STATE OF WEST BENGAL

v.

UNION OF INDIA

1962

December, 21.

(B. P. SINHA, C. J., JAFER IMAM, K. SUBBA RAO, J. C. SHAH, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Land Acquisition—State property—Coal bearing areas—Acquisition by Union of India—Parliament, power to enact law—Indian Constitution, if not federal—Sovereignty, if lies in States also—Fundamental rights, whether can be claimed by States—"Person" and "Property", Connotation of—Coal Bearing Areas (Acquisition and Development) Act, 1957 (XX of 1957)—Constitution of India, Arts. 13, 31, 73, 162, 245, 246, 248, 249, 254, 294, 298, Seventh Schedule, List I Entries 52, 54, 97, List II Entries 23, 24, List III Entry 42.

Under the Coal Bearing Areas (Acquisition and Development) Act, 1957, enacted by Parliament, the Union of India proposed to acquire certain coal bearing areas in the State of West Bengal. The State filed a suit contending that the Act did not apply to lands vested in or owned by the State and that if it applied to such lands the Act was beyond the legislative competence of Parliament.

Held, (per Sinha C. J., Imam, Shah, Ayyangar and Mudholkar, JJ.), that upon a proper interpretation of the relevant

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provisions of the Act it was clear that the Act applied also to coal bearing areas vested in or owned by the State. The preamble of the Act did not support the argument that the Act was intended to acquire only the rights of individuals and not those of the States in coal bearing areas. Though the statement of Objects and Reasons supported the contention of the State it could not be used to determine the true meaning and effect of the substantive provisions of the Act.

Held, further, (per Sinha C. J., Iman, Shah, Ayyangar and Mudholkar JJ. Subba Rao J., *contra*), that the Coal Bearing Areas (Acquisition and Development) Act, 1957, is not *ultra vires* the powers of Parliament and is valid. Under Entry 42 of List III of the Seventh Schedule to the Constitution, Parliament is competent to make a law for the acquisition for the property of a State.

The Constitution of India is not truly Federal in character. The basis of distribution of powers between the Union and States is that only those powers which are concerned with the regulation of local problems are vested in the States and the residue specially those which tend to maintain the economic, industrial and commercial unity of the country are left to the Union. It is not correct to say that full sovereignty is vested in the States. Parliament which is competent to destory a State cannot be held, on the theory of absolute sovereignty of the States, to be incompetent to acquire by legislation the property owned by the States. Even if the Constitution were held to be a Federation and the States regarded *qua* the Union as sovereign, the power of the Union to legislate in respect of the property situate in the States would remain unrestricted. The power of Parliament conferred by Entry 42, List III, as accessory to the effectuation of the power under Entries 52 and 54, List I, is not restricted by any provision of the Constitution and is capable of being exercised in respect of the property of the States also.

From the fact that Art. 294 vests the property in the States and, that Art. 298 empowers the States to transfer the property it does not follow that the property of the States cannot be acquired without a constitutional amendment, Article 294 does not contain any prohibition against the transfer of property of the States and if the property is capable of being transferred by the State it is capable of being acquired.

Under s. 127 of the Government of India Act, 1935, the Central Government could require the Province to acquire land

on behalf of the Federation if it was private land and to transfer it to the Federation if it was land belonging to the Province, and the Provincial Government had no option but to comply with the direction. It was not considered an infraction of Provincial autonomy to vest such a power in the Central Government. Absence of a similar provision in the present Constitution made no difference. Under the Government of India Act the power to compulsorily acquire property was exclusively vested in the Provinces but under the Constitution the Union also has that power.

If the other provisions of the Constitution in terms of sufficient amplitude confer power for making laws for acquiring State property, the power cannot be defeated because the express power to acquire property generally does not specifically and in terms refer to State property. Power to acquire and requisition property can be exercised, concurrently by the Union and the States but on that account there can be no conflict in the exercise of the power as such a conflict is prevented by Arts. 31 (3) and 254.

Under the Constitution fundamental rights can be claimed not only by individuals and corporations but in some cases by the State also. Property vested in the States may not be acquired under a law made under Entry 42, List III, unless the law complies with the requirements of Art. 31.

The rule that the State is not bound, unless it is expressly named or by necessary implication in a statute is one of interpretation. In interpreting a constitutional document provisions conferring legislative power must normally be interpreted liberally and in their widest amplitude. There is no indication in the Constitution that the word "property" in Entry 42 of List III is to be understood in any restricted sense; it must accordingly be held to include property belonging to the States also.

Per Subba Rao, J.—The impugned Act in so far as it confers a power on the Union to acquire lands owned by the States, including coal mines and coal bearing lands is *ultra vires*. Under the Constitution of India the political sovereignty is divided between the constitutional entities, that is, the Union and the States, who are juristic personalities possessing properties and functioning through the instrumentalities created by the Constitution. The Indian Constitution accepts the federal concept and distributes the sovereign powers between the coordinate constitutional entities, namely, the Union and the

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States. This concept implies that one cannot encroach upon the governmental functions or instrumentalities of the other unless the Constitution provides for such interference. The legislative fields allotted to the units cover subjects for legislation and they do not deal with the relationship between the coordinate units functioning in their allotted fields. This is regulated by other provisions of the Constitution and their is no provision which enables one unit to take away the property of another except by agreement.

The power to acquire the property of a citizen for a public purpose is one of the implied powers of the sovereign. Under the Indian Constitution that sovereign power is divided between the Union and the States. It is implicit in the power of acquisition by a sovereign that it must relate only to property of the governed. for a sovereign cannot acquire its own property.

It is also implicit in the concept of acquisition and requisition that they shall be for public purpose on payment of compensation. The word "person" in Art. 31 does not include "State"; if Entry 42 were to empower Parliament to acquire the property of a State, the State would not have the protection of Art. 31 which is available to all other persons. Therefore, Entry 42 List III does not authorise either Parliament or a State Legislature to make a law for the acquisition of the property of the other.

Nor do the residuary Art. 248 and Entry 97 List I confer any power on Parliament to acquire the property of a State. The residuary legislative field cannot possibly cover inter-State relation, for that matter is not distributed between the Union and the States by way of legislative Lists. When a specific provision is made for acquisition of property, it would be incongruous to confine that Entry to properties other than those of the States and to resort to the residuary power for acquiring the property of the States. Further the anomaly of the Union acquiring the property of the States without compensation would still remain.

Neither Entry 24 of List II nor Entry 52 of List I empowers a State Legislature before Parliament made a law declaring that the control of a particular industry by the Union is expedient in the public interest or the Parliament, after such declaration, to make such a law for acquisition of State lands, for they deal only with the regulation of an existing industry or an industry that may be started subsequently, but not with acquisition of lands.

Act 12 of 1952 and Act 67 of 1957 deal only with the regulation of mines and further the declarations contained in the said Acts are expressly confined to the extent of the regulation provided thereunder and, therefore, the declarations therein could not be relied upon to sustain the validity of the Act.

No inspiration can be drawn from foreign constitutions or decisions made thereunder in construing the express provisions of our Constitution in the context of its different set up. The property of the states can be acquired by the Union only by agreement.

ORIGINAL JURISDICTION : Suit No. 1 of 1961.

S. M. Bose, Advocate-General for the State of West Bengal, B. Sen, S. C. Bose, Milon K. Banerjee, P. K. Chatterjee, and *P. K. Bose,* for the plaintiff.

M. C. Setalvad, Attorney-General for India, H. N. Sanyal, Additional Solicitor General of India, Bishan Narain, N. S. Bindra and *R. H. Dhebar,* for the defendant.

B. Sen and *I. N. Shroff,* for the Intervener No. 1.

S. M. Sikri, Advocate-General for the State of Punjab, R. Ganapathy Iyer and *P. D. Menon,* for Intervener No. 2.

B. C. Barua, Advocate-General for the State of Assam and *Naunit Lal,* for the Intervener No. 3.

Dinabandhu Sahu, Advocate-General for the State of Orissa, B. K. P. Sinha and *P. D. Menon,* for the Intervener No. 4.

A. Ranganadham Chetty and *A. V. Rangam,* for Intervener No. 5.

Lal. Narayan Sinha, and *D. Goburdhan,* for Intervener No. 6.

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K. S. Hajela and *C. P. Lal*, for Intervener No. 7.

P. D. Menon, for Intervener No. 8.

S. M. Sikri, Advocate-General for State of Punjab, and *P. D. Menon*, for Intervener No. 9.

G. S. Pathak, N. S. Bindra and *R. H. Dhebar*, for Intervener No. 10.

1962. December 21. The Judgment of Sinha, C. J., Imam, Shah, Ayyangar and Mudholkar, JJ., was delivered by Sinha, C. J., Subba Rao, J., delivered a separate Judgment.

Sinha, C. J.

SINHA, C. J.—This is a suit by the State of West Bengal against the Union of India for a declaration that Parliament is not competent to make a law authorising the Union Government to acquire land and rights in or over land, which are vested in a State, and that the Coal Bearing Areas (Acquisition and Development) Act (XX of 1957)—which hereinafter will be referred to as the Act—enacted by the Parliament, and particularly ss. 4 and 7 thereof, were *ultra vires* the legislative competance of Parliament, as also for an injunction restraining the defendant from proceeding under the provisions of these sections of the Act in respect of the coal bearing lands vested in the plaintiff. As will presently appear, the suit raises questions of great public importance, bearing on the interpretation of quite a large number of the Articles of the Constitution. In view of the importance of the questions raised in this litigation, notices were issued by this Court to all the Advocates-General of the States of India. In pursuance of that notice, the States of Assam, Bihar, Gujarat, Madras, Orissa, Punjab, Rajasthan and Uttar Pradesh have appeared, either through their respective Advocates-General or through other Counsel. The National Coal Development Corporation Ltd., with its head

office at Ranchi in Bihar, has also intervened in view of a pending litigation between it as one of the defendants and the State of West Bengal as the plaintiff. We have heard counsel for the parties at great length.

The Plaint is founded on the following allegations. The plaintiff is a State, specified in the First Schedule of the Constitution, as forming part of India, which is a Union of States. By virtue of Art. 294 of the Constitution, all property and assets in West Bengal, which were vested in His Majesty for the purposes of the Government of the Province of Bengal became vested in the State of West Bengal for the purposes of the State. The State of West Bengal, in exercise of its exclusive legislative powers, enacted the West Bengal Estates Acquisition Act, 1954 (W. B. 1 of 1954). By notification issued under the Act, as amended, all estates and rights of intermediaries and *Ryots* vested in the State for the purposes of Government, free from encumbrances, together with rights in the sub-soil, including mines and minerals. The Parliament enacted the impugned Act authorising the Union of India to acquire any land or any right in or over land, in any part of India. In exercise of its powers under the Act, the Union of India, by two notifications dated September 21, 1959 and January 8, 1960, has expressed its intention to prospect for coal lying within the lands which are vested in the plaintiff, as aforesaid. Disputes and differences have arisen between the plaintiff and the defendant as to the competence of Parliament to enact the Act and its power to acquire the property of the plaintiff, which is a sovereign authority. In paragraph 9 of the Plaint, a controversy had been raised as to whether or not the proposed acquisition was for a public purpose, but at the actual hearing of the case, the learned Advocate-General of Bengal withdrew that contention, and, therefore, that issue is no more a live one. Notice

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under s. 80 of the Code of Civil Procedure is said to have been duly served.

The Written Statement of the defendant does not deny the allegations of fact made in the Plaint, but denies the correctness of each and all the submissions or legal contentions as to the legislative competence of Parliament to enact the Act and as to the power of the defendant to acquire any property of a State. It is also denied that the State of West Bengal is a sovereign authority. The following statement in paragraph 12 of the Written Statement brings out the policy underlying the enactment in question :

> "The defendant states that it is in the public interest that there should be a planned and rapid industrialization of the country. For such rapid and planned industrialization, it is essential that the production of coal should be greatly increased as coal is the basic essential for industries. Regulation of mines and mineral development under the control of the Union has been declared by Parliament by law to be expedient in the public interest. It is submitted that in the circumstances, the acquisition of coal bearing areas by the Union is necessary for the regulation of mines and mineral development and for increased production of coal in the public interest. The defendant will rely on documents a list whereof is hereto annexed."

On those pleadings, the following issues were raised :

1. Whether Parliament has legislative competence to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the State as alleged in para 8 of the plaint ?

2. Whether the State of West Bengal is a sovereign authority as alleged in para 8 of the plaint ?

3. Whether assuming that the State of West Bengal is a sovereign authority, Parliament is entitled to enact a law for compulsory acquisition of its lands and properties ?

4. Whether the Act or any of its provisions are *ultra vires* the legislative competence of Parliament ?

5. Whether the plaintiff is entitled to any relief and if so, what relief ?

After the arguments on behalf of the plaintiff, and of the States in support of the plaintiff, had been finished, application was made for amendment of the plaint praying that the following paragraph may be added as paragraph 9A, which is as follows :—

> "Alternatively the plaintiff submits that the Coal Bearing Areas (Acquisition and Development) Act (Act XX of 1957) on its true construction does not apply to the lands vested in or owned by the Plaintiff the State of West Bengal. Further the notifications purported to have been issued under the said Act are void and of no effect."

At the request of the learned Attorney-General a short adjournment was granted to consider the position as to whether or not the amendment sought should be opposed on behalf of the defendant. As the amendment sought was not opposed, it was granted and an additional issue was raised in these terms :

> "Whether Act XX of 1957 on its true construction applies to lands vested in or owned by the Plaintiff State? "

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It will thus appear that the parties are not at issue on any question of fact, and the determination of the controversy depends entirely upon the interpretation of the relevant provisions of the Constitution, and the scope and effect of the Act.

The issues joined between the parties are mainly two, (1) whether on a true construction of the provisions of the Act, they apply to lands vested in or owned by the plaintiff; and (2) If this is answered in the affirmative whether there was legislative competence in Parliament to enact the impunged statute. The scope and effect of the Act is the most important question for determination, in the first instance, because the determination of that question will affect the ambit of the discussion on the second question. As already indicated, when the case was opened for the first time by the learned Advocate-General of Bengal, he proceeded on the basis that the Act purported to acquire the interests of the State, and made his further submission to the effect that Parliament had no competence to pass an Act which had the effect of affecting or acquiring the interest of the State. But later he also took up the alternative position that the Act, on its true construction, did not affect the interests or property of the State. The other States which have entered appearance, through their respective counsel, have supported this stand of the plaintiff and have laid particular emphasis on those provisions of the Act which, they contend, support their contention that the Act did not intend to acquire or in any way affect the interests of the States. In this connection, the arguments began by making pointed reference to the following paragraphs in the Statement of Objects and Reasons, set out at pages 16-17 of the Paper Book :

> "According to the Industrial Policy Resolution of 1956 the future development of coal is the responsibility of the State. All new units in

the coal industry will be set up only by the State save in exceptional circumstances as laid down in the Resolution.

The production of coal in India in 1953 was 38 million tons and the target for production for the Second Five-Year Plan has been fixed at 60 million tons per annum. It has been decided that out of the additional production of 22 million tons per annum envisaged, the public sector should produce an additional 12 million tons per annum, the balance being allocated to the private industry for production from existing collieries and immediately contiguous areas.

Out of the additional 12 million tons in the public sector, the bulk (10 million tons per annum) will have to be raised by the development of new coal fields, such as Korba, Karanpura, Kathara and Jhilimili and Bisrampur. Very nearly all the coal bearing areas however are covered by mining leases held by private persons or prospecting licencees which carry a right to mining lease. Hence it is proposed to take power to acquire unworked coal bearing areas covered by private leases or prospecting licencees which are found surplus to the production required in the private sector and to work these areas as lessees of the State Government.

With the acquisition of zamindari rights by the the State Governments, the rights in minerals are now vested in all areas in the State Governments, and it is not appropriate to use the Land Acquisition Act, 1894, for the acquisition of mineral rights, particularly because the Central Government does not intend to acquire the proprietary rights vested in the States. There is no other existing Central or State Legislation under which the Government has powers to acquire immediately the lessee's rights over the coal bearing areas acquired by Government for the

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additional coal production. It is accordingly considered necessary to take powers by fresh legislation to acquire the lessees' rights over unworked coal-bearing areas on payment of reasonable compensation to the lessees, and without affecting the State Government rights as owner of the minerals or the royalty payable to the State Government on minerals.

The Bill provides for payment of reasonable compensation for the acquisition of the rights of prospecting licencees and mining lessees."

Besides setting out the policy of the State in the matter of coal mining industry and the actual state of affairs in relation thereto, the Statement of objects and Reasons contains the crucial words on which particular reliance was placed on behalf of the States, "because the Central Government does not intend to acquire the proprietary rights vested in the States ....." and, "without affecting the State Government rights as owners." It is however well-settled that the Statement of Objects and Reasons accompanying a bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments' rights as owners of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute.

It was then contended that the preamble of the

Act was the key to the understanding of the scope and provisions of the statute. The preamble is in these words :

> "An act to establish in the economic interest of India greater public control over the coal mining industry and its development by providing for the acquisition by the state of unworked land containing or likely to contain coal deposits or of rights in or over such land, for the extinguishment or modification of such rights accruing by virtue of any agreement, lease, licence or otherwise, and for matters connected therewith."

Particular stress was laid on the last two lines of the preamble, showing that only rights "accruing by virtue of any agreement, lease, licence or otherwise" were being sought to be extinguished or modified by the provisions of the Act. But this argument omits to take note of the words of the previous clause in the preamble which has reference to the fact that the Act also was meant for "acquisition by the state of unworked lands containing or likely to contain coal deposits." Before proceeding to deal with the main arguments it is necessary to advert to a submission of the learned Advocate-General of Bengal that the reference to the "State" in the words "acquisition by the State" occurring in the preamble was a reference to the "States" as distinguished from the union. This contention has only to be mentioned to be rejected as the entire object and purpose of the impugned Act was to vest powers in the Union Government to work coal mines and in that context the word "State" could obviously refer only to the Union Government.

The preamble, therefore, does not support the argument that the Act was intended to acquire only the rights of individuals, derived from prospecting licences or based on leases, and to exclude from the

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purview of the Act the rights of States in coal-bearing lands. Section 4, relating to the issue of a preliminary notification of the intention to prospect for coal in any given area, makes reference to "lands", without any qualifications, and s. 6, which is consequential upon s. 4 lays down the effect of such notification on prospecting licences and mining leases. Section 7 also speaks of giving notice of the Government's intention to acquire the whole or any part of the land, notified as aforesaid or any rights in or over such land. Section 9, which provides for a declaration of acquisition has also used the same expression, "any land or any rights in or over such land." The proviso to s. 9, which is in these terms :

> "Provided that, where the declaration relates to any land or to any rights in or over land belonging to a State Government which has or have not been leased out, no such declaration shall be made except after previous consultation with the State Government"

is very important in this connection. This proviso for the first time makes specific reference to any land or to any rights in or over land "belonging to a State Government." Section 9A authorises the Central Government to dispense with the necessity of complying with the provisions of s. 8, which provides for hearing any objections raised to the proposal to acquire any land which is notified under s. 7 as the subject-matter of acquisition. Ordinarily, if a notification is made by the Central Government of its intention to acquire the whole or any part of the land or of any right in or over land, notified under s. 4, it is open to any person interested in the land to object to the acquisition of the whole or any part of the land or of any rights in or over such land. If any such objection is raised, an opportunity has to be given for hearing such an objection or

objections, by the "competent authority." But under s. 9-A, the Central Government, if it is satisfied that it is necessary to acquire immediately the whole or any part of the land, or any rights in or over such land, may direct that s. 8 shall not come into operation, and, therefore, no proceedings thereunder would be entertainable. Section 10 lays down the consequences of the notification of declaration of acquisition under s. 9. On such a declaration the land, or the rights in or over the land, shall vest in the Central Government, free from all encumbrances, and under sub-section (2) where the rights acquired happen to have been granted under a mining lease by a State Government, the Central Government shall be deemed to have become the lessee of the State Government. A good deal of argument was addressed to us as to the significance of the provision, contained in s. 10 (2) of the Act. They will be dealt with later in the course of this judgment. But it is open to Government to direct by an order in writing that the land or the rights in or over the land, instead of vesting in the Central Government under s. 10 shall vest in a Government Company, which has expressed its willingness to comply with the terms and conditions imposed by the Central Government. A 'Government Company' means a company as defined in s. 617 of the Companies Act, 1956. In the case where the land or the rights in or over the land become vested in a Government Company, under s. 11 (1), that company shall be deemed to have become a lessee of the State Government, as if the Company had been granted the mining lease by the State Government under the Mineral Concession Rules. Compensation under the Act on account of prospecting licences ceasing to have effect, or the rights under a mining lease having been acquired, or for any land acquired under s. 9, has been provided for and the rules lay down the procedure for determining such compensation, in s. 13. It is clear on a reading of the provisions for

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compensation in that section that no compensation has been provided for in respect of minerals lying unworked underground. Section 14 to 17 lay down the method of determining compensation and other cognate matters relating to payment of compensation. The rest of the provisions of the Act do not bear on the present controversy and, therefore, need not be adverted to.

On a bare reading of the provisions of the Act, the expression "any land" or "any rights in or over such land" would appear to cover every interest regardless of the person or authority who owns them, including those of a State Government. But it has been argued that on a close examination of the provisions aforesaid of the Act and keeping certain general principles of interpretation of Statutes in view, the conclusion follows that the Act does not cover any property or interest in or over land belonging to a State Government. We have already indicated that neither the statement of objects and reasons nor the preamble are of any help to the plaintiff or to States which have intervened and have claimed that any property belonging to a State Government is outside the scope and effect of the Act.

Bearing in mind that the words used in s. 4 are comprehensive and unrestricted and apt to include in their sweep lands "belonging to a State" and that the reference in s. 7 is to lands which are notified under s: 4 (1), we shall now turn to the arguments bearing upon the interpretation of certain specific provisions which are however claimed to suggest an opposite conclusion. Firstly, it is urged that "any person" used in s. 8 could not be interpreted as including a State. This argument is bound up with the other argument relating to the competence of Parliament to legislate in respect of property belonging to a State. It will, therefore, be convenient to deal

with this argument along with that topic. It is enough to point out here that the explanation to s. 8 (1), and particularly the words "undertaken by the Central Government or by any other person", would lend support to the argument of the learned Attorney-General that the word "person" has been used in the generic sense of including both a natural person and a juristic person. Secondly, it was argued with reference to the words of the proviso to s. 9 (1) that where the Act intended to make any mention of a State Government, it had done so specifically as in ss. 9, 10, 11 and 18 of the Act, and that, therefore, the substantive provisions of the Act were not intended to apply to any rights or interest vested in a State Government. The argument is plausible but not sound. Section 9 is the effective section of the Act, which provides that after the Central Government has investigated the prospect of obtaining coal, after the issue of a notification under s. 4, and after notifying its intention to acquire the land covered by the notification under s. 7, and after disposing of objections, if any, under s. 8, the Central Government has to make the necessary declaration that that land should be acquired. The proviso to s. 9 (1) only requires consultation with the concerned State Government where it is the owner of the land, or has any interest in or over such land. It has rightly been pointed out on behalf of the Central Government that if the right or interest of a State Government were not involved in the acquisition, it would be wholly unnecessary to make any reference to the State Government concerned. It was urged that unless "lands belonging to a State Government" or in which a State Government has an interest in or over such land, were within the operative words of the main provisions in s. 9 (1), it would be meaningless to make a provision for the consultation referred to in the proviso. We see force in this submission. The consultation with the State Government is made a condition precedent to the declaration

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to be made by the Central Government in respect of the proposed acquisition. But consultation does not necessarily mean consent, though ordinarily consultation between two governments or two public authorities would signify the co-operation and willingness to accede to the proposal—a situation which is not contemplated with reference to the interests of private persons.

On the question of the proper interpretation of the proviso to s. 9 (1), a number of readings were suggested, which went to the length of not only re-writing the section but of adding words which were not there so as to make the proviso mean what on its plain reading it cannot. We are not, therefore, inclined seriously to examine those several alternative readings of this part of the section. Similarly the provisions of s. 10 (2) were pressed in aid of the construction suggested on behalf of the plaintiff and the other intervening States, that the interests of a State Government were not within the purview of the Act. This argument is based on the consideration that if rights or interests of a State Government were also within the purview of the Act, it would be meaningless to provide that the Central Government or a Government Company, as contemplated by s. 11, should be deemed to be the lessee of the State Government in respect of the rights acquired. We are unable to acceeds to this construction. Sections 10 (2) and 11 have particular reference to those cases where the property acquired consists of rights under any mining leases granted by a State Governm t. Apart from the kind of property contemplated by ss. 10 (2) and 11 (2), as aforesaid, there may be other kinds of property acquired, e. g. coal-bearing land, in which the entirety of the interest is vested in a State Government. In such cases, there would be no question of the Central Government or a Government Company becoming or being deemed to become a lessee of a State Government. Reference was made

to s. 18 but the mention of a "State Government" in the section is consequential upon the provisions of ss. 10 and 11, that is to say, where the Central Government or a Government Company has, by operation of those provisions of the Act, become the lessee of a State Government. In the case of any differences between the Central Government and a State Government on the question of how prospecting is to be done or of how far the mineral Concession Rules shall be observed, is, by virtue of this section, to be resolved by arbitration or in such other manner as the Governments concerned may decide.

It will thus appear that on a proper interpretation of the relevant provisions of the Act, it cannot be said that either in express terms or by necessary implication the provisions of the Act are implicable to rights or interests of a State Government or that such lands are excluded. It is plain that the Act is intended to cover land or rights in or over land belonging either to an individual or to a juristic person. Such land may comprise not only surface rights but also mineral rights. The land to be acquired by the Central Govt. might be virgin soil unencumbered by any prospecting licences or mining leases granted by the State or by an intermediary, using the expression to mean all interests below the State. Such an interest as aforesaid may be vested in a State or different interests may be vested in different persons by virtue of leases or licences granted by proprietors in permanently settled States or by tenure-holders who have expressly obtained mining rights. The Act, therefore, had to use the compendious language "land or any interest in or over land" to cover all those diverse rights and interests which the Central Govt. would be interested to acquire in order to have a free hand in developing the land for coal mining in the public sector, as it is called. The Act may have been more artistically drafted but construing it as it is, we have no doubt that

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Parliament intended to acquire all rights and interests in coal bearing land with a view to prospecting for coal and for exploiting coal-bearing mines. It must, therefore, be held that the supplementary issue as regards the interpretation of the Act joined between the parties as a result of the amendment of the plaint must be decided against the plaintiff.

Starting with the position that on a true construction of the relevant provisions of the Act, the rights and interests of a State Government in coal bearing land had not been excluded from the operation of the Act, either in express terms or by necessary implication, the next question that arises for consideration is the first issue which covers issues 3 and 4 also. The competence of Parliament to enact the Act has to be determined with reference to specific provisions of the Constitution, with particular reference to the entries in the Seventh Schedule—List I and List III.

By Entry 42 in List III of the Seventh Schedule to the Constitution read with Art. 246 (3) power to legislate in respect of acquisition and requisition of property is conferred upon the Parliament as well as the State Legislatures, *Prima facie*, this power may be exercised by the Parliament in respect of all property, privately owned or State owned. But on behalf of the State of West Bengal and some of the intervening States it was submitted that the very nature of the right in property vested in the State for governmental purposes imposed a limitation upon the exercise of the power of the Union Parliament, affecting State owned property. On behalf of the State of Punjab—one of the intervening States—it was urged that if acquisition of property was necessarily incidental to the effective exercise of power by Parliament in respect of any of the entries in Lists I and III, the Parliament may legislate so as to affect title of the State to property vested in it

provided it does not interfere with the legislative power of the State.

Diverse reasons were suggested at the Bar in support of the plea that the State property was not subject to the exercise of legislative powers of the Parliament. They may be grouped under the following heads :—

(1) The Constitution having adopted the federal principle of government the States share the sovereignty of the nation with the Union, and therefore power of the Parliament does not extend to enacting legislation for depriving the States of property vested in them as sovereign authorities. Entrustment of power to legislate must therefore be so read as to imply a restriction upon the Parliament under Entry 42 of List III when it is sought to be exercised in respect of the property owned by a State.

(2) Property vested in the States by virtue of Art. 294 (1) cannot be diverted to Union purposes by compulsion of Parliamentary legislation.

(3) The Government of India Act, 1935 provided special machinery for acquisition of property of the State by negotiations, and not by compulsion in exercise of legislative power. That provision recognised that the Central Legislature of the Government of India had no power to acquire property of the State by exercise of legislative power, and even though no provision similar to s. 127 of the Government of India Act, 1935 has been enacted in the Constitution, the recognition implicit in that provision of the immunity of the property of the units must also be deemed to be superimposed upon the exercise

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of legislative power vested in the Parliament under the Constitution.

(4) Absence of power expressly conferred such as is to be found in the Australian Constitution, to legislate for acquisition of the property of the State indicates that it was not the intention of the Constitution makers to confer that power upon the Union Parliament, under the general legislative heads.

(5) If power be exercised by the Union to acquire State property under Entry 42 of the Concurrent List, similar power may also be exercised by the States in respect of Union property and even to re-acquire the property from the Union by exercise of the State's legislative power. The power under Entry 42 can therefore never be effectively exercised by the Parliament.

(6) It could not have been the intention of the Constitution makers to confer authority upon the Parliament to legislate for acquiring property of the States and thereby to make the right of the State to property owned by it even more precarious than the right which individuals or Corporations have under Constitution to their property. Individuals and Corporations have the guarantee under Art. 31 (2) of the Constitution that acquisition of their property will be for public purposes and compensation will be awarded for acquiring property. Entry 42 must be read subject to Art. 31, and inasmuch as Fundamental rights are conferred upon individuals and Corporations against executive or legislative actions, and States are not invested with any fundamental rights exercise-able against the Union or other States, the right to legislate for compulsory acquisition of State property cannot be exercised,

(7) Unless a law expressly or by necessary implication so provides, a State is not bound thereby. This well recognised rule applies to the interpretation of the Constitution. Therefore in the absence of any provision express or necessarily implying that the property of the State could be acquired by the Union, the rights claimed by the Union to legislate for acquisition of State property must be negatived.

All these arguments, except the purely interpretational, are ultimately founded upon the plea that the States have within their allotted field full attributes of sovereignty and exercise of authority by the Union agencies, legislative or executive, which trenches upon that sovereignty is void.

Re: (1)

Ever since the assumption of authority by the British Crown under Statute 21 & 22, Vict .(1656) Ch. 106, the administration of British India was unitary and highly centralized. The Governor-General was invested with autocratic powers to administer the entire territory. Even though the territory was divided into administrative units, the authority of the respective Governors of the Provinces was derived from the Governor-General and the Governor-General was responsible to the British Parliament. There was, therefore, a chain of responsibility the Provincial Governments were subject to the control of the Central Government and the Central Government to the Secretary of State. Some process of Revolution took place under the Government of India Act, 1919, but that was only for the purpose of decentralization of the Governmental power but on that account the Government did not cease to be unitary. The aim of the Government of India Act, 1935 was to unite the Provinces and Indian States into a federation, but that could be

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achieved only if a substantial number of the Indian States agreed to join the Provinces in the federation. For diverse reasons the Indian States never joined the proposed federation and the part dealing with federation never became effective. The Central Government as it was originally constituted under the Government of India Act, 1919, with some modification continued to function. But in the Provinces certain alterations were made. Certain departments were administered with the aid of Ministers, who were popularly elected, and who were in a sense responsible to the electorate. The Governor was still authorised to act in his discretion without consulting his Ministers in respect of certain matters. He derived his authority from the British Crown, and was subject to the directions which the Central Government gave to carry into execution Acts of the Central Legislature in the Concurrent List and for the maintenance of means of communication, and in respect of all matters for preventing grave menace to the peace or tranquility of India or part thereof. The administration continued to function as an agent of the British Parliament.

By the Indian Independence Act, 1947 a separate Dominion of India was carved out and by s. 6 thereof the Legislature was for the first time authorised to make laws for the Dominion. Such laws were not to be void or inoperative on the ground that they were repugnant to the law of England or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Legislature of the Dominion included the power to repeal or amend any such Act, order, rule or regulation. The British Parliament ceased to have responsibility as respects governance of the territories which were immediately before that date included in British India, and suzerainty of the Crown over the Indian States lapsed

and with it all treaties and agreements in force on the date of the passing of the Act between the Crown and the rulers of Indian States. The bond of agency which bound the administration in India to function as agent of the Birtish Parliament was dissolved and the Indian Dominion to that extent became sovereign. Then came the Constitution. The territory was evidently too large for a democratic set-up with wholly centralized form of Government. Imposition of a centralized form might also have meant a reversal of political trends which had led to decentralization of the administration and some distribution of power. The Constitution had, therefore, to be in a form in which authority was decentralized. In the era immediately prior to the enactment of the Indian Independence Act, there were partially autonomous units such as the Provinces. There were Indian States which were in a sense sovereign but their sovereignty was extinguished by the various merger agreements which the rulers of those States entered into with the Government of India before the Constitution. By virtue of the process of integration of the various States there emerged a Centralised form of administration in which the Governor General was the fountain head of executive authority. The Constitution of India was erected on the foundations of the Government of India Act, 1935; the basic structure was not altered in many important matters, and a large number of provisions were incorporated *verbatim* from the earlier Constitution.

In some respects a greater degree of economic unity was sought to be secured by transferring subjects having impact on matters of common interest into the Union list. A comparison of the Lists in Schedule 7 to the Constitution with the Schedule 7 to the Government of India Act, 1935 discloses that the powers of the Union have been enlarged particularly in the field of economic unity and this was done as it was felt that there should be

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centralized control and administration in certain fields if rapid economic and industrial progress had to be achieved by the nation. To illustrate this it is sufficient to refer to National Highways (Entry 24), inter-State Trade and Commerce (Entry 42)—to mention only a few being transferred from List II of the Government of India Act to List I in the Constitution, to the new entry regarding inter-State rivers (Entry 56), to the new Entry 33 in the Concurrent List to which it is transferred from List II, and to the comprehensive provisions of Part XIII—which seek to make India a single economic unit for Purposes of trade and commerce under the overall control of the Union Parliament and the Union Executive. The result was a Constitution which was not true to any traditional pattern of federation. There is no warrant for the assumption that the Provinces were sovereign, autunomous units which had parted with such power as they considered reasonable or proper for enabling the Central Government to function for the common good. The legal theory on which the Constitution was based was the withdrawal or resumption of all the powers of sovereignty into the people of this country and the distribution of these powers save those withheld from both the Union and the States by reason of the provisions of Part III—between the Union and the States.

(a) A truly federal form of Government envisages a compact or agreement between independent and sovereign units to surrender partially their authority in their common interest and vesting it in a Union and retaining the residue of the authority in the constituent units. Ordinarily each constituent unit has its separate Constitution by which it is governed in all matters except those surrendered to the Union, and the Constitution of the Union primarily operates upon the administration of the units. Our Constitution was not the result of any such

compact or agreement : Units constituting a unitary State which were non-sovereign were transformed by abdication of power into a Union.

(b) Supremacy of the Constitution which cannot be altered except by the component units. Our Constitution is undoubtedly supreme but it is liable to be altered by the Union Parliament alone and the units have no power to alter it.

(c) Distribution of powers between the Union and the regional units each in its sphere coordinate and independent of the other. The basis of such distribution of power is that in matters of national importance in which a uniform policy is desirable in the interest of the units, authority is entrusted to the Union, and matters of local concern remain with the State.

(d) Supreme authority of the Courts to interpret the Constitution and to invalidate action violative of the Constitution. A federal Constitution, by its very nature, consists of checks and balances and must contain provisions for resolving conflicts between the executive and legislative authority of the Union and the regional units.

In our Constitution characteristic (d) is to be found in full force, (a) and (b) are absent. There is undoubtedly distribution of powers between the Union and the States in matters legislative and executive; but distribution of powers is not always an index of political sovereignty. The exercise of powers legislative and executive in the allotted fields is hedged in by numerous restrictions, so that the powers of the States are not coordinate with the Union and are not in many respects independent.

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Legal sovereignty of the Indian nation is vested the people of India who as stated by the preamble have solemnly resolved to constitute India into a Sovereign Democratic Republic for the objects specified therein. The Political sovereignty is distributed between, as we will presently demonstrate, the Union of India and the States with greater weightage in favour of the Union. Article 300 invests the Government of India and the States with the character of quasi-corporations entitled to sue and liable to be sued in relation to their respective affairs. By Art. 299 contracts may be entered into by the Union and the States in exercise of their respective executive powers and Art. 298 authorises in exercise of their respective executive powers the Union and the States to carry on trade or business and to acquire, hold and dispose of property and to make contracts. These provisions and the entrustment of powers to legislate on certain matters exclusive, and concurrently in certain other matters, and entrustment of executive authority co-extensive with the legislative power form the foundation of the division of authority.

In India judicial power is exercised by a single set of courts, Civil, Criminal and Revenue whether they deal with disputes in respect of legislation which is either State legislation or Union legislation. The exercise of executive authority by the Union or by the State and rights and obligations arising out of the executive authority are subject to the jurisdiction of the Courts which have territorial jurisdiction in respect of the cause of action. The High Courts have been invested with certain powers under Art. 226 to issue writs addressed to any person or authority, including in appropriate cases any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose and under Art. 227 the High Court has superintendence over all courts in relation to which it exercises jurisdiction. The Supreme Court is at the apex of the

hierarchy of courts, civil, criminal, revenue and of quasi-judicial tribunals. There are in India not two sets of courts, Federal and State as are found functioning under the Constitution of the United States of America. By Art. 247 power is reserved to the Parliament by law to provide for establishment of courts for better administration of laws made by the Parliament or of any existing laws with regard to the matters enumerated in the Union List, but no such courts have been constituted.

Sovereignty in executive matters of the Union is declared by Art. 73 which enacts that subject to the provisions of the Constitution, the executive power of the Union extends to the matters with respect to which Parliament may make laws, and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. But this executive power may not save as expressly provided in the Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws. By Art. 77 all executive actions of the Government of India have to be expressed to be taken in the name of the President. Executive power of the State is vested by Art. 154 in the Governor and is exercisable by him directly or through officers subordinate to him in accordance with the Constitution. The appointment of the Governor is made by the President and it is open to the President to make such provision as he thinks fit for the discharge of the function of a Governor of the State in any contingency not provided for in Ch. II of Part VI. By Art. 162 subject to the provisions of the Constitution, executive power of the State extends to matters with respect to which the Legislature of the State has power to make laws, subject to the restriction that in matters in the Concurrent List of the Seventh Schedule, exercise of executive power of the State is also subject to and

limited by the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. Exercise of executive authority of the States is largely restricted by diverse Constitutional provisions. The executive power of every State has to be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and not to impede or prejudice the executive power of the Union. The executive power of the Union extends to the giving of such directions to a State as may appear to the Government of India to be necessary for those purposes and as to the construction and maintenance of means of communication declared to be of national or military importance and for protection of railways. The Parliament has power to declare highways or waterways to be of national importance, and the Union may execute those powers, and also construct and maintain means of communication as part of its function with respect to naval, military and air force works. The President may also, with the consent of the Government of a State, entrust to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends : Art. 258 (1). Again the Union Parliament may by law made in exercise of authority in respect of matters exclusively within its competence confer powers and duties or authorise the conferment of powers and imposition of duties upon the State, or officers or authorities thereof : Art 258 (2). Art. 365 authorises the President to hold that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, if the State fails to comply with or give effect to any directions given in exercise of the executive power of the Union.

These are the restrictions on the exercise of the executive power by the States, in normal times; in

times of emergency power to override the exercise of executive power of the State is entrusted to the Union. Again the field of exercise of legislative power being co-extensive with the exercise of the legislative power of the States, the restrictions imposed upon the legislative power also apply to the exercise of executive power.

Distribution of legislative powers is effected by Art. 246. In respect of matters set out in List I of the Seventh Schedule Parliament has exclusive power to make laws: in respect of matters set out in List II the State has exclusive power to Legislate and in respect of matters set out in List III Parliament and the State Legislature have concurrent power to legislate. The residuary power, including the power to tax, by Art. 248 and item 97 of List I is vested in the Parliament. The basis of distribution of powers between the Union and States is that only those powers and authorities which are concerned with the regulation of local problems are vested in the States, and the residue specially those, which tend to maintain the economic, industrial and commercial unity of the nation are left with the Union. By Art. 123 the President is invested with the power to promulgate Ordinances on matters on which the Parliament is competent to legislate, during recess of Parliament. Similarly under Art. 213 power is conferred upon the Governor of a State to promulgate Ordinances on matters on which the State Legislature is competent to legislate during recess of the Legislature. But upon the distribution of legislative powers thus made and entrustment of power to the State Legislature, restrictions are imposed even in normal times. Article 249 authorises the Parliament to legislate with respect to any matter in the State List if the Council of States has declared by resolution supported by not less than two-third of the members present and voting that it is necessary or expedient in the national interest that Parliament

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should make laws with respect to any matter enumerated in the State List specified in the resolution. By Art. 252 power is conferred upon Parliament to legislate for two or more States by consent even though the Parliament may have no power under Art. 246 to make laws for the State except as provided in Art. 249 and 250. Such a law may be adopted by a Legislature of any other State. By Art. 253 Parliament has the power notwithstanding anything contained in Art. 246 to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. In case of inconsistency between the laws made by Parliament and laws made by the Legislatures of the States, the laws made by the Parliament whether passed before or after the State law in matters enumerated in the Concurrent List to the extent of repugnancy prevail over the State laws. It is only a law made by the Legislature of a State which had been reserved for the consideration of the President and has received his assent, on a matter relating to a Concurrent List containing any provision repugnant to the provisions—of an earlier law made by Parliament or an existing law with respect to that matter, prevails in the State.

Power of taxation (which is exercisable by the States in comparatively minor fields, the more important such as Income-tax, wealth-tax, excise-duties other than those on certain specified articles, and customs, being reserved to the Union) conferred by various entries under List II on the States is also severely restricted. Property of the Union, save in so far as the Parliament may by law otherwise provide, is exempt from all taxes imposed by the State or by any authority within the State. By Art. 286 imposition of a tax on sale or purchase of

goods where such sale or purchase takes place outside the State or in the course of import of the goods into, or export of the goods out of, the territory of India can only be imposed by Parliamentary legislation. A State is also prohibited unless the Parliament by law otherwise provides, from imposing a tax on the consumption or sale of electricity which is consumed by the Government of India or in the construction, maintenance and operation of any railway. Nor can levy of a tax be authorised in respect of water consumed or distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river valley, except in so far as the Parliament may by law so provide.

The States depend largely upon financial assistance from the Union. A share in certain taxes levied and collected by the Union such as tax on non-agricultural income, duties in respect of succession to property other than agricultural land, estate duty in respect of property other than agricultural land, terminal taxes on goods or passengers carried by railway, sea or air, taxes on railway fares and freights, taxes on the sale or purchase of newspapers and on advertisements published therein, taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade or commerce, is given to the States. Certain grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States may also be made. Union duties of excise except duties on medicinal and toilet preparations are collected by the Union but may be distributed in whole or in part among the States in accordance with such principles of distribution as may be formulated. By Art. 275 grants-in-aid of the revenue of such States as

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Parliament may determine to be in need of assistance may also be made.

It is manifest that the States depend for financial assistance upon the Union, their own resources, because of their restricted fields of taxation, being inadequate. The power of borrowing is exercisable by the States under Art. 293, but the same cannot be exercised without the consent of the Government of India, if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Union, or by its predecessor.

In times of national political or financial emergency, the States may exercise only such powers legislative and executive as the Union permits. When a State of emergency is declared the Parliament has power to make laws for the whole or any part of the territory of India with respect to any matter in the State List, and the laws made by Parliament prevail over the State Laws in the event of repugnancy. If, as a result of war, external aggression or internal disturbances the security of India or any territory is threatened, the President may declare a state of emergency, and the executive power of the Union will thereupon extend to giving directions to the States, as to manner in which the executive power of the States is to be exercised, and the power of the Parliament to make laws will extend to making laws conferring or authorising conferment of powers and imposition of duties, upon the Union or its officers and authorities as respect any matter, even if such matter be not enumerated in the Union List. The President may also during the emergency suspend the operation of Art. 268 to 279 and require that all money Bills shall be submitted to the President for his consideration, after they are passed by the Legislature of the State.

The normal corporate existence of States entitles them to enter into contracts and invests them with power to carry on trade or business and the States have the right to hold property. But having regard to certain basic features of the Constitution, the restrictions on the exercise of their powers executive and legislative and on the powers of taxation, and dependence for finances upon the Union Government it would not be correct to maintain that absolute sovereignty remains vested in the States. This is illustrated by certain striking features of our constitutional set up. There is no dual citizenship in India: all citizens are citizens of India and not of the various States in which they are domiciled. There are no independent Constitutions of the States, apart from the national Constitution of the Union of India: Ch. II, Part VI from Arts. 152 to 237, deals with the States, the powers of the Legislatures of the States, the powers of the executive and judiciary. What appears to militate against the theory regarding the sovereignty of the State is the wide power with which the Parliament is invested to alter the boundaries of States, and even to extinguish the existence of a State. There is no constitutional guarantee against alteration of the boundaries of the States. By Art. 2 of the Constitution the Parliament may admit into the Union or establish new States on such terms and conditions as it thinks fit, and by Art. 3 the Parliament is by law authorised to form a new State by redistribution of the territory of a State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, increase the area of any State, diminish the area of any State, alter the boundaries of any State, and alter the name of any State. Legislation which so vitally affects the very existence of the States may be moved on the recommendation of the President which in practice means the recommendation of the Union Ministry, and if the proposal in the Bill affects the area, boundaries or name of any of the States, the

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President has to refer the Bill to the Legislature of that State for merely *expressing its views thereon.* Parliament is therefore by law invested with authority to alter the boundaries of any State and to diminish its area so as even to destroy a State with all its powers and authority. That being the extent of the power of the Parliament it would be difficult to hold that the Parliament which is competent to destroy a State is on account of some assumption as to absolute sovereignty of the State incompetent effectively to acquire by legislation designed for that purpose the property owned by the State for governmental purpose.

The parliamentary power of legislation to acquire property is, subject to the express provisions of the Constitution, unrestricted. To imply limitations on that power on the assumption of that degree of political sovereignty which makes the States coordinate with and independent of the Union, is to envisage a Constitutional scheme which does not exist in law or in practice. On a review of the diverse provisions of the Constitution the inference is inevitable that the distribution of powers—both legislative and executive—does not support the theory of full sovereignty in the States so as to render it immune from the exercise of legislative power of the Union Parliament—particularly in relation to acquisition of property of the States. That the Parliament may in the ordinary course not seek to obstruct the normal exercise of the powers which the States have, both legislative and executive, in the field allotted to them will not be a ground for holding that the Parliament has no such power if it desires, in exercise of the powers which we have summarisedtcd do so. It was urged that to hold that property ves to in the State could be acquired by the Union, would mean, as was picturesquely expressed by the learned Advocate-General of Bengal, that the Union could acquire and take possession of Writer's buildings

where the Secretariat of the State Government is functioning and thus stop all State Governmental activity. There could be no doubt that if the Union did so, it would not be using but abusing its power of acquisition, but the fact that a power is capable of being abused has never been in law a reason for denying its existence, for its existence has to be determined on very different considerations.

We might add that this submission is, as it were, a resuscitation of the now exploded doctrine of the immunity of instrumentalities which originating from the observations of Marshall, C. J., in *Mc Culloch* v. *Maryland* (1), has been decisively rejected by the Privy Council as inapplicable to the interpretation of the respective powers of the States and the Centre under the Canadian and Australian Constitutions (vide *Bank of Toronto* v. *Lambe* (2), and *Webb* v. *Outrim* (3), and has practically been given up even in the United States. The following passage in the judgment of Lord Hobhouse in Lambe's case, though it dealt with the converse case of not reading limitations into provincial power might usefully be set out :

> "The appellant invokes that principle to support the conclusion that the Federation Act must be so construed as to allow no power to the provincial legislatures under sect. 92, which may by possibility, and if exercised in some extravagant way, interfere with the object of the Dominion in exercising their powers under sect. 91. It is quite impossible to argue from the one case to the other. Their Lordships have to construe the express words of an Act of Parliament which makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the federated provinces a carefully balanced constitution, under which

(1) (1819) 4 Wheat. 316. (2) (1887) 12 App. Cas. 575.
(3) [1907] A.C. 81.

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no one of the parts can pass laws for itself except under the control of the whole acting through the Governor-General. And the question they have to answer is whether the one body or the other has power to make a given law. If they find that on the due construction of the Act a legislative power falls within sect. 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion Parliament."

It is pertinent also to note that under several entries of List I it is open to the Union Parliament to legislate directly upon properties which are situate in the State including properties which are vested in the States, for instance, Railways (Entry No. 22), Highways declared by or under law made by Parliament to be national highways (Entry 23), Shipping and Navigation on inland waterways declared by Parliament by law to be national waterways, (Entry 24), Lighthouses including lightships etc. (Entry 26), Ports declared by or under law made by Parliament or existing law to be major ports (Entry 27), Airways, aircraft and air navigation, provision of aerodromes etc. (Entry 29), Carriage of passengers and goods by railways, sea or air, or by national waterways in mechanically propelled vessels (Entry 30), Property of the Union and the Revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides (Entry 32), Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest (Entry 52), Regulation and development of oilfields and mineral oil resources, petroleum and petroleum products, other liquids and substances declared by Parliament by law to be dangerously inflammable (Entry 53), Regulation of

mines and mineral development (Entry 54), Regulation and development of inter-State rivers and river-valleys (Entry 56), Ancient and historical monuments and records and archaeological sites and remains declared to be of national importance (Entry 67). These are some of the matters in legislating upon which the Parliament may directly legislate in respect of property in the States. To deny to the Parliament while granting these extensive powers of legislation authority to legislate in respect of property situate in the State, and even of the State, would be to render the Constitutional machinery practically unworkable. It may be noticed that in the United States of America the authority of Congress to legislate on a majority of these matters was derived from the "Commerce Clause." The commerce clause is not regarded as so exclusive as to preclude the exercise of State legislative authority in matters which are local, in their nature or operation, or are mere aids to commerce. As observed in Cooley's Constitutional Limitations—8th Edition p. 1004 "Mr. Justice Hughes, in delivering the opinion of the Supreme Court of the United States, in *Simpson* v. *Shepard* (1), said :

> "The grant in the Constitution conferred upon Congress an authority at all times adequate to secure the freedom of inter-state commercial intercourse from State control, and to provide effective regulation of that intercourse as the national interest may demand. The words 'among the several States' distinguish between commerce which concerns more States than one, and that commerce which is confined within one State and does not affect other States. 'The genius and character of the whole government', said Chief Justice Marshall, 'seems to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States

(1) (1913) 230 U.S. 352 : 57 L. ed. 1511.

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generally; but not to those which are completely within a particular State, which do not affect other States and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government. The completely internal commerce of a State, then, may be considered as reserved for the State itself. 'This' reservation to the States manifestly is only of that authority which is consistent with, and not opposed to, the grant to Congress. There is no room in our scheme of government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of inter-state commerce, and to every instrumentality or agency by which it is carried on; and the full control by by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate inter-state commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power with its appointed sphere."

Our Constitution recognises no such distinction between the operation of a State law in matters which are local, and which are interstate. If an enactment falls within the Union List, whether its operation is local or otherwise State legislation inconsistent therewith, will subject to Art. 254 (2) be struck down.

The question may be approached from another angle. Even under Constitutions which are truly federal and full sovereignty of the States is recognised in the residuary field both executive and legislative, power to utilise or as it is said "Condemn" property of the State for Union purposes is not denied.

The power to acquire land sought to be exercised by the Union, which is challenged by the State of West Bengal, is power to acquire in exercise of authority conferred by ss. 6, 7 and 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957. The Act was enacted for establishing in the economic interest of India greater public control over the coal mining industry and its development by providing for the acquisition by the State of land containing or likely to contain coal deposits or of rights in or over such land for the extinguishment or modification of such rights accruing by virtue of any agreement, lease, licence or otherwise, and for matters connected therewith. By Entries 52 and 54 of List I the Parliament is given power to legislate in respect of :

(52) "Industries, the control of which by the Union is declared by parliament by law to be expedient in the public interest."

(54) "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to the expedient in the public interest."

In exercise of powers under Entry 36 of the Government of India Act, 1935 which corresponds with Entry 52 of the Constitution the Central Legislature enacted the Minerals & Mining (Regulation & Development) Act, 1948, (LIII of 1948). By s. 2 of the Act it was declared that it was expedient in the

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public interest that the Central Government should take under its control the regulation of mines and oilfields and development of minerals to the extent specified in the Act. 'Mine' was defined under the Act as meaning any excavation for the purpose of searching for or obtaining minerals and includes an oil well. No mining lease could be given after the commencement of the Act, otherwise than in accordance with the rules made under the Act. By s. 13 the provisions of the Act were to be binding on the Government, whether in the right of the Dominion or of a State. By the declaration by s. 2 the minerals became immobilized. The Act is on the Statute Book, and the declaration, in the future application of the Act since the Constitution must also remain in force, as if it were made under Art. 52 of the Constitution.

After the Constitution, the Industries (Development & Regulation) Act, 1951 (65 of 1951) was enacted by the Parliament. By s. 2 it was declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. In the Schedule item (3) "Coal, including Coke and other derivatives" was included as one of such industries. The Legislature then enacted the Mines & Minerals (Regulation & Development) Act, 1957 (LXVII of 1957). By s. 2 a declaration in terms similar to the declaration in Act LIII of 1948 was made. The Act deals with all minerals except oil, and enacts certain amendments in Act LIII of 1948. There being a declaration in terms of item 52 the Parliament acquired exclusive authority to legislate in respect of Coal industry set out in the Schedule to Act 65 of 1951 and the State Government had no authority in that behalf.

In the American Constitution there is no express power conferred upon the Congress to make a law for

acquisition of any property for a public purpose. But it has been held by a long course of decisions that it is open to the Congress to legislate in respect of matters within its competence even if such legislation may have a direct impact upon the States' rights, to property. In the *States of Oklahoma Ex Rel. Leon Co. Phillips* v. *Guy F. Atkinson Company* (1), it was held that in enacting flood control legislation which authorised construction of a reservoir, the Congress had the power to condemn lands owned by a constituent State. It was observed "The Tenth Amendment does not deprive 'the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end' United States v. Darby (312 U. S. p. 124) x x x Since the construction of this dam and reservoir is a valid exercise by Congress of its commerce power, there is no interference with the sovereignty of the State. United States v. Appalachian Electric Power Co. (311 U. S. 428). The fact that land is owned by a state is no barrier to its condemnation by the United States. Wayne Country v. United States, 53 Ct. cl. (F) 417, affirmed in 252 U. S. 574." Similarly it was held in *The Cherokee Nation* v. *The Southern Kansas Railway Co.* (2), that Congress has the power to authorise a Corporation to construct a railway through the territory of the Cherokee Nation, for the United States may exercise the right of eminent domain even within the limits of the several States for purposes necessary to the execution of powers granted to the general government by the Constitution.

Power to effectuate its legislative authority which is entrusted in absolute terms being essential for carrying out of the powers, does not depend upon the consent of the States, and cannot be thwarted by any opposition on the part of the States. The extent of this power was aptly described by Strong, J., in

(1) (1940) 313 U.S. 508 : 85 L. ed. 1487.
(2) (1889) 135 U.S. 641 : 34 L. ed. 295.

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Kohl v. *United States* (1) .

"It has not been seriously contended during the argument that the United States Government is without power to appropriate lands or other property within the States for its own uses and to enable it to perform its proper functions. Such an authority is essential to its independent existence and perpetuity. These cannot be preserved if the obstinacy of a private person, or if any other authority, can prevent the acquisition of the means or instruments by which alone governmental functions can be performed. The powers vested by the Constitution in the General Government demand for their exercise the acquisition of lands in all the States. These are needed for forts, armories and arsenals, for navy yards and light houses, for custom-houses, post offices and Court-houses, and for other public uses. If the right to acquire property for such uses may be made a barren right by the unwillingness of property holders to sell, or by the action of a State prohibiting a sale to the Federal Government, the constitutional grants of power may be rendered nugatory, and the Government is dependent for its practical existence upon the will of a State, or even upon that of a private citizen. This cannot be. No one doubts the existence in the state governments of the right of eminent domain—a right distinct from and paramount to the right of ultimate ownership. It grows out of the necessities of their being, not out of the tenure by which lands are held. It may be exercised, though the lands are not held by grant from the Government either mediately or immediately, and independent of the consideration whether they would escheat to the Government in case of a failure of heirs. The right is the offspring of political necessity; and

(1) (1876) 91 U.S. 449.

> it is inseparable from sovereignty, unless denied to it by its fundamental law."

In the United States of America power to take private property for public use is called by American lawyers eminent domain. It is the power of the State to take property upon payment of just compensation for public use: it is an inherent attribute of sovereignty—not arising even out of the Constitution, but independently of it, and may be exercised in respect of all property in the States for effective enforcement of the authority of the Union against private property or property of the State.

In *Attorney-General for British Columbia* v. *Canadian Pacific Railway* (1), one of the questions which fell to be determined before the Judicial Committee was whether power under s. 91 read with s. 92 of the British North America Act 1867 which secures to the Dominion Parliament exclusive legislative authority in respect of lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting any province with any other, or others could be exercised so as to authorise use of crown lands in the province for a railway. The Judicial Committee observed at p. 210 :

> "It was argued for the appellant that these enactments ought not to be so construed as to enable the Dominion Parliament to dispose of Provincial Crown lands for the purposes mentioned. But their Lordships cannot concur in that argument. In *Canadian Pacific Ry. Co.* v. *Corporation of the Parish of Notre Dame de Bonsecours* (1899 A. C. 367) (a case relating to the same company as the present) the right to legislate for the railway in all the provinces through which it passes was fully recognised. In *Toronto Corporation* v. *Bell Telephone Co. of Canada*

(1) [1906] A.C. 204.

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(1905 A. C. 52) which related to a telephone company whose operations were not limited to one province, and which depended on the same sections, this Board gave full effect to legislation of the Dominion Parliament over the streets of Toronto which are vested in the city corporation. To construe the section now in such a manner as to exclude the power of Parliament over Provincial Crown lands would in their Lordships' opinion, be inconsistent with the terms of the sections which they have to construe, with the whole scope and purposes of the legislation, and with the principle acted upon in the previous decisions of this Board. Their Lordships think, therefore, that the Dominion Parliament had full power if it thought fit, to authorize the use of provincial Crown lands by the company for the purposes of this railway."

It is not considered as inconsistent with a true federation like Australia to have a provision like s. 51 (31) of the Commonwealth of Australia Act, 1900 which specifically empowers the Commonwealth to acquire "State" property, if needed for a Commonwealth purpose, on terms of payment of compensation. In this connection it is to be noticed that there is under the Commonwealth of Australia Act a provision as regards vesting of property in States and in the Commonwealth on lines somewhat similar to Art. 294. In Canada, the decision of the Privy Council have held that the acquisition of property by the Dominion for implementing or carrying out Dominion legislation under powers vested in Parliament in that behalf by s. 91 was not inconsistent with what might be termed the legislative sovereignty of the Provinces in the fields marked out for them by s. 92. And lastly, even in America which is a true federation, since the Constitution of the U. S. makes no provision for the State Constitutions, these being

determined by their own laws, it has been held that the power of eminent domain of the Congress for the purposes of effectuating Congressional purpose comprehends the right to expropriate State property. In these circumstances we are unable to appreciate the argument that if the Constitution were to be held to be a Federation, the States being considered as the federative units, such a status necessarily involved a prohibition or negation of the right of the Union to acquire the property of the State for the purpose of giving effect to its legislative powers.

Therefore the power of the Union to legislate in respect of property situate in the States even if the States are regarded *qua* the Union as Sovereign, remains unrestricted, and the State property is not immune from its operation. Exercising powers under the diverse entries which have been referred to earlier, the Union Parliament could legislate so as to trench upon the rights of the State in the property vested in them. If exclusion of State property from the purview of Union legislation is regarded as implicit in those entries in List I, it would be difficult if not impossible for the Union Government to carry out its obligations in respect of matters of national importance. If the entries which we have referred to earlier are not subject to any such restriction as suggested, there would be no reason to suppose that Entry 42 of List III is subject to the limitation that the property which is referred to in that item is of individuals or corporations and not of the State. In its ultimate analysis the question is one of legislative competence. Is the power conferred by Entry 42 List III as accessory to the effectuation of the power under Entries 52 & 54 incapable of being exercised in respect of property of the States? No positive interdict against its exercise is perceptible in the Constitution : and the implication of such an interdict assumes a degree of sovereignty in the States of such plenitude as transcending the express legislative

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power of the Union. The Constitution which makes a division of legislative and executive powers between the Union and the States is not founded on such a postulate : and the concept of superiority of the Union over the States in the manifold aspects already examined negatives it.

Re. (2).

By Art. 294 (a) all property and assets which immediately before the commencement of the Constitution were vested in the British Crown for the Dominion of India, became vested in the Union, and property vested for the purposes of the Government of the Provinces, became vested in the corresponding States. Under the Government of India Act all property for governmental purposes was vested in the British Crown, and by virtue of the Constitution that property became vested in the Union and the States. By virtue of cl. (b) the rights, liabilities and obligations of the Government of India and the Provinces, devolved upon the Union and the corresponding States.

A considerable point was made of the fact that Art. 294 had vested certain property in the State and it was submitted that subject to the right of the State by agreement to convey that property under Art. 298, the Constitution intended that the State should continue to be the owner of that property and that this vesting must be held to negative the Union's right to acquire any property vested in the State without its consent. It was pointed out by the learned Attorney-General that so far as the plaintiff—the State of West Bengal—was concerned it did not own the coal-bearing lands on the date of the Constitution, and that it got title thereto only after they vested in the State by virtue of the provisions of the Bengal Acquisition of Estates Act of 1954 (W. B. 1 of 1954) and that the property thus acquired subsequently was not within the scope of Art. 294. We

have nodoubt that this would be an answer to the claim of the plaintiff in this suit and particularly in the context of the challenge to the validity of the notification now impugned but we do not desire to rest our decision on any such narrow ground.

Article 298 runs :

"298. The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose :

Provided that—

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the States; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."

The argument was that the Constitution intended and enacted that property allotted to or vested in a State under the provisions of Art. 294 or 296 shall continue to belong to that State unless and until by virtue of the power conferred on the State by Art. 298 it chose to part with it, and that without a Constitutional amendment of these Articles such property cannot be divested from the State. We consider that this submission proceeds on a misconception of the function of Arts. 294 and 298 in the scheme of the Constitution. To start with it has to

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be pointed out that when Art. 298 confers on States the power to acquire or dispose of property, the reference is to the executive power of the State to acquire or dispose of property which would apply without distinction to property vested under Art. 294 or under 296 by escheat or lapse or as *bona vacantia*, or property acquired otherwise. Besides, Art. 298 is merely an enabling Article—conferring on the State as owner of the property, the power of disposal. That cannot on any reasonable interpretation be construed as negativing the possibility of the State's title to property being lost by the operation of other provisions of the Constitution. Art. 298 has therefore no relevance on the proper construction of Art. 294.

Article 294 was modelled on s. 172 of the Government of India Act, 1935. As pointed out by the Federal Court in *In re the Allocation of Lands and Buildings in a Chief Commissioner's Province*(1).

> "Up to April 1st, 1937, when the greater part of the Act came into force, the Government of India was a unitary Government, to which all the Provincial Governments were subordinate; and hence all lands and buildings belonging to Government or used for governmental purposes of were vested in His Majesty 'for the purpose of the Government of India.' This had been the legal position ever since the Government of India Act, 1858 (see s. 39 of that Act, and s. 28(1) and (3) of the Government of India Act, which immediately preceded the Act of 1935). But the setting up of a number of autonomous Provinces, independent of the Central Government and dividing with the latter the totality of executive and legislative powers in British India, and the separation of the powers connected with the exercise of the functions of the Crown in its relations with the Indian States (which were to be thenceforward exercised

(1) [1943] F.C.R. 20, 23.

exclusively by His Majesty's Representative appointed for that purpose) made an allocation necessary among these three authorities of the lands and buildings which had hitherto been vested in His Majesty for the purposes of the Government of India alone. It is this allocation which was effected, or attempted to be effected, by the provisions of s. 172, sub-s. (1), paras, (a), (b) and (c)."

Section 172 which effected this distribution ran :

"172. (1) All lands and buildings which immediately before the commencement of Part III of this Act were vested in His Majesty for the purpose of the Government of India shall as from that date—

(a) in the case of lands and buildings which are situate in a Province, vest in His Majesty for the purposes of the government of that Province unless they were then used, otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for purposes which thereafter will be purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, or unless they are lands and buildings formerly used for such purposes as aforesaid, or intended or formerly intended to be so used and are certified by the Governor-General in Council or, as the case may be, His Majesty's Representative, to have been retained for future use for such purposes, or to have been retained temporarily for the purpose of more

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advantageous disposal by sale or otherwise;
....."

Just like s. 172 being the forerunner of Art. 294, ss. 174 and 175 are phrased in terms similar and correspond to Arts. 296 and 298.

The right of the States to property, which devolved upon them by Art. 294 (a) was therefore no different from the right they had in the after acquired property: the Constitution does not warrant a distinction between the property acquired at the inception of the Constitution, and in exercise of executive authority. Article 294 does not contain any prohibition against transfer of property of the State and if the property is capable of being transferred by the State it is capable of being compulsorily acquired.

Attorney-General for Quebec v. *Nipissing Central Railway Co. and Attorney-General for Canada* (1), is in this context instructive.

The Dominion legislation—the Railway Act, 1919 of Canada—made provision for the expropriation of lands for the purpose of railways and for the payment of compensation for the lands so taken and under s. 189 of the enactment the railway company was empowered with the consent of the Governor-General-in-Council to take "Crown lands" for the use of the railway.

Section 109 of the British North America Act which corresponds to Art. 294 ran :

> "109. All lands, mines, minerals, and royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall belong

(1) (1926) A. C. 715.

> to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same."

The right of the Provinces to continue to retain and enjoy their property so vested was further emphasized by s. 117 which read :

> "117. The several Provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country."

The Governor-General of Canada referred to the Supreme Court questions as to the effect of these provisions and its competence in relation to Provincial Crown Lands.

It would be seen that the lands were not required either for fortifications for the defence of the country within s. 117. The Supreme Court of Canada held that the provision applied to the Provincial lands and was competently enacted by the Dominion Parliament, Sir John Simon appearing for the appellant—Province made two submissions : (1) That on a proper construction of the Railway Act, it could be held applicable only to Crown Lands vested in the Dominion and not to Provincial Crown Lands, relying for this purpose largely on the provision in s. 189 of the impugned Act for taking the consent of the Governor-General-in-Council., (2) By reason of Provincial Crown Lands being vested in the appellant by s. 109 of the Imperial Act, read with s. 117, the Provinces were entitled to retain their respective property not otherwise disposed of by the Act, and that the purpose for which the Railways

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Act made provision did not fall within the last limb of s. 117 vesting in the Dominion Government a right to take property for certain limited purposes. For this reason, if the Act on its proper construction involved interference with Provincial Lands the same was unconstitutional. The agreement for the respondent--the Dominion—was that when s. 117 of the British North America Act vested in the Dominion the power to take Dominion land for defence etc. it was a reference to executive and not legislative action. They submitted that the section was not intended to ensure that the Provinces retain their public property for all time but was meant merely as a distribution of public property on the date of the Confederation. Viscount Cave, after disposing of the question relating to the construction of s. 189 in the following terms :

> "The section applies in terms to all lands of the Crown lying on the route of the railway, no distinction being made between Dominion and Provincial Crown lands."

dismissed as not very material the contention raised that as reference had been made to the Governor-General-in-Council it indicated that it was only Dominion property that was intended to be covered by that provision.

Dealing with the main constitutional objection to the validity of the taking of Provincial property, Viscount Cave pointed out that it was not the first occasion when the impact of Dominion legislative power under s. 91 of the British North America Act upon the property vested in the Provinces arose before the Privy Council, for in *Attorney-General for British Columbia* v. *Canadian Pacific Railway Co.* (1906 A. C. 204) the argument had been advanced that the legislative power of the Dominion ought not to be construed so as to deprive the Provinces of their

proprietary interest in what had been vested in them by the British North America Act.

Viscount Cave quoted the passage in the judgment we have already extracted and continued :

> "It was argued that the effect of ss. 109 and 117 of the British North America Act was to vest in each of the Provinces the beneficial interest in the Crown land situate in the Province, subject only to the right of Canada under the reservation contained in s. 117 to assume lands required for purposes of defence. But the reservation in question appears to refer to executive, and not to legislative, action; and while the proprietary right of each Province in its own Crown lands is beyond dispute, that right is subject to be affected by legislation passed by the Parliament of Canada within the limits of the authority conferred on that Parliament.....where the legislative power cannot be effectually exercised without affecting the proprietary rights both of individuals in a Province and of the Provincial Government, the power so to affect those rights is necessarily involved in the legislative power."

Re. (*3*).

Power to acquire land was vested under the Government of India Act, 1935, by Entry 9 in List II of the Seventh Schedule, exclusively in the Provinces. For any purpose connected with a matter in respect of which the Central Legislature was competent to enact laws, the Central Executive could require the Province to acquire land on behalf of and at the expense of the Union. This however did not mean that incidental to the exercise of the right to legislate in respect of Railways, Ports, Lighthouses, power to affect the right of the citizens and

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corporations and of Provinces in land was not exercisable. As already observed even under Constitutions where a larger slice of sovereignty remains effectively vested in the (component unity) such as the United States of America power to legislate vested in the Central or national subjects includes the power to legislate so as to extinguish rights in State property.

Under the Government of India Act, 1935 the Central Government could *require* the Province to *acquire* lands on behalf of the Union if it was private land, and to *transfer* it to the Union if it was the State land. The Provincial Government had manifestly no option to refuse to comply with the direction. Provision for fixation of compensation did not affect the nature of the right which the Central Government could exercise.

In broad outline the governmental structure under the Constitution vis-a-vis the Union and the States is based on the relationship which existed between the Central Government and the Provinces under the Government of India Act, 1935, and that in this respect the Constitution has borrowed largely from the earlier constitutional document. But even with the Provinces being autonomous within the spheres allotted to them and there being a distribution of property and assets between the Central Government and the Provinces under Part III of Ch. VII in almost the same terms as is found in the corresponding Arts. 294 and 298, it was not considered an infraction of the autonomy of the Provinces to vest such a power in the Central Government, for s. 127 of the Government of India Act enacted :

> "127. The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature

> has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India."

and thus property vested in a Province under s. 172 could be required to be transferred to the Central Government if it was needed for a central purpose.

It would therefore be manifest that the right of the Centre to require the Province to part with property for the effective performance of central functions was not considered as detracting from provincial autonomy.

What however is of relevance is the presence of s. 127 in that enactment which empowered the Central Government to require the Provinces to part with property owned by them if the same was needed for the purposes of the Government of India. It was however suggested that the compulsory acquisition of provincial property by the Central Government was there specifically provided for and that the absence of such a provision made all the difference. But this, in our opinion, proceeds on merely a superficial view of the matter. A closer examination of the scheme of distribution of legislative power in regard to compulsory acquisition of property under the Government of India Act discloses that though the power to compulsorily acquire property was exclusively vested in the Provinces, the Central Government could satisfy its requirements of property for Central purpose by utilising provincial machinery, and that it was in that context that a specific provision referring to the Provinces having at the direction of the Central Government to transfer provincial property was needed. It is therefore difficult to appreciate the ground

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on which the existence of a provision in the Government of India Act for assessment of compensation for land which the Provinces were bound to transfer on being so required by the Central Government and the deletion of that provision in enacting the Constitution may affect the exercise of the power vested in the Union Parliament.

Re. (*4*):

The Australian Constitution contains an express power authorising legislation by the Parliament of Australia for acquisition of State property. But the Constitutions of the United States of America and Canada contain no such express provision. The power of the Union Parliament to enact legislation affecting title of the constituent States to property vested in them, is on that account not excluded. If the other provisions of our Constitution in terms of sufficient amplitude confer power for enacting legislation for acquiring State property, authority to exercise that power cannot be defeated because the express power to acquire property generally does not specifically and in terms refer to State property.

Re. (*5*):

In the Constitution of India as originally enacted there was an elaborate division of powers by providing three entries relating to acquisition and requisition of property. List I entry 33 "Acquisition or requisitioning property for purposes of the Union". List II Entry 36 "Acquisition or requisitioning of property, except for the purpose of the Union, subject to the provisions of Entry 42 of List III"; List III Entry 42 "principles on which compensation for property acquired or requisitioned for the purpose of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given". By the Constitution (Seventh Amendment) Act, 1956 the

three Entries were repealed, and a single Entry 42 in the Concurrent List "Acquisition and Requisition of property" was substituted. Power to acquire or requisition property may since the amendment, be exercised concurrently by the Union and the States. But on that account conflicting exercise of the power cannot be envisaged. Article 31 (2) which deals with acquisition of all property requires two conditions to be fulfilled (1) acquisition or requisitioning must be for a public purpose (2) the law under which the property is acquired or requisitioned must provide for payment of compensation either fixed thereby, or on principles specified thereby. By cl. (3) of Art. 31 no such law as is referred to in cl. (2) made by the Legislature of a State shall have efficacy unless such law has been reserved for the consideration of the President and has received his assent. As the President exercises his authority with the advice of the Union Ministry, conflict by the effective exercise of power of acquisition in respect of the same subject-matter simultaneously by the Union, and the State, or by the State following upon legislation by the Union cannot in practice be envisaged even as a possibility. Article 254 also negatives the possibility of such conflicting legislation. By cl. (1) of that Article if a law made by the Legislature of a State is repugnant to any provision of a law competently made by Parliament the State law is, subject to cl. (2), void, Clause (2) recognises limited validity of a State law on matters in the Concurrent List if that law is repugnant to an existing or earlier law made by Parliament, only if such law has been reserved for the consideration of the President, and has received his assent. By the proviso authority is reserved to the Parliament to repeal a law having even this limited validity. Assent of the President to State legislation intended to nullify a law enacted by Parliament for acquisition of State property for the purposes of the Union lies outside the realm of practical possibility.

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Re. (6):

The submission that Art. 31 has no application to the acquisition or requisition of property of a State is based on no solid foundation. This argument was based on three grounds:—

(a) Fundamental rights are declared in favour of citizens and others against legislative or executive action of the Government and the Parliament of India and the Government and the legislatures of the States and all local or other authorities within the territory of India, or under the control of the Government of India and not in favour of the States against Union action.

(b) Article 31 gives protection to the rights of persons, and a State is not a person within the meaning of that Article.

(c) Entry 42 in the Concurrent List is by virtue of Art. 13 and 245 subject to Art. 31. Therefore private property may be acquired consistently with the prohibitions in the Constitution, but State property may be acquired without a public purpose and without payment of compensation.

It is difficult to agree with the view that under the scheme of the Constitution fundamental rights may be claimed by individuals or corporations only and never by the State.

By Art. 13 (1) all laws in force before the Constitution to the extent of inconsistency with Ch. III are declared void: and by cl. (2) the State is prohibited from making any law which takes away or abridges fundamental rights, and the laws made in contravention of the prohibition are void.

The fundamental rights are primarily for the protection of rights of individuals and corporations enforceable against executive or legislative action of a Governmental agency, but it has to be remembered that all laws pre-existing which are inconsistent with and post constitutional laws which contravene the prohibitions are to the extent of the inconsistency or contravention void. Some of these rights are declared in form positive but subject to the restrictions authorising the State to make laws derogating from the fullness of the protection e. g. 15 (4), 16 (3), 16 (4), 16 (5),..... 19 (2), (3), (4), (5), (6), 22 (3), 22 (6), 23 (2), 25 (2), 28 (2) & (3) : there are certain articles which merely declared rights e. g. 17, 25 (1), 26, 29 (1) and 30, (1) : and there are others merely prohibitory without reference to the right of any person. body or agency to enforce them e.g. 18 (1), 23 (1), 24 and 28 (1).

Prima facie, these declarations involve an obligation imposed not merely upon the "State", but upon all persons to respect the rights so declared, and the rights are enforceable unless the context indicates otherwise against every person or agency seeking to infringe them. The rights declared in the form of prohibition must have a concomittant positive content ; without such positive content they could be worthless. Relief may be claimed from the High Court or from this Court, against infringement of the prohibition, by any agency, unless the protection is expressly restricted to State action.

There are still other Articles in the form not of rights but fundamental disabilities e. g. 18 (2), 18 (3), 18 (4). Again there are certain Articles e.g. 19 (g), Part II, 24 (2) which appear to recognise affirmative rights of the States. Article 31 is couched in negative form, but recognises the existence of at least one important power vested in every sovereign State, not by virtue of its Constitution, but

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springing from its very existence as a State viz, the power to acquire property for public purposes on payment of compensation which the American jurists call 'eminent domain'. Article 31 (2) enunciates the restriction subject to which this power of eminent domain is to be exercised. For the purposes of the present case it is unnecessary to consider whether Art. 31 (1) recognises the existence of the police power. Before Art. 31 was amended by the Constitution (Fourth Amendment Act, 1955), there was conflict of opinion in this Court as to the interrelation of cl. (1) and (2). Some Judges held that cl. (1) & (2) dealt with subject of eminent domain : other Judges were of the opinion that Art. 31 (1) dealt with the police power and Art. 31 (2) with eminent domain ; some Judges did not express any definite view. After the amendment by the Constitution (Fourth Amendment) Act, 1955, cl. (1), (2) and (2A) of Art. 31 read as follows :—

(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which the compensation is to be determined and given ; 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.

(2A) 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, notwithstanding that it deprived any person of his property".

In *Kavalappara Kottarathil Kochuni* v. *State of Madras* (1), it was held that cls. (1) and (2) of Art. 31 as amended grant a limited protection against the exercise of different powers. By cl. (2) of Art. 31 property is protected against compulsory acquisition or requisition. The clause grants protection in terms of widest amplitude against compulsory acquisition or requisition of property, and there is nothing in the Article which indicates that the property protected is to be of individuals or corporations. Even the expression 'person' which is used in cl. (1) is not used in cls. (2) and (2A), and the context does not warrant the interpretation that the protection is not to be available against acquisition of State property. Any other construction would mean that properties of municipalities or other local authorities—which would admittedly fall within the definition of State in Part III either cannot be acquired at all or if acquired may be taken without payment of compensation. Entry 42 in List III and cl. (2) of Art. 31, operate in the same field of legislation : the former enunciates the content of legislative power, and the latter restraints upon the exercise of that power. For ascertaining whether an impugned piece of legislation in relation to acquisition or requisition of property is within legislative competence, the two provisions must be read together. The two provisions being parts of a single legislative pattern relating to the exercise of the right which may for the sake of convenience be called of eminent domain the expression 'property' in the two provisions must have the same import in defining the extent of the power and delineating restraints thereon. In other words Art. 31(2) imposes restrictions on the exercise of

(1) [1960] 3 S.C.R. 887.

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legislative power under Entry 42 of List III. Property vested in the State may not therefore be acquired under a statute enacted in exercise of legislative power under Entry 42 unless the Statute complies with the requirement of the relevant clauses of Art. 31.

Re. (7):

In Director of Rationing and Distribution v. *The Corporation of Calcutta* (1), it was held by this Court by a majority:

> "The law applicable to India before the Constitution was as authoritatively laid down by the Privy Council in L. R. 73 I. A. 271. The Constitution has not made any change in the legel position. On the other hand it has clearly indicated that the laws in force before January 26, 1950, shall continue to have validity even in the new set-up except in so far as they were in conflict with the express provisions of the Constitution. The rule of interpretation of statutes that the State is not bound by a statute unless it is so provided in express terms or by necessary implication, is still good law".

It was observed at p. 172:

> "The immunity of Government from the operation of certain statutes, and particularly statutes creating offences, is based upon the fundamental concept that the Government or its officers cannot be a party to committing a crime—analogous to the 'prerogative of perfection' that the King can do no wrong. Whatever may have been the historical reason of the rule, it has been adopted in our country on grounds of public policy as a rule of interpretation of statutes. That this rule is not

(1) [1961] 1 S.C.R. 158.

peculiar or confined to a monarchical form of Government."

The Court thereby approved the principle of exemption of the sovereign from the general words of a Statute enunciated by the Judicial Committee in *Province of Bombay* v. *Municipal Corporation of Bombay* (1), in the following terms :

> "The general principle to be applied in considering whether or not the Crown is bound by general words in a statute is not in doubt. The maxim of the law in early times was that no statute bound the Crown unless the crown was expressly named therein, *"Roy n'est lie par ascun statute si il ne soit expressement nosme."* But the rule so laid down is subject to at least one exception. The Crown may be bound, as has often been said, "by necessary implication". If, that is to say, it is manifest from the very terms of the statute, that it was the intention of the Legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named. It must then be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions."

But the rule that the State is not bound, unless it is expressly named or by necessary implication in the statute is one of interpretation. In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. Again in interpreting a Constitutional document provisions conferring legislative power must normally be interpreted liberally

(1) (1946) L.R. 73 I.A. 271, 274.

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and in their widest amplitude. Vide—*Navinchandra Mafatlal* v. *The Commissioner of Income-tax, Bombay City* (1), Entry 42 in List III does not, *prima facie*, contain any indication that the expression "Property" therein is to be understood in any restricted sense : nor do the other provisions of the Constitution for reasons already stated suggest a restricted meaning. The ground of absolute sovereignty of the States which may not be interfered with by taking property vested in the States by Parliamentary legislation has no legal basis. Again denial of power to the Union Parliament to legislate on allotted topics of legislation, in a manner affecting the property vested in a State, may render Parliamentary legislation virtually ineffective. No provision in the Constitution suggesting a restricted meaning of the word 'property' in the context of legislative power has been brought to our notice. Regard being had to the extensive powers which the Union Parliament and Executive have for using State property, in the larger public interest, the restriction suggested that the power does not extend to the acquisition of property of the States does not seem to be contemplated. By making the requisite declarations under Entries 54 of List I, the Union Parliament assumed power to regulate mines and minerals and thereby to deny to all agencies not under the control of the Union, authority to work the mines. It could scarcely be imagined that the Constitution makers while intending to confer an exclusive power to work mines and minerals under the control of the Union, still prevented effective exercise of that power by making it impossible compulsorily to acquire the land vested in the States containing minerals. The effective exercise of the power would depend—if such an argument is accepted—not upon the exercise of the power to undertake regulation and control by issuing a notification under Entry 54, but upon the will of the State in the territory of which mineral bearing land is situate. Power to legislate for regulation and development of mines and minerals

(1) [1955] 1 S.C.R. 829.

under the control of the Union, would by necessary implication include the power to acquire mines and minerals. Power to legislate for acquisition of property vested in the States cannot therefore be denied to the Parliament if it be exercised consistently with the protection afforded by Art. 31.

The following findings will accordingly be recorded on the issues:

Issue 1	...	in the affirmative.
2	...	not such as to disentitle the Union Parliament to exercise its legislative power under Entry 42 List III.
3	...	answer covered by answer on issue 2.
4	...	in the negative.
5	...	in the negative:
Finding on additional issue	...	in the affirmative.

The suit will therefore stand dismissed with costs.

Subba Rao, J.

SUBBA RAO, J.—I regret my inability to agree. The summary of the pleadings and the issues raised thereon are set out in the judgment of the learned Chief Justice and I need not restate them.

Learned Advocate-General of West Bengal contended that the State of West Bengal and the Union of India are sovereign authorities in their respective spheres allotted to them by the Constitution, and therefore it would be inconceivable that one sovereign authority could acquire the property of the other : they could do so only by mutual agreement.

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That apart, the argument proceeded, on a true construction of the relevant entry, i. e., entry 42 of List III, in the context of the scheme of the Constitution and particularly of Art. 31 thereof, it would be clear that the said entry could not be invoked by the Union to acquire the land of the State. Learned counsel appearing for the States of Madhya Pradesh, Orissa, Assam and Madras supported the Advocate-General of West Bengal. The Advocate-General of Punjab, while supporting the argument of the Advocate-General of West Bengal, also raised an alternative contention, namely, that if the acquisition of State property was necessarily incidental to the effective exercise of any of the powers conferred on Parliament under Lists I and III of the Seventh Schedule to the Constitution, it could make a law for acquiring such property, provided it did not interfere with the exercise of the governmental functions of the State; and that the power to acquire land of the State was not necessarily incidental to the regulation of mines. Learned Government pleader for the State of Bihar supported the Union of India in its contention that Parliament can make a law providing for the acquisition of State property by virtue of entry 42 of List III.

Learned Attorney-General, appearing for the Union of India, argued that entry 42 of List III, on its natural and grammatical construction, sustains the impugned law; he would also seek to support it on the basis of entries 52 and 54 of List I and entry 33 of List III. In any event, he contended, the impugned law could be made by Parliament by virtue of Art. 148 of the Constitution and entry 97 of List I. He also questioned the correctness of the proposition that the Union and the States are sovereign authorities in their respective fields and advanced the theory that under our Constitution the States are subordinate to the Union.

Before I attempt to construe the relevant provisions of the Constitution, it would be convenient to have a conspectus of the Constitution as far as it is material to the present enquiry, as the arguments, to some extent, are linked with the scope and nature of the powers of the Union and the States thereunder. The Constitution purports to have been enacted by the people of India who have solemnly resolved to constitute India into a sovereign democratic republic. India is described as a Union of States. The preamble to the Constitution indicates that the political sovereignty of the country rests in the people of India and the legal sovereignty is divided between the constitutional entities of the Republic of India, namely, the Union and the different States. Part V of the Constitution deals with the Union and the instrumentalities through which it is authorized to function, namely, the legislature, the executive and the judiciary. Part VI provides for the States and the organs through which they can function, namely, the legislature, the executive and the judiciary. Part XI lays down the relation between the Union and the States : it distributes the legislative powers and regulates the administrative relationship between them; it devises various methods to resolve conflicts that may arise in the exercise of their powers. Article 246 demarcates the legislative fields with precision and emphasizes the exclusive power of the Union and the States to make laws in respect of the matters enumerated in the Lists in the Seventh Schedule and allotted to the Union or the States, as the case may be. Even in regard to the executive power, Arts. 73 and 162 mark out the respective fields of the Union and the States. Chapter II of Part XI provides for the control of the Union over the States in certain specified cases. Part XII deals with finance, property, contracts, rights, liabilities, obligations and suits; it distributes the revenues between the Union and the States, provides for the allocation between them of certain taxes collected by the Union, creates

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separate consolidated funds described as the consolidated fund of India and the consolidated fund of the State, and enacts certain exemptions, among others, of State properties from Union taxation and Union properties from State taxation and authorizes the Union as well as the States to borrow money on the security of their respective properties subject to certain limitations. Chapter III of part XII deals with acquisition of property, assets, rights, liabilities and obligations in certain cases; under Art. 294,

> "As from the commencement of this Constitution—
>
> (a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and
>
> (b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,.....".

Under Art. 296, any property accruing by way of escheat or lapse, or as *bona vacantia*, if it is property situate in a State, shall vest in the State and in any other case it shall vest in the Union. Article 297 vests all lands, minerals and other things of value underlying the ocean within the territorial waters of

India in the Union. Article 298, which was substituted by the Constitution (Seventh Amendment) Act, 1956, extends the executive power of the Union and of each State to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose subject to the legislative powers of the Union, or of the State, as the case may be. Article 300 says that the Government of India and the Government of a State may sue or be sued by the name of the Union of India or by the name of the State, as the case may be, i.e., they may be sued as juristic personalities. Chapter I of Part XIV provides for the mode of recruitment and regulation of conditions of service of different services in the Union and the States. Part XV provides for an independent machinery for elections to the Parliament and the State Legislatures. Part XVIII deals with emergency provisions whereunder the President, when the security of India or any part of the territory thereof is threatened by war, external aggression or internal disturbances or when the constitutional machinery of the States fails or when the financial stability or credit of India or any part thereof is threatened, may, by proclamation, declare an emergency to that effect; in those events, subject to certain safeguards, the Centre is authorized to take over the administration of the State in whole or in part for a specified period. Article 368 provides for the amendment of the Constitution; and in regard to certain provisions thereof, such as the Lists in the Seventh Schedule, the representation of the States in Parliament, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by a resolution to that effect passed by those Legislatures.

Under the scheme of our Constitution, sovereign powers are distributed between the Union and the States within the spheres allotted to them. The Union exercises the sovereign powers within its sphere

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throughout the territories of India, and the States exercise their sovereign powers within their respective territories in respect of their allotted fields. The Legislatures of the States as well as the Parliament are elected on adult franchise. The legislative field of the Union is much wider than that of the States; and in case of conflict in the common field allotted to them, the Union law generally prevails over the State law. In regard to Bills passed by a Legislature of a State, the Governor may, and in the case of bills derogating from the powers of the High Court shall, reserve them for the consideration of the President: though this is in theory a limitation on the legislative power of the State, in practice the Governor only acts on the advice of the ministry which has the confidence of the Legislature. Except in the case of a bill derogating from the powers of the High Court when the Governor is bound to refer it to the President, in other cases it is not likely that the Governor would refer a bill to the President contrary to the advice of the ministry. In a few cases of legislation where inter-State element or conflict of laws are involved, sanction of the President is made a condition precedent for their validity: see Arts. 200, 254, 304 etc.

Coming to the executive field, both the Union and the State executives are manned by ministers responsible to their respective Legislatures elected on adult franchise. The executive powers of the Union as well as of the States extend to matters in respect of which they have power to make laws, though the executive of the Union can give directions to a State to ensure compliance with the laws made by Parliament and any existing law which applies in that State. The State is also enjoined to exercise its powers in such a way as not to impede or restrict the exercise of the power of the Union executive; and the executive of the Union is empowered to give directions to the State as may be necessary for that purpose. So too, the Union executive can give

directions to a State as to the construction and maintenance of means of communications declared to be of national importance. It is also authorised to confer powers on States in respect of matters to which the executive power of the Union extends. By and large, with minor exceptions, the Union as well as the State executive functions in its exclusive field, and the Union executive's directives are intended to facilitate the carrying out of the Union purposes.

Every State has its judiciary and the highest court in a State is the High Court of judicature. The expenditure of the State judiciary is charged on the consolidated fund of the State concerned but the Judges of the High Court are appointed by the President; and appeals lie to the Supreme Court of India in certain matters and it has also extraordinary powers to entertain appeals in other matters or to issue writs to enforce fundamental rights. But both the High Courts and the Supreme Court interpret the State and the Union laws and resolve conflicts, if any. An integrated system of judiciary has been accepted by the Constitution and the judicial control operates both ways, though the final word is with the Supreme Court. That cannot by itself affect the federal principle, as even in Australia an appeal lies to the Privy Council, under certain circumstances, from the decisions of the High Court of the Commonwealth of Australia.

In financial matters, though the States and the Union have consolidated funds of their own, the sources allotted to the States are comparatively meagre and those allotted to the Union appear to be perennial; the States also depend upon the Union for allocation of funds from and out of the taxes collected by it and also for grants; though there is no direct control by the Union over the field of finance of the States, there will always be indirect pressure on the States in that field. The Union, being in charge

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of the purse strings, can always, to use an euphemistic term, pursuade the States to take its advice. In case of emergencies, such as, war, external aggression, internal disturbances, failure of the constitutional machinery and financial instability, extraordinary powers are conferred on the Union, subject to certain limitations, to interfere with the States' administration; but the provisions relating to emergency situations are really in the nature of safety valves to protect the country's future. Parliament has also the power to change the boundaries of the territories or form new territories, but that is also an extraordinary provision to meet certain emergencies.

There is also another side of the picture. Parliament shall consist of the President and two Houses respectively known as the Council of States and the House of the People; the Council of States shall consist, apart from the 12 nominated members, not more than 238 representatives of the States and the Union territories. A part of the Parliament is, therefore, comprised of the representatives of the State Legislatures. Though the powers of the Council of States are not co-equal with those of the House of the People, to the extent it exercises its legislative powers the States also have control over the Union. The States are also entitled to be consulted in the matter of the amendment of certain provisions of the Constitution : vide Art. 368.

The foregoing resume of the provisions of the Constitution reveals the following picture : The political sovereign is the people of India and the legal sovereignty is divided between the constitutional entities i. e., the Union and the States, who are juristic personalties possessing properties and functioning through the instrumentalities created by the Constitution. Though the jurisdiction of the Union is confined to some subjects, it extends throughout India, whereas that of the States is confined to their

territorial limits. Within their respective spheres both in the legislative and executive fields they are supreme; their *inter se* relationship is regulated by specific provisions. The relation between the Union and the States cannot be found in the legislative fields demarcated by the Lists, but can only be discovered in the specific constitutional provisions forging links between them. The emergency powers of the Union to meet extraordinary situations do not affect its exclusive fields of operation in normal times.

On the basis of a comparison of the Indian Constitution with that of America, it is argued that none of the important criteria of a federation is present in the Indian Constitution. "Federalism in the United States embraces the following elements: (1) as in all federations, the union of several autonomous political entities, or "States", for common purposes; (2) the division of legislative powers between a "National Government", on the one hand and constituent "States", on the other, which division is governed by the rule that the former is "a government of enumerated powers" while the latter are governments of "residual powers"; (3) the direct operation, for the most part, of each of these centers of Government, within its assigned sphere, upon all persons and property within its territorial limits; (4) the provision of each center with the complete apparatus of law enforcement, both executive and judicial; (5) the supremacy of the "National Government" within its assigned sphere over any conflicting assertion of "state" power; (6) dual citizenship." The aforesaid elements are no doubt present in the American Constitution, but it is not possible to contend that unless all the said criteria exist a constitution cannot be described as a federal one. Though on paper the American Constitution is a typical federation, in practice the Supreme Court of the United States of America by evolving and developing many legal doctrines and implied powers has

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invested the Federal Government with large powers to enable it to interfere indirectly in the States field. Even in regard to judicial power, though the American Supreme Court was originally conceived to be a Federal Court concerning itself with federal laws, in fact it authoritatively interprets the State laws when they come into conflict with federal laws. The point is that even in America there is no federation in the orthodox sense of the term.

So too, the Constitution of Australia clearly demarcates the exclusive fields of the Commonwealth and the States and jealously guards the State rights, but in practice the States have been reduced to the position of agencies of the Commonwealth Government. This was brought about because of the financial grip the Centre has over the State: see Wheare on "Federal Government."

But in Canada the position is the reverse. Though the Centre and the Provinces have their distinctive Lists of powers, the Central Government has certain limited powers of control over the governments of the ten Provinces of Canada; the residuary powers are given to the Centre and not to the States. Though undoubtedly some elements of unitary form of government are present, the constitutional custom evolved practically a federal State and, as one author puts it, "no dominion government which attempts to stress the unitary elements in the Constitution at the expense of the federal elements would survive." It is, therefore, clear that in every federal Constitution there are either textually or customarily some unitary elements. The real test to ascertain whether a particular Constitution has accepted the federal principle or not is whether the said Constitution provides for the division of powers in such a way that the general and regional governments are each within its sphere substantially independent of the other. The reservation

of the residue of power or the power to interfere with States' affairs in emergencies in the Union may affect the balance of power in a federation, but does not destroy its character. Some Constitutions show a marked bias towards the Federation and the others towards the States, but notwithstanding the varying emphasis they accept the federal principle as their basis. Though some authors, accepting the American Constitution as the yardstick for a federation, prefer to describe Constitutions with a bias towards Union as quasi-federations, I do not think it is inappropriate to describe all Constitutions which substantially accept the federal principle as Federations. Applying this test, I have no doubt that the Indian Constitution is a federation, as the units in normal times exercise exclusive sovereign powers within the fields allotted to them.

A further distinction is sought to be made between the American Constitution and the Indian Constitution on the basis of the historical evolution of the two countries. While in America, the argument proceeds, the pre-existing sovereign States were brought together under a federation, in India the Constitution conferred certain powers on the existing administrative units or such units newly constituted. The status of a political entity under a particular constitution does not depend upon its history but upon the provisions of the constitution. The pre-existing independent States may not be given any appreciable power under a constitution, while newly formed States may enjoy larger power under another constitution. A federal structure is mainly conceived to harmonize existing conflicting interests and to provide against future conflicts. India is a vast country: indeed, it is described as a sub-continent. Historically, before the advent of the Constitution, there were different Provinces enjoying in practice a fair amount of autonomy and there were innumerable States with varying forms of government ranging from pure autocracy

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to guided democracy. There were also differences in language, race, religion etc. There were also foreign pockets expected sooner or later to be incorporated with the main country. In those circumstances our Constitution adopted a federal structure with a strong bias towards the Centre. Under such a structure, while the Centre remains strong to prevent the development of fissiparous tendencies, the States are made practically autonomous in ordinary times within the spheres allotted to them.

With this background I shall now proceed to consider the arguments advanced by learned counsel. I shall first take up the argument based upon entry 42 of List III, i.e., acquisition and requisitioning of property. The provisions relevant to the said question are as follows:

> *Article 245:* (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
>
> (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
>
> *Article 246:* (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in

this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of a State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

The entries relevant to acquisition, as they stood before the Constitution (Seventh Amendment) Act, 1956, read as follows:

Entry 33 of List I. Acquisition or requisitioning of property for the purpose of the Union.

Entry 36 of List II. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III.

Entry 42 of List III. Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given.

After the said amendment, entry 33 of List I and entry 36 of List II were omitted; and entry 42 of List III, as substituted by the Seventh Amendment reads:

"Acquisition and requisitioning of property".

Article 31. (1) No person shall be deprived of his property save by authority of law.

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

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for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that is not adequate.

(2A) 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, notwithstanding that it deprives any person of his property.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

I have already held that the sovereign powers have been distributed between the constitutional entities, namely, the Union and the States; one such sovereign power is the power to acquire or requisition the property of a citizen for a public purpose. The doctrine of "Eminent Domain" is defined by Willis as "the legal capacity of sovereign, or one of its governmental agents to take private property for a public use upon the payment of just compensation". Nicholas in his book on Eminent Domain, Vol. I, describes it as a power of the sovereign to take a property for public use without the owner's consent. In *Chiranjit Lal Chowdhri* v. *The Union of India* (1), Mukherjea, J., as he then was, accepted this definition when he said:

> "It is a right inherent in every sovereign to take and appropriate private property belonging

(1) [1950] S.C.R. 869, 901-902.

> to individual citizens for public use. This right, which is described as *eminent domain* in American law, is like the power of taxation, an offspring of political necessity, and it is supposed to be based upon an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner."

It is, therefore, clear that the power to acquire the property of a citizen for a public purpose is one of the implied powers of the sovereign. In our Constitution, before the Constitution (Seventh Amendment) Act, 1956, this power was divided and distributed between the Union and the States; the Union, by virtue of entry 33 of List I could acquire a property for Union purposes, and by virtue of entry 36 of List II a State could acquire a property for State purposes: the result was that a State could not acquire a property of a citizen for a Union purpose, and the Union could not acquire a property of a citizen for a State purpose. To avoid this difficulty entry 33 of List I and entry 36 of List II were omitted and the present entry 42 of List III has been substituted for the earlier entry 42 in the said List. Now both Parliament and the Legislature of a State can make a law providing for the acquisition and requisitioning of property for Union or State purposes. But the crucial point that is implicit in the power of acquisition by a sovereign is that it must relate only to the property of the governed, for a sovereign cannot obviously acquire its own property. This sovereign power of Eminent Domain under our Constitution is conferred on, or divided between, the Union and the States. *Prima facie*, therefore, entry 42 of List III can only mean acquisition and requisitioning of private property by a State. It is also implicit in the concept of acquisition or requisitioning that the acquisition or requisitioning shall be for

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a public purpose on payment of just compensation. The said concept has acquired a well defined connotation not only in the foreign countries from which it is borrowed, but also in the legislative history of our country. That is why our Constitution laid down in express terms that any law made shall not violate the fundamental rights. One of the fundamental rights is that enshrined in Art. 31(2) and it says that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law, which provides for compensation for the property so acquired or requisitioned. The scope of entry 42 of List III would be apparent if it is read along with the said article. Unless it is held that Art. 31(2) applies also to a law of acquisition of a State property by the Union, the result will be that Parliament can make a law providing for the acquisition of a property of a State for a purpose which is not a public purpose and without payment of compensation, while it cannot do so in the case of acquisition of a private property. If Art. 31, does not govern the law of acquisition of a State property, it indicates that entry 42 of List III does not deal with acquisition of a State property, for otherwise it would lead to the anomaly of acquisition of a State property by a law of Parliament without safeguards inherent in the doctrine of Eminent Domain. That is why the learned Attorney-General made an attempt to persuade us to hold that Art. 31(2) applies also to a law providing for the acquisition of a State property. He contended that after the Constitution (Fourth Amendment) Act, 1955, Art. 31(1) is separated from Art. 31(2) and that the phraseology of Art. 31(2), if independently construed, is wide enough to take in acquisition of a State property. And for this position he relied upon the judgment of this Court in *Kavalappara Kottarathil Kochuni* v. *The State of Madras* (1). There, this Court held that after the Constitution (Fourth Amendment) Act, 1955, cls. (1), (2) and (2A) of Art. 31 dealt with

(1) [1960] 3 S.C.R. 887.

different subjects—cls. (2) and (2A) dealing with acquisition and requisitioning, and cl. (1) with deprivation of property with authority of law. That decision has no bearing on the construction of cl. (2) of the said Article vis-a-vis the question of acquisition of a State property. The fact that this Court held that the two clauses of the Article deal with two different subjects does not mean that cl. (1) has no bearing on the interpretation of cl. (2) of the same Article. Clause (2) of Art. 31 reads :

> "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; 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."

Clause (2A) thereof reads :

> "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, notwithstanding that it deprives any person of his property."

It is true that cl. (1) opens out with the words "no person" whereas cl. (2) does not repeat that expression; but in the context, I find it difficult to hold that cl. (1) deals with property of a person and cl. (2) deals with property of persons and States. Article 31 deals with a fundamental right in regard

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to property—cl. (1) with deprivation of property, and cl. (2) with acquisition of property. As cl. (1) makes it clear that property shall be of a person, it is not necessary to mention over again that the property acquired should be of a person. The idea of compulsory acquisition and requisitioning in cl. (2) indicates that the acquisition or requisitioning is by a State of a person's property. That is made clear by cl. (2A) which says that the law of acquisition shall provide for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State. The transfer of property is to the State and *a fortiori* the transferor must be one other than the State. In the context it can only mean the person mentioned in cl. (1). The use of the definite article in the expression "the State" is a further indication that transfer *inter se* between State and State or Union and State is not contemplated by that clause. If that was the intention it would have provided expressly for a transfer between a State and a State. Even so, the learned Attorney-General contends that State is also a person. "Person" has not been defined in the Constitution; but a perusal of the various provisions of Part III clearly shows that the expression "person" is used in contradistinction to "State." Indeed, most of the fundamental rights are conferred on a person or a citizen against infringement of his rights by a State. The expression "person" in Arts. 14, 18, 20, 21, 22, 25 and 27 does not and cannot include a "State". Indeed, there is no other article in this part wherein the expression "person" is used in the sense of "State". *Prima facie,* therefore, the expression "person" in Art. 31 will not include "State". There is nothing in the said Article which compels me to give a strained meaning particularly when the Article is consistent with the recognized concept of Eminent Domain and fits in squarely with the scheme of fundamental rights. But it is said that if a State cannot be a "person", a corporation or a

company will have to be excluded from its scope. There is no definition of the expression "person" in the Constitution; but it is defined in the General Clauses Act, 1897, as including any company or association or body of individuals, whether incorporated or not. Though this definition is an enlargement of the natural meaning of the expression "person", even the extended meaning does not include the State. Anyhow the question whether the said expression takes in a corporation or not, does not call for a decision in this case. In this context two decisions of this Court may usefully be referred to. In *Director of Rationing and Distribution* v. *The Corporation of Calcutta* (1), it was held that "the rule of interpretation of statutes that the State is not bound by a statute unless it is so provided in express terms, or by necessary implication, is still good law". Though that rule has been laid down in the context of a statute, there is no reason why a different principle should apply in the construction of the Articles of the Constitution. If that rule of interpretation is applied to Art. 31 (2) of the Constitution, it will have to be held that, as the said rule does not in terms or by necessary implication provide for the acquisition of State property, a State property cannot be the subject-matter of the said rule. Reliance is placed upon another judgment of this Court in *The State of Bihar* v. *Rani Sonabati Kumari* (2), in support of the contention that the expression "person" embraces a State. There, the decision was that when the State disobeyed the order of injunction issued by the court, the said order could be enforced against the State in the manner prescribed by O. XXXIX, r. 2 (3), of the Code of Civil Procedure. A plaintiff may apply to the court for a temporary injunction to restrain a defendant from committing the injury complained of. Under O. XXXIX, r. 2 (3) of the code,

> "In case of disobedience, or of breach of any

(1) [1961] 1 S.C.R. 158. (2) [1961] 1 S.C.R. 728.

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such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release."

This Court, on a construction of cls. (1) and (3) of r. 2 of O. XXXIX of the Code of Civil Procedure held that the expression 'person' in r. 2 (3) has been employed compendiously to designate everyone in the group "Defendant, his agents, servants and workmen" and not for excluding any defendant against whom the order of injunction has primarily been passed. But at the same time, this Court made it clear that the provision for detention does not apply to the State; and this could only be because the State is not a "person" who could be detained. The decision is based upon the phraseology of the two clauses of O. XXXIX, r. 2, of the Code of Civil Procedure and does not lay down as a general proposition that the expression "person" wherever it appears shall include a "State".

The historical background of Art. 31 and entry 42 of List III also does not bear out the construction that acquisition of a State property is contemplated by the entry 42 of List III. In the Government of India Act, 1935, acquisition was a provincial subject, being entry 9 of List II, Section 299 of the Government of India Act, 1935, read :

(1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor 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."

Broadly, cls. (1) and (2) of s. 299 of the said Act correspond respectively to cls. (1) and (2) of Art. 31 of the Constitution, under the said Act, the Federal Legislature could not make a law acquiring the land of a Province for the simple reason that the subject of acquisition of land was exclusively a Provincial subject. But s. 127 provided for the contingency of the Federation requiring the land belonging to a Province. The section read :

"The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India."

A combined reading of the said provisions indicates that though under the Government of India Act the federal Legislature could not make a law empowering the Federation to acquire the land belonging to a Province, the Federation may require the Province to transfer to it the land owned by the Province on terms agreed upon between them or, in default of agreement, determined by an arbitrator: that is to

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say, under the Government of India Act transfer of lands owned by a Province to the Federation could be effected only under an agreement or an award. Under the Constitution, before it was amended in 1956, Parliament as well as State Legislatures were empowered to make laws for acquisition of lands for their respective purposes—Parliament for the Union purposes and a State Legislature for the purposes of the State. *Prima facie* the relevant entries, namely, entry 33 of List I and entry 36 of List II, could have related only to acquisition of private lands for purposes of the Union or the State, as the case may be. But if the Union or the State wanted the land held by the other, it could secure the same only under Art. 298 (1), as it stood then. The said article read :

> "The executive power of the Union and of each State shall extend, subject to any law made by the appropriate Legislature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts."

The phraseology used in this article clearly shows that the land held by the Union or the State for the Union or the State purposes respectively, could be transferred to the other only in the manner indicated in Art. 298 (1). By the Constitution (Seventh Amendment) Act, 1956, the subject of acquisition and requisitioning of land was placed in List III as entry 42, and entry 33 of List I and entry 36 of List II were deleted and Art. 298 was substituted by a new Article. The changes made in Art. 298 are not material for the present purposes. It is, therefore, manifest that under the Government of India Act, 1935, compulsory acquisition of land was a provincial subject, that under the Constitution, as it

originally stood, Parliament could make a law for acquiring such a property for the Union purposes and the State Legislature for the State purposes by virtue of different entries and that, after the amendment, both Parliament and State Legislatures could make a law for the acquisition of such a property by virtue of entry 42 of List III. But if the Federation or a province under the Government of India Act, or the Union or the State under the Constitution wanted a property owned by the other, it could secure it only under an agreement and not otherwise. This scheme clearly demonstrates that a law whether made by Parliament or by a State Legislature cannot provide for the acquisition of property owned by the other. I, therefore, hold that Parliament cannot make a law by virtue of entry 44 of List III for the acquisition by the Union of the property owned by a State.

Reliance is then placed upon Art. 248 of the Constitution, read along with entry 97 of List I of the Seventh Schedule to sustain the wider power of the Parliament. Article 248 reads :

> (1) Parliament has exclusive power to make any law with respect of any matter not enumerated in the concurrent List or State List.
>
> (2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.
>
> *Entry 97 of List I.* Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

It is contended that if acquisition of a State property does not fall under entry 42 of List III it must fall under entry 97 of List I. Emphasis is laid upon the

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words "any matter" in Art. 248 and a contention is advanced that the expression "any matter" has the widest connotation and, therefore, it empowers the Parliament to make a law in regard to any subject, including taking over of the property of a State. There are two answers to this argument : firstly, a residuary entry cannot travel beyond the scope of the division of powers. The sovereign legislative power is divided between different entities. The entire legislative field is divided between the Union and the States. The method of allocation adopted is by enumeration of subjects. The residuary article and the entry are, the devices adopted to entrust to the Union any subject omitted by mistake or otherwise. The residuary legislative field cannot possibly cover inter-State relation; for that matter is not distributed between the Union and the States by way of legislative Lists. That apart, when a specific provision is made for acquisition of a property, it would be incongruous to confine that entry to properties other than those of the States and to resort to the residuary power for acquiring the properties of States. If the power of acquisition can be construed to mean only acquisition of properties in the States and not properties belonging to the States, it must be held that the power of acquisition is limited to that extent. Further if Art. 31 (2) applied only to a law of acquisition of a private property as I have already held, the anomaly that arises if the said clause does not apply to entry 42 of List III will equally arise in respect of entry 97 of List I—I would, therefore, hold that Parliament cannot make a law for the acquisition of a State property by virtue of entry 97 of List I.

There would be many anomalies in the working of the Constitution if the contention of the Union was accepted. As the subject of "acquisition and requisitioning" is in the Concurrent List both Parliament and a State Legislature can make different

laws for acquiring the property of the State or of the Union, as the case may be. Under the law made by Parliament, the State property can be acquired and on acquisition it becomes the Union property; then under the law made by the State, the same property can be reacquired by the State as the Union property. It is said that this vicious circle cannot arise under the Constitution. Reliance is first placed upon Art. 31(3) of the Constitution, which says :

> "No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent."

But I have held that Art. 31 (2) has no application to a law providing for the acquisition of a State property and if so, cl. (3) thereof will also not apply to such a law. Even if Art. 31(3) applies, there is nothing which prevents the President from giving his consent to a State to acquire the Union property, though the Union executive may ordinarily be relied upon not to do so. But we must test the validity of a contention on the legal possibilities and not on what a particular executive may or may not do. If so, Art. 31(3) cannot always prevent the conflict indicated above. It is said that Art. 254(1) would invariably resolve such conflicts in favour of the law made by the Parliament. But Art. 254(1) can come in aid of the law made by Parliament only if there is repugnancy between that law and that made by the State Legislature. But in the illustration given there is no such repugnancy, for the law made by Parliament provides for the acquisition of the property of the State, whereas the law made by the State provides for the acquisition of the property owned by the Union. The moment the State property is acquired by the Union it becomes the property of the Union. In such a context there is no

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repugnancy between the two laws though the purpose of the Union law can be defeated by the exercise of a power under a State law. Article 254(2) also saves the laws of the States if the previous consent of the President has been taken; such a consent is legally possible, though ordinarily the Central Executive can be expected to withhold it. The Constitution could not have intended such an unresolved conflict between the Union and the States. Secondly, if the contention of the Union be correct, Parliament can make a law making a provision for acquiring the entire property of a State without compensation. It can indirectly prevent the State from functioning; it can acquire the buildings owned by the State and used for its offices; it can take away the substratum of the State's jurisdiction by acquiring not only its offices but also its buildings and works, which are maintained for the public good. Though Parliament may not be expected to create such a situation, nothing will prevent it from doing so. A construction which may prevent the State from functioning as visualized by the Constitution cannot easily be accepted unless it is clearly expressed in the Constitution itself. It is said that Parliament can destroy the State under Art. 3 of the Constitution and, therefore, nothing more untoward can happen to a State if this limited power is conceded, as a larger power has already vested in the Parliament. Article 3 only enables the Parliament to make a law for the formation of a new State, alteration of boundaries of any State, increase or decrease of the area of any State or alteration of the name of any State. Such a power is expressly given to the Parliament and, therefore, it can function under that Article. But that has nothing to do with a power to acquire the property of a State. Thirdly, when the Constitution created legal entities and distributed the sovereign powers between them, it is unreasonable to construe the ambiguous provisions of the Constitution in such a way as to create

conflicts between them or to make one a creature of the other. It is said that if such a power is not conceded to the Union, the States may not cooperate with the Union, in the implementation of the policies conceived in the interest of the whole country. This argument may have some relevance in America or in Australia where the States are powerful under their respective Constitutions, but absolutely none under our Constitution whereunder the States are practically beholden to the Union in many ways. It was necessary in America to evolve implied powers to implement national policies; in India the Constitution has conferred on the Union ample powers in that direction. In such a situation this Court should be very reluctant to curtail the already limited powers of the States and should not, by construction, convert the federal structure into a unitary form of government which the Constitution has rejected.

At this stage another argument advanced by learned Advocate-General for West Bengal may be noticed. He contends that under Art. 294 of the Constitution all the coal-mines vested in His Majesty for the purposes of the Province vested in the State of West Bengal as from the commencement of the Constitution; and that, therefore, unless there is an express constitutional provision for divesting them, they could not be acquired by a law made by Parliament. I shall consider the decisions cited at the Bar in this context at a later stage. If the argument advanced on behalf of the Union is correct, viz., that there is a legislative power in the Parliament to acquire the property of a State, Art. 294 cannot be in the way of the Union law providing for the acquisition of the State property. That apart, Art. 294 applies only to the property vested in the State at the commencement of the Constitution and not to property that has been subsequently acquired by it. In this case, the zamindaries where the coal-mines are

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situate vested in the State of West Bengal subsequent to the commencement of the Constitution by reason of a State law. But it is contended that though the surface soil of the zamindari was with the zamindars, the coal-mines vested in His Majesty before the Constitution and that at the commencement of the Constitution continued to vest in the State. But this argument is contrary to series of decisions given by the Privy Council : see *Harinarayan Singh Deo* v. *Sriram Chakravarti* (1); *Durga Prasad Singh* v. *Brajnath Bose* (2); *Sashi Bhushan Misra* v. *Jyoti Prasad Singh Deo* (3); *Rajkumar Thakur Girdhari Singh* v. *Megh Lal Pandey* (4); and *Raghunath Roy Marwari* v. *Durga Prasad Singh* (5). Though these decisions were given in dispute between zamindars and their tenants, the observations in some of the judgments run counter to the argument of learned Advocate-General. He has not placed before us any authority to support his contention; but he alternatively suggested that though the estates with the coal-mines may have belonged to the zamindars, the reversion in the said estates was with His Majesty and subsequently with the State. This is contrary to the principles of permanent settlement, for under the permanent settlement the British Government granted to the zamindars a permanent hereditary property in their lands for all times to come and fixed a moderate assessment of public revenue on such lands, which could not be increased under any circumstances. The sannads granted under the permanent settlement regulations did not reserve any reversionary right to the Government. As I have held that, even if any interest had vested in the State, it could be divested by an Act of an appropriate Legislature if the requisite power was conferred on it by the Constitution, I do not propose to express my final opinion on this question.

The constitutional validity of the impugned Act is next sought to be sustained on the basis of

(1) (1910) I.L.R. 37 Cal. 723. (2) (1912) I.L.R. 39 Cal. 696.
(3) (1916) I.L.R. 44 Cal. 585. (4) (1917) I.L.R. 45 Cal. 87.
(5) (1919) I.L.R. 47 Cal. 95.

entry 52 and entry 54 of List I of the Seventh Schedule to the Constitution. They read :

> *Entry 52 of List I* : Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
>
> *Entry 54 of List I* : Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Before construing these two provisions, it would be convenient to read entries 23 and 24 of List II, the State List :

> *Entry 23 of List II* : Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
>
> *Entry 24 of List II* : Industries subject to the provisions of entries 7 and 52 of List I.

A combined reading of the four entries shows that ordinarily the industries and the regulation of mines and mineral development are the State subjects. But if Parliament makes a law declaring that any particular industry should be under the control of the Union in public interests or the regulations of any mines or mineral development should be under its control, to that extent entries 24 and 23 of List II shall yield to entries 52 and 54 of List I. Under the Industries (Development and Regulation) Act, 1951 (65 of 1951), Parliament has declared that "it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule", which include coal and, therefore, it is argued, the subject of coal industry passed on to Parliament and the impugned Act made thereafter

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for acquisition of coal bearing lands was well within its power. If I may say so, there is a fallacy in this argument. A declaration under entry 52 of List I would no doubt enable Parliament to make a law in respect of an industry, that is to say Parliament may make a law in respect of an existing industry or an industry that may be started subsequently. So too, before the declaration a State Legislature could have made a law in respect of an industry by virtue of entry 24 of List II. But neither entry 24 of List II nor entry 52 of List I empowers the State Legislature before the said declaration or the Parliament after such a declaration to make a law for acquisition of lands. If the State Legislature before the declaration or the Parliament after the declaration wanted to acquire the land it can only proceed to make a law by virtue of entry 42 of List III. As I have held that entry 42 of List III does not enable Parliament to make a law providing for the acquisition of a property of a State, entry 52 of list I cannot be relied upon for such a purpose. Reliance is also placed upon the Coal Mines (Conservation and Safety) Act, 1952 (Act XII of 1952) in support of the contention that the declaration contained therein gave vitality to entry 54 of List I and that the impugned Act could be sustained under that entry. Section 2 of that Act says :

> "It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of coal mines to the extent hereinafter provided."

The simple answer to this argument is that the declaration was limited to the control and regulation of coal mines to the extent provided by that Act, and such a declaration, with its limited scope, could not be taken advantage of to sustain the impugned Act. Further, under the entry "regulation of mines" a law cannot be made for the acquisition of coal bearing

lands themselves, particularly when there is a specific entry for acquisition. Nor can the Mines and Minerals (Regulation and Development) Act 1957 (Act 67 of 1957) be successfully invoked in this case, for that Act, which contains a declaration that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided therein, was passed on December 28, 1957, whereas the impugned Act was passed on June 8, 1957. That declaration was also confined to the extent of the regulation provided thereunder and therefore could not be relied upon for purposes other than those comprehended by that Act. It follows that Parliament cannot rely upon the declaration in either of the three Acts i.e., Act 65 of 1951, Act 12 of 1952, and Act 67 of 1957, to sustain the impugned law which was solely made for the purpose of acquiring the coal bearing areas.

Sustenance is sought to be drawn from American, Australian and Canadian decision in support of the Union's contention that a federal law can provide for the acquisition of a property owned by a State. Before adverting to the decisions of a foreign court, it would be necessary to know the relevant fundamental differences between the constitution of the said country and our own. In America there is no express power conferred on the Congress enabling it to make a law for the acquisition of any property for public purposes. There is also no concurrent List giving a common field of operation for the Federal and the State units. The power of acquisition was evolved by judicial decisions by invoking the doctrine of implied powers. The law of that country, therefore, may not be of much relevance in construing the provisions conferring express powers on the different units under our Constitution. Nor the decisions cited on behalf of the Union lend any support

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to the contention advanced. In *State of Oklahoma Ex. Rel. Leon C. Philips* v. *Guy F. Atkinson Company* (1), the Flood Control Act of 1938 authorized the construction of the Denison Reservoir on the Red River as part of a comprehensive scheme for the control of floods in the Mississippi River and its tributaries. That law was made by the Congress in the exercise of its commerce power. The effect of the construction of dam and reservoir for the purpose of flood control on a stream running between two States was to inundate lands in one State. The Supreme Court held that the fact that the land was owned by a State was not a barrier to its condemnation by the United States. It also observed that the State Government could not prevent the exercise by the Federal Government of its power of eminent domain for flood control purposes, merely because the State boundary would be obliterated by the flooding of the land taken. It was observed therein :

> "Since the construction of this dam and reservoir is a valid exercise by Congress of its commerce power, there is no interference with the sovereignty of the State. .... The fact that land is owned by a state is no barrier to its condemnation by the United States. ..... Nor can a state call a halt to the exercise of the eminent domain power of the federal government because the subsequent flooding of the land taken will obliterate its boundary."

It does not appear from the report, though the phraseology used is wide, that what had submerged or obliterated was State owned property or the State territory. Assuming that the State property had submerged because of the operation of the Federal law, this decision can be understood to have laid down only the limited proposition that the Congress in exercise of its commerce power can make a law incidentally

(1) (1940) 85 L. ed. 1487, 1505.

encroaching upon the State property. The decision in *The Cherokee Nation* v. *The Southern Kansas Railway Company* (1), does not carry the matter further. There it was held that the Congress had power to authorize a corporation to construct a rail road through the territory of Indian tribes. It was pointed out that Cherokee Nation was not a sovereign nation but was under the political control of the government of the United States and, therefore, it could not be said that the right of eminent domain within its territory could only be exercised by it and not by the United States. It was observed therein:

> "The lands in the Cherokee territory, like the lands held by private owners everywhere within the geographical limits of the United States, are held subject to the authority of the general government to take them for such objects as are germane to the execution of the powers granted to it; provided only, that they are not taken without just compensation being made to the owner."

This case, therefore proceeded on a different basis altogether, namely, that the entire territory was directly under the Federal Government and that the Federal Government could exercise its power of eminent domain in respect of that territory. Nor does the decision in *Kohl* v. *United States* (2), support the defendant. There it was held that the United States could acquire lands in Cincinnati for a post office and other public buildings under the power of eminent domain. The property sought to be acquired there was the private property in the State and the decision therein throws little light on the present question.

The decisions of the Supreme Court of America are clear on the point viz., that in exercise of the power conferred on the Congress, expressly or by implication, a law can be made to acquire the

(1) (1889) 34 L. ed. 295. 302. (2) (1875) 23 L. ed. 449.

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private property in a State for carrying out a federal purpose. But they are not decisions on the question whether the said law can provide for the condemnation of the property owned by the States.

In Nichols on Eminent Domain, 3rd edn., Vol. I, at p. 160, the following passage appears:

> "Despite the phraseology of the Fifth Amendment to the Constitution of the United States to the effect that "private property" shall not be taken for public use except upon payment of just compensation, it has been held that there is no implied limitation therefrom which inhibits the taking of public property by the federal government and the latter may acquire the property of a state or one of its agencies or sub-divisions."
>
> "Although the federal government has the power to acquire such property, the relative positions of the federal and state governments are such that it would seem that the United States could not for the sake of mere convenience, take the property of a state which was devoted to the public use the loss of which would seriously cripple the state in carrying on its functions.....
> In case of necessity, as distinguished from mere convenience, the State would have to yield in any event."

The said passage makes a distinction between a State property and a property devoted by a State for a public purpose—the former can be acquired and the latter ordinarily cannot be acquired by the federal government. These principles are not based upon any particular power conferred upon the Congress, but appear to have been envolved on a pragmatic approach to concrete problems arising in that country.

Such an approach cannot have any relevance to our Constitution where the powers have been described with particularity. The passage in "Willoughby on the Constitution of the United States", Vol. 1, at p. 180, namely, "that, in cases of conflict, the power of eminent domain of the States must yield to the constitutionally superior power of eminent domain of the United States is well settled", does not relate to the acquisition of property owned by States but to the resolution of a conflict between the powers of eminent domain of the Union and the States when both of them seek to acquire property within a State. That doctrine is based upon the supremacy given by the constitution to the Government of the United States in all matters within the scope of its sovereignty.

The said discussion shows that the law in America on the question raised in the present case is not clear. In view of the admitted differences in the constitutional provisions, it would not be safe to rely upon it in construing the provisions of our Constitution.

The Australian decisions also do not help us, for s. 51 of the Australian Constitution expressly provides that the Commonwealth can make a law for the acquisition of property on just terms from any State or person: see Wynes' Legislative, Executive and judicial Powers in Australia, p. 441. If at all, the said provision indicates that in a federal form of government one sovereign unit cannot acquire the property of another unless the Constitution expressly provides for it.

In Canada this question was subject of judicial scrutiny. It may be mentioned that in Canada there is no concurrent List conferring the power of eminent domain expressly on both the Union and the constituent States. Reliance is placed on behalf of the Union on the decision of the Privy Council in

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Attorney-General for the Dominion of Canada v. *Attorney-General for the Provinces of Ontario, Quebec and Nova Scotia* (1). Sections 91 and 92 of the British North America Act, 1867, distributed legislative powers between the Dominion and the Provinces of Canada. Under s. 108 thereof certain items of property were transferred to the Dominion, one of them being "rivers and lake improvements, and public harbours". The residue of proprietary rights not transferred to the Dominion by s. 108 and Schedule III remained vested in the provinces subject to ss. 109 and 117; and the residuum of legislative jurisdiction not comprised in ss. 91 and 92 vested in the Dominion. The questions raised in the appeal were whether under s. 108 the river was transferred to the Dominion, and whether the Dominion could make a law under s. 91 affecting fisheries and fishing rights in the river. The Privy Council held that the proprietary rights in the river vested in the Province on the date of the British North America Act, 1867 and that s. 108 by transferring rivers and lake improvements did not transfer the proprietary rights in the rivers. On the second question, it held that s. 91 empowered the Dominion to make a law taxing the right to fish in the rivers. Lord Herschell recognized a broad distinction between proprietary rights and legislative jurisdiction and observed that the fact that such jurisdiction in respect of a particular subject-matter was conferred on the Dominion Legislature afforded no evidence that any proprietary rights with respect to it were transferred to the Dominion. It is observed at p. 730 :

> "If, however, the Legislature purports to confer upon other proprietary rights where it possesses none itself, that in their Lordships' opinion is not an exercise of the legislative jurisdiction conferred by s. 91. If the contrary were held, it would follow that the Dominion might

(1) [1898] A.C. 700.

practically transfer to itself property which has, by the British North America Act, been left to the provinces and not vested in it."

This decision, therefore, is an authority for the position that when the constitution vests particular properties in one of the governing units, the other cannot by legislation take over those properties, for if that is allowed one can destroy the other. This decision supports the broad contention of the learned Advocate-General of West Bengal that the properties vested in a State cannot be taken over by the Union in exercise of a legislative power. The wide sweep of this decision has been restricted to some extent, by the Judicial Committee in *Attorney-General for British Columbia Canadian Pacific Railway Company* (1). There, the judicial Committee held that ss. 91 and 92, read together, empowered the Dominion to dispose of provincial Crown lands, and therefore of a provincial foreshore, for the purposes of the respondent railway, which was a trans-continental railway connecting several provinces. In coming to that conclusion the Judicial Committee relied upon its earlier decisions in *Canadian Pacific Railway Co.* v. *Corporation of the Parish of Notre Dame De Bonsecours* (2), and *Toron to Corporation* v. *Bell Telephone Co. of Canada* (3). Though Crown lands vested in a province, the Constitution Act conferred an express power on the Dominion enabling it to make a law for inter-State purposes affecting the Crown lands. The same view was reiterated by the Privy Council in *Attorney-General for Quebec* v. *Nipissing Central Railway Company and Attorney-General for Canada* (4). The Canadian decision do not support the wide contention of the learned Attorney-General that properties vested in a State can be acquired by Union law by virtue of either entry 42 of List III or entry 52 of List I of our Constitution. Apart from the fact that the relevant provisions of the other constitutions are not

(1) [1906[A.C. 204.
(2) [1899] A.C. 367.
(3) [1905] A.C. 52.
(4) 1926] A.C. 715.

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State of West Bengal v. Union of India

Subba Rao, J.

pari materia with those of the Indian Constitution, the decisions cited do not constitute a clear authority to support either of the two rival contentions, though they contain some observations which may be relied upon by either side. In these circumstances, it would not be proper for this Court to draw any inspiration from the foreign constitutions or the decisions made thereunder in construing the express provisions of our Constitution in the context of its different set-up. I have referred to the decisions only out of respect for the argument advanced.

To conclude : The Indian Constitution accepts the federal concept and distributes the sovereign powers between the co-ordinate constitutional entities, namely, the Union and the States. This concept implies that one cannot encroach upon the governmental functions or instrumentalities of the other, unless the Constitution expressly provides for such interference. The legislative fields allotted to the units cover subjects for legislation and they do not deal with the relationship between the two co-ordinate units functioning in their allotted fields : this is regulated by other provisions of the Constitution and there is no provision which enables one unit to take away the property of another except by agreement. The future stability of our vast country with its unity in diversity depends upon the strict adherence of the federal principle, which the fathers of our Constitution have so wisely and foresightedly incorporated therein. This Court has the constitutional power and the correlative duty—a difficult and delicate one—to prevent encroachment, either overtly or covertly, by the Union of State field or vice versa, and thus maintain the balance of federation. The present is a typical case where the Court should stop the Union from overstepping its boundary and trespassing into the State field. I would, therefore, hold that the impugned Act, in so far as it confers a power on the

Union to acquire the lands owned by the State, including coal mines and coa bearing lands, is *ultra vires*. I find on issues 1, 2 and 3 against the defendant. In view of my findings on the said issue, I do not propose to express my opinion on the additional issue.

In the result, there will be a decree in favour of the plaintiff in terms of cls. (a), (c) and (d) of paragraph 11 of the plaint. The plaintiff is entitled to costs.

BY COURT: In view of the judgment of the majority, the suit stands dismissed with costs.

Appeal dismissed.