C. B. No.169

LOK SABHA

JOINT COMMITTEE

ON THE

CONSTITUTION (SEVENTEENTH AMENDMENT) BILL, 1963

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI
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Witnesses Examined

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JOINT COMMITTEE ON THE CONSTTTUION (SEVENTEENTH AMENDMENT) BILL, 1963

MINUTES OF EVIDENCE GIVEN BEFORE JOINT COMMITTEE ON THE CONSTITUTION (SEVENTEETH AMENDMENT) BILL, 1963

Friday, the 11th October, 1963 at 10.00 hours

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bibhuti Mishra
3. Shri Sachindra Chaudhuri
4. Shri Surendranath Dwivedy
5. Shri Kashi Ram Gupta
6. Shri Ansar Harvani
7. Shri Harish Chandra Heda
8. Shri Hem Raj
9. Shri Ajit Prasad Jain
10. Shri S. Kandappan
11. Shri Cherian J. Kappen
12. Shri L. D. Kotoki
13. Shri Lalit Sen
14. Shri Harekrushna Mahatab
15. Shri Jaswantraj Mehta
16. Shri Bibudhendra Misra
17. Shri Purushottamdas R. Patel
18. Shri T. A. Patil
19. Shri A. V. Raghavan
20. Shri Raghunath Singh
21. Chowdhry Ram Sewak
22. Shri Bhola Raut
23. Dr. L. M. Singhvi
24. Shri U. M. Trivedi
25. Shri Radhelal Vyas
26. Shri Balkrishna Wasnik
27. Shri Ram Sewak Yadav.

Rajya Sabha

28. Shri Rohit Manushankar Dave
29. Shri Khandubhai K. Desai
30. Shri Nemi Chandra Kasliwal
31. Shri Dhirendra Chandra Mallik
32. Shri Joseph Mathen
33. Shri Nafisul Hasan

34. Shri P. Ramamurti
35. Sardar Raghbir Singh Panjhazari
36. Shri Kota Punnaiah
37. Shri G. Rajagopalan
38. Shri Atal Bihari Vajpayee
39. Shri J. Venkatappa.

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVE OF THE PLANNING COMMISSION

Shri Ameer Raza, *Joint Secretary, Planning Commission.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. Maharashtra Pragat Shetkari Sangh, Poona.

1. Shri D. G. Shembekar
2. Shri S. G. Bhamburkar.

II. Shri S. G. Bhamburkar, Industrial Economist, Poona.

III. Bhal-Nalkantha Khedut Mandal, Gundi (Ahmedabad).

1. Shri Phuljibhai Dabhi.
2. Shri Ambubhai Shah.

I. Maharashtra Pragat Shetkari Singh, Poona.

Sopkesmen:

1. Shri D. G. Shembekar.
2. Shri S. G. Bhamburkar.

II. Shri S. G. Bhamburkar, Industrial Economist, Poona.

(*Witnesses were called in and they took their seats*)

Chairman: Gentlemen, the evidence that you give will be treated as public. It is liable to be published. Even if you want any partition to be treated as confidential, it will be printed and circulated to members of the Committee and Members of Parliament.

Shri Bhamburkar: There is nothing confidential about it.

Chairman: You have sent your Memorandum and also the printed pamphlet. They have all been distributed to the members. If you want to stress any particular point you may do so now.

Shri Bhamburkar: According to us, Sir, there was no necessity for the Maharashtra State Agricultural Land Ceiling Act. This Act is intended to be included in the 9th Schedule of the Constitution whereby the remedies to the agriculturists that are available now will be taken away.

On page 197 of the *Second Five Year Plan* issued in 1956 it is mention:

> "In the nature of things these are general suggestions which should be adapted to the needs and conditions of each State and in those parts of the country where culturable waste lands are available and sufficient number of cultivators are not always easy to obtain the ceiling may not be necessary at this stage."

This being the case we think that this Act was not necessary because, as we have mentioned in our Memorandum, the cultivable waste land in Maharashtra State is 23 lakh acres. This figure can be traced to two government documents. One is the *Agricultural Statistics* published by the Statistics Branch of Maharashtra State Government and edited by the Agricultural Information Unit of the State. It was published in May, 1960, the year in which this Bill was proposed. In this pamphlet, on page 3, 5th line from the bottom, they have given the figures for the years 1954-55, 1955-56 and 1956-57. In 1954-55 the area of culturable waste land was 23,23,900 acres. In the year 1955-56 this figure was 23,50,500 acres and in 1956-57 this area was 23,20,400 acres.

Chairman: Is it Government waste or private waste land?

Shri Bhamburkar: Government waste land.

Chairman: What is your objection to this land being made cultivable?

Shri Bhamburkar: It should be taken for cultivation first before taking my land. This is the direction given by the Planning Commission. They have said that if there is surplus of cultivable waste land available in the State and a large number of farmers are not forthcoming the Ceiling Act is not necessary.

Chairman: Your point is that as long as the cultivable waste land in the State is not brought under cultivation no ceiling should be fixed?

Shri Bhamburkar: That is the direction of the Planning Commission and I entirely agree with it.

Shri A. P. Jain: May I know whether any classification of this waste land has been made, because a large area of land which is not actually cultivable has been entered as waste land in a number of States.

Shri Bhamburkar: In this case the classification is given in the *Agricultural Statistics.*

Shri A. P. Jain: I know that in governmental statistics certain lands are classified as waste land but actually they are not capable of being reclaimed. Enquiries instituted by the Ministry of Food and Agriculture have revealed that although on record certain lands are shown as culturable they are not capable of being reclaimed.

Shri Bhamburkar: There is nothing mentioned in this pamphlet. Geographically the area of Maharashtra State is 70,06,03,000 acres.

Chairman: You have mentioned the point about waste land. Continue your evidence now.

Shri Bhamburkar: On the same point, I would like to say, that in the *Handbook of Mahahrashtra State* compiled by the Publicity Department of the *State*. . . . .

Chairman: These Acts were passed by the local legislature. We are not concerned with them. They are a question of fact now. They are now sought to be included in the 9th Schedule of the Constitution. What is your objection to that?

Shri Bhamburkar: My objection to that is, by including the Maharashtra State Land Ceiling Act in the 9th Schedule, it will perpetuate inequalities in the rural areas. In the Ceiling Act they have given a standard by which they are going to allot the ceiling area. It is given in the Explanation to Clause 5 of the Act. According to that and as on the same

principle revenue assessment is made, the revenue of the ceiling areas should be equal. The area of land may be different, but at least the revenue should be equal. We have found out from government records—it is in the bunch of letters from the Collector which we have given this morning....

Shri A. V. Raghavan: I think the Act which the witness is referring to is not included in this Volume I. We cannot appreciate the argument of the witness without the Act before us.

Chairman: They are being printed. It will take some time.

Shri P. R. Patel: I think it is better that we examine the witnesses after we have gone through the different Acts.

Chairman: The Acts will be supplied to you. He will refer to the particular sections of the Acts.

Shri Khandubhai K. Desai: He is only referring in general terms to the ceiling. The Maharashtra State Act has laid down certain ceilings. His argument is that as long as there is waste land which is not reclaimed, let there be no ceiling. It is a question of facts only, and on principle he is not opposed to the ceiling.

Shri Bhamburkar: I was speaking about assessment of land revenue.

Chairman: Has not the Maharashtra State legislature taken this into consideration when they fixed the ceiling?

Shri Bhamburkar: With great disappointment, Sir, I have to say that that was not the case. It seems they have not taken this into account. From the letters from the Collector you will find that there is a terrible discrepancy. The land revenue assessment for the ceiling area in Bhir village is Rs. 5.95 nP., while in Alibag village the land revenue for the ceiling area is Rs. 1,650. There is a mistake in this pamphlet. Thinking it to be a *bona fide* mistake on our part the printer has made it Rs. 16.50. It should be Rs. 1,650. The system of cultivation differs in different areas. This land revenue is for the ceiling area because the ceiling is on the holding of land and not on ownership. On the same principle on which the ceiling is fixed the land revenue is also fixed. But here is Rs. 5.95 for the ceiling area in one part of Maharashtra while in another part it is Rs. 1,650.

Shri A. P. Jain: When was the settlement done?

Shri Bhamburkar: In 1911—prior to the First War. No settlement was done thereafter. There is another thing. There is one village Vasi in Akola District. You will find it in the bunch of letters from the Collector. The lowest revenue from the ceiling area is Rs. 40.50 while the highest revenue from the same village is Rs. 452.25.

Shri Khandubhai K. Desai: Why is it so? Is it not due to the nature of the land?

Shri Bhamburkar: My own opinion is, they have passed this Act in a hurry in 1961 just before the elections.

Shri A. V. Raghavan: The increase or decrease in revenue is due to the fertility of the soil.

Shri Bhamburkar: I am coming to that later. Alibag is a village near Bombay. There, as I said, Rs. 43.32 is the lowest revenue from the ceiling area while the highest is Rs. 1,650.

Chairman: It depends upon fertility, irrigation, method of cultivation etc.

Shri Bhamburkar: Ceiling areas vary from 66 acres to 160 acres.

Chairman: Ceiling is fixed on the income from the land?

Shri Bhamburkar: Yes. These ceiling lands vary in acreage. It is done on the same principle on which land revenue is fixed. Therefore, the land revenue should have been equal. But unfortunately Government has not applied its mind thoroughly to this fundamental problem.

Coming to money valuation of the land. Any agriculturist who wants to buy land considers the same factors which Government has considered in deciding about the ceiling. Government has given a scheme of compensation and we have valued the land on the same principle, *viz.*, so many times the land revenue of a particular place. This varies from 55 times in Thana District to 190 times in Chanda District. Please refer to the last para of page 16 of the Representation:

> "In Washim the valuation of the ceiling area land as lowest comes to Rs. 4,050 while the highest is Rs. 45,225. In Nirgudi—I have taken assorted villages—the lowest valuation of the ceiling area comes to Rs. 6,412·50 while the highest comes to Rs. 64,125. In Kagal, the lowest valuation comes to Rs. 11,292.37 while the highest comes to Rs. 58,643.82. In Parbhani, the lowest valuation of the ceiling area comes to Rs. 21,772.80 while the highest is Rs. 1,07,520...."

This is the type of Ceiling Act we are having and therefore, we have come all the way here to place our points before the Committee. Since it contains so many inequalities and disparities between village and village, between locality and locality, this Act should not be included in the 9th schedule. The sickness has been imposed on us and the remedy is being taken away from us. That is the pity.

Shri Surendranath Dwivedy: Has it been challenged in the court?

Shri Bhamburkar: The implementation has not yet started in my part of the country. They have started with the sugar industry. Since we have not been given any notices that our lands will be taken away, we have no cause of action, according to our legal advisers.

Shri A. P. Jain: But stil you have the right to file a writ.

Shri Bhamburkar: Coming to the question of productivity, I have taken examples from different districts and they are all based on Government statistics, contained in this book *Statistical Companion* to the Maharashtra Agricultural Land Ceiling on Holdings Bill, 1961. Let us take different crops which are commonly grown in almost all the districts of Maharashtra. Taking rice, in Aurangabad district, the production from the ceiling area is 192 maunds, which is the lowest in the entire State, while in Thana district, it is 739.2 maunds, which is almost more than three times. Similarly taking wheat, in Poona district, it is 302.2 maunds from the ceiling area, while in Satara district, it is 777.6 maunds, i.e. again about three times. These statistics are given on page 13. Coming to sugarcane, which is the only crop that is lifting the face of the rural areas of Maharashtra.....

Shri A. P. Jain: Are you sure about the statistics? You say 18 acres produce only 343.8 maunds. That might be per acre.

Shri Bhamburkar: They are Governmnet statistics and they are correct. That is the figure for Nagpur district, which is not known for its sugar.

Shri A. P. Jain: Poona is known for its sugarcane, but even there you say 18 acres produce only 1675.8 maunds. Please check up; it will be per acre and not for 18 acres.

Chairman: Is it from the ceiling area or per acre?

Shri Bhamburkar: It is from the ceiling area. There is a production schedule in this *Statistical Companion*. It is all given on page 34.

Chairman: We will verify it. You can go on.

Shri Bhamburkar: Even if it is per acre, it should not be difficult to calculate for the ceiling area. There seems to be a *bona fide* mistake here. I agree. The difficulty about sugarcane in Maharashtra is that the crops

are grown under what is called the block irrigation. So, out of the 18 acres 6 acres can grow crop for the current year, 6 acres for the next year and 6 acres will remain fallow.

Then I come to the gross income from production, where also I meet with the same difficulty. In Dhulia, it is Rs. 3,888 where wheat is grown Rs. 10,000 where rice is grown and Rs. 13,483 where sugarcane is grown There is a great difference.

There is a Schedule to the Act which is the only operative part of it. According to the Schedule for the dry crop land 66 acres is the lowest and 198 acres is the highest. I think there is some printing mistake and it should be 108 acres. So, the area of land differs, productivity differs and revenue also differs.

Chairman: It may be according to the income derived from the land.

Shri Bhamburkar: No, they have not done that.

Chairman: Then what is the basis?

Shri Bhamburkar: Section 5 says:

> "In each of the local area described in column 3 of the First Schedule situated in a district specified in column (1) thereof for each class of land described in columns 4, 5, 6 and 7 the ceiling area shall be the area mentioned under each such class of land against the local area."

To this clause they have given an Explanation, which is the most important one. It reads:

> "The ceiling area in respect of each class of land in the local area aforesaid has been fixed regard being had to the soil classification of the land, the climate and the rainfall of the area, the average yield of crop, the average prices of crops and commodities, the agricultural resources of the area, the general economic condition prevailing therein and other factors."

So, they do not give any definite indication as to on what particular item this is based.

Chairman: Apart from this section, have they given a definition of "ceiling area"?

Shri Bhamburkar: In the body of the Act they have nowhere defined the "ceiling area". The area under pernnial irrigation is 18 acres, for two seasons it is 27 acres, for one season it is 48 acres. For dry crop land it varies from 66 acres for Thana, Colaba and Ratnagiri to 126 acres for other districts. So, there is considerable variation regarding land, productivity and land revenue.

Chairman: Could they not have fixed it after taking into account the productivity of various lands?

Shri Bhamburkar: In that case, the production would have been equal and land revenue would have been equal.

Chairman: The land revenue cannot be equal, because it depends upon the net income from the land, its fertility, irrigation potential and value. So, there may be variation. All these factors contribute to the productivity of the land.

Shri Bhamburkar: In that case, the cumulative effect of all these factors which are embodied in the Explanation should have been equal somewhere. Unfortunately, it is not so. It is nowhere equal; not even near equal. The variation is 300 times in the case of revenue—Rs. 5.94 to Rs. 1,650. So, my contention is, if they were to adhere to the principles given in the Explanation, the cumulative effect should have got equal results somewhere. Unfortunately, it is not so. Judged by any standard the equality is not there. So, this Act spreads inequality of a very high order and if in rural areas inequalities are spread, discontent is bound to occur and the trouble will be there.

Shri Rohit Manushanker Dave: Are there any figures of incomes available?

Shri Bhamburkar: They are also there in the Statistical Companion. The Government have given the average income of each district, that is, income in the agricultural sector.

Shri Rohit Manushanker Dave: On what page?

Shri A. P. Jain: They are given on pages 13 and 14 of the memorandum.

Shri Bhamburkar: They are given on pages 50 and 51 of the Statistical Companion which was published along with the Bill when it was introduced.

Then, this Act will hamper agricultural production and that is a very serious matter.

Chairman: How?

Shri Bhamburkar: I would like to draw your particular attention to what I have written on page 7 of the Memorandum under the heading "Would Production Increase?". I would pointedly draw your attention to the sequence of Acts passed or Bills brought forward. You will find that the preamble of the Bombay Tenancy Act, that is, the 1948 Act, says that the land is to be given to landless persons and the definition of 'landless person' is very important just to know to whom the land is going to be given. The term 'landless person' has been defined in Bombay Acts and Bills thrice. I have come across it three times. On page 2758 of the Bombay Tenancy and Agricultural Lands Act of 1948, 'landless person' is defined thus—

> "Landless person means a person who holding no land for agricultural purposes whether as an owner or tenant earns his livelihood principally by manual labour and intends to take to the profession of agriculture and is capable of cultivating land personally."

Subsequent to that a Bill was introduced—it was gazetted on the 4th August, 1959—which could not take the shape of an Act. I do not know why it was withdrawn.

Chairman: There also it is "is capable of cultivating land personally".

Shri Bhamburkar: Yes; there also it is mentioned as a person who has no land, who is principally an agricultural labourer, who wants to take to agriculture and who is capable of doing it. The Bill which was introduced in 1961 and which took the shape of an Act also has the same clause, that is, the capability clause; but in the Act you will find that 'landless person' is defined as a person with all other things except his capacity.

Chairman: What is the definition?

Shri Bhamburkar: On page 3 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the definition given in section 2, clause 17 reads:—

> "Landless person means a person who does not hold any land for the purpose of agriculture and earns his livelihood principally by manual labour on agricultural land and intends to do agriculture."

The capacity clause, that is, the words "is capable of doing it" which was in the previous Bill, which was also in the Tenancy Act has been dropped here. The question, therefore, arises whether the Maharashtra Government is not conscious that persons to whom these lands are going to be given are not good cultivators and if they are not good cultivators, the result will be that production will fall.

Shri A. P. Jain: At least to me the point is not clear. How does that inference arise?

Shri Bhamburkar: The definition of 'landless person' is given in the Bombay Tenancy Act as also in the Bill which resulted in this Act. A landless person to whom land is to be

given and who will be the primary receiver of the surplus land has all along been defined as being capable of doing agriculture himself plus other things, but unfortunately it is not so in this Act.

Shri Nafisul Hasan: What is the criterion for judging whether a person could do agriculture himself or not?

Chairman: His capacity will be determined only after he does it.

Shri Bibudhendra Misra: Whereas the definition in the previous Act refers to manual labour, only the 1961 Act makes it clear by saying 'manual labour on agricultural land'. Therefore the capacity is implied. The words "on agricultural land" after the words "principally by manual labour" were not there in the previous Act.

Shri A. P. Jain: That is a proof of his capacity to do agriculture.

Shri Bhamburkar: Then why was the capacity clause dropped?

Shri Bibhudhendra Misra: In the previous Act, manual labour had no reference to agricultural land; therefore, the words "agricultural land" have been included in this Act.

Shri A. P. Jain: It is a substitute for capacity. To enact a separate capacity clause becomes unnecessary.

Shri Bhamburkar: Then again, by this Land Ceiling Act, particularly this Act is going to hit the sugarcane cultivation. Sugarcane cultivation is a specialised crop inasmuch as it requires a very high amount of money, efficiency, knowledge of manures, fertilizers as well as the doses of water, etc. That is one thing. Secondly, it is a basic raw material for sugar as well as gur industry (jaggery industry) for which I think Maharashtra State has earned quite a good name. So it has to be looked at from that point of view.

Here in the Schedule to this Act we find that lands are given for perennial irrigation it is 18 acres and for one-season irrigation it is 48 acres. Sugarcane is a crop which takes 18 to 22 months to ripen in my province. I do not know whether it is a speciality of the province or climate or is in general.

Shri A. P. Jain: It is a speciality of yours.

Shri Bhamburkar: So it takes 18 to 22 months. If it is to be cut and then processed into sugar it depends upon the sugar factory purchasing it. Its crushing capacity is limited. So he has to keep that particular crop for 22 months. Anyway, on an average I will take it as an 18 months crop. That means that the land which is under sugarcane has to remain under the crop for 18 months.

Now, there is a one-season crop. Let us take rice. It is a four-months crop. The land under rice has to be there for four months. The land under sugarcane has to remain for 18 months. Therefore, mathematically calculated, the land for sugarcane must have been four and a half times the land for rice. Because, this is a ceiling on land and not on any other thing.

Shri A. P. Jain: This is a rather queer argument. How many crops of rice do you take?

Shri Bhamburkar: Well, two we can take.

Shri A. P. Jain: When you take a four-month crop, even according to your calculation, in eighteen months you can have three and a half crops or . . .

Shri Bhamburkar: We can take one rice crop and another cotton crop.

Shri A. P. Jain: But you are talking of rice crop on the basis of four months.

Shri Bhamburkar: Anyway, It should be double in that case.

Chairman: The income is so much higher.

Shri Bhamburkar: Unfortunately this is a ceiling on land.

Chairman: Based on the income.

Shri Bhamburkar: If it is on income, the question arises why the rural area alone should be subjected to this.

Shri Bibudhendra Mishra: That is a different thing.

Shri Bhamburkar: But that is very important. Then the discrimination point becomes very important. If the ceiling is to be fixed on the income, why only the rural areas, the agriculturists; why not the urban areas, the towns?

Shri Bibudhendra Mishra: Is it your contention that the definition in section 5, "ceiling area", in which it says what factors are taken into consideration in fixing the ceiling, violates some of the rights? We want to know whether it is your contention that the Explanation to section 5 is violative of certain fundamental rights or creates inequalities because it fixes the ceiling by taking into consideration the soil, classification of the land, the climate, the rainfall of the area, the average yield of crop, the average prices of crops and commodities. All this is taken into consideration in fixing the ceiling. And naturally there is bound to be some difference whether it is rice or sugar so far as yield and prices are concerned. So, without referring to the Schedule, is it your contention that the Explanation given in section 5 is violative of some rights?

Shri Bhamburkar: If you permit me, I would say that in this explanation, as given in section 5, they have not considered these points at all. It is an arbitrary decision. And I am made to suffer, we are made to suffer.

Shri Bibudhendra Mishra: So your contention is that all the factors which should have been taken into consideration while fixing the ceiling have not been taken into consideration in fixing the Schedule?

Shri Bhamburkar: That is right, that is my contention. Otherwise, as I have made it clear earlier that the cumulative effective of all these factors, which are made out in the Explanation should have reached equality somewhere. But unfortunately it has not reached.

Shri P. Ramamurti: Is the inequality on the basis of length of crop or income? You are saying that the cumulative effect of this is inequality. I want to know on what basis you arrive at that conclusion. Is it your contention that there are unequal incomes as between the rice crop ceiling and the sugarcane crop ceiling?

Shri Bhamburkar: No, that is not my contention. My contention is that had all these factors been considered, then these four factors which are related to it should have been equal. That is, either the ceiling area should have been equal; or the income should have been equal; or the revenue should have been equal; or the money valuation should have been equal—because all these are based on the same factors which are given in the Explanation. At least one of these should have been equal. Unfortunately it is not. I have shown you by figures from the Government itself that none of these four factors is equal. It is therefore necessary to come to the conclusion that the Explanation in clause 5 saying that on these factors the land ceiling is based is not correct and that it is an arbitrary fixation of ceiling.

Shri P. Ramamurti: What is the income on one acre of sugarcane at the end of 18 months and what is the income per annum on one acre of rice?

Shri Bhamburkar: These incomes are given in the statistical compilation by the Government. And sugarcane does not grow in all areas, while rice does grow at least in many parts of each district in Maharashtra.

Chairman: Only where there is irrigation.

Shri Bhamburkar: There are two types of irrigation. Either it is government irrigation, and these eighteen, twenty-seven and forty-eight acres are given only where there is flow irrigation from government sources . . .

Chairman: That is perennial.

Shri Bhamburkar: Where there are wells there is no ceiling. There is no special ceiling for sugarcane done on well irrigation.

Dr. L. M. Singhvi: Can the witness state more specifically as to what parts of the Act which is before us now for discussion he considers to be violative of the fundamental rights, either article 14 or any other article in Part III of the Constitution?

Shri Bhamburkar: Well, Sir, I have not come here to plead legally as a lawyer before this august House: I have come as an individual farmer.

Dr. L. M. Singhvi: We would like to know the precise upshot of your argument.

Shri Bhamburkar: In a moment's time I will explain it. Unfortunately you have not got these Acts before you.

Dr. L. M. Singhvi: Your evidence will be on record before us, and it will help us later on if we know specifically what provisions of the Act you cosider to be violative of the fundamental rights, and in what way.

Shri Bhamburkar: Here there is a discrimination. I say it is a discrimination which violates, I think, article 14 of the Constitution. The Act has a particular aspect which discriminates between farmer and farmer, between villager and villager, between one village and another village, and between one area and another area. When I come to the question of compensation, I could give you a clearer and a better picture of it.

As regards the question which has been put to me, my answer is this. If the explanation given to clause 5 would have been validly taken into consideration, there would have been difference in the lands coming under clauses 4, 5, 6 and 7. You will find that the difference is there regarding only land coming under clause 7, that is, *jirayat* land. While uniformly perennially irrigated land is given 18 acres as ceiling, two-season crop land is given 27 acres, and one-season crop land is given 48 acres, the uniformity in these would never have been there had the explanation to clause 5 been taken into consideration by the Maharashtra State. Therefore, I say that the entire fixation of ceiling is an arbitrary fixation; it is absolutely arbitrary.

Dr. L. M. Singhvi: Could you give us a specific reference to the provisions of the sections of the Act, which is now before us, from the point of view of transgressing the fundamental principles laid down in Part III of the Constitution?

Shri Bhamburkar: Unfortunately, in the Act as it stands, the operative part is only the Schedule, and the rest is all only about procedure and definitions and so on.

Dr. L. M. Singhvi: What I am putting to you is this. What this Constitution Amendment Bill seeks to do is only to protect the legislation itself. The scheme which is framed, and which is repugnant to the principles of the Act could, of course, always be raised before a court of law and could be struck down by the court even after the constitutional validation of the Act, that is to say, if, operatively speaking, Government proceed to frame a scheme under the Act which violates, for example, the principle laid down in the explanation to section 5, then it could be struck down by the court of law, even after this constitutional validation under the present Bill. What we would like to know is whether there is anything in the Act itself, as it is before us, which is repugnant to the Fundamental Rights as enshrined in Part III of the Constitution.

Shri Bhamburkar: The entire first schedule, right from columns 4 to 8 contravenes the Fundamental Rights; it contravenes my fundamental rights.

Shri A. P. Jain: You are questioning the very basis of the Act.

Shri P. R. Patel: The policy of the day is that scientific methods should be applied to agriculture. If the ceiling is imposed, and the lands are divided after a generation or two, would there be persons who would be capable of adopting scientific methods?

Shri Bhamburkar: If the present farms which are scientifically operated are broken today,—I must tell you a little of the mind of the agriculturists in my part of the country—then they would leave agriculture and go to some other profession.

Chairman: How many agricultural farms are there which are more than 18 acres in extent, with perennial irrigation in the Maharashtra State?

Shri Bhamburkar: I could not tell you the exact number, but they comprise about 1,04,000 acres of land.

Chairman: I want to know the actual number of farms which are more than 18 acres in extent, and which consist of perennially irrigated land. How many such individual farms are there?

Shri Bhamburkar: I could not give you that number.

Chairman: Are you cultivating your land scientifically?

Shri Bhamburkar: Yes.

Chairman: What is the extent of your farm? Is it perennially irrigated?

Shri Bhamburkar: It is not perennially irrigated.

Chairman: How many acres have you got?

Shri Bhamburkar: I am speaking on behalf of the association.

Chairman: What is the extent of your personal farm?

Shri Bhamburkar: I do not come under the category of persons having lands with perennial irrigation. I am a rice-grower in Bhandara district.

Chairman: How many acres have you got?

Shri Bhamburkar: Between four brothers, we have 260 acres. We do not come within the purview of this ceiling Act, because there is no irrigation. We are lucky that way.

Chairman: So, this Act does not affect you.

Shri Bhamburkar: No, but somebody has to bring up the case of the agriculturist before you, and that is what I am doing with what little information I have collected.

Shri Surendranath Dwivedy: That means that you have come to represent the association?

Shri Bhamburkar: Yes.

Chairman: Has your association collected statistics as to the number of farms which are more than 18 acres in extent perennially irrigated in Maharashtra?

Shri Khandubhai K. Desai: And which are likely to be affected?

Shri Bhamburkar: Unfortunately, we have no information on that. But I an give you the total acreage.

Chairman: That is not necessary, because that can be had from the Government figures.

Shri P. Ramamurti: Have you got statistics with regard to the actual production on an estate less than 18 acres and on estates just above 18 acres?

Shri Bhamburkar: I can tell you that in my State, the income-tax people have started collecting those figures, because there is now income-tax on agriculture there. So, nobody would give that information.

Shri P. Ramamurti: Are you in a position to state that the production on an estate which is less than 18

acres, perennially irrigated, and grows sugarcane crop, is less than that on an estate of over 20 acres?

Shri Bhamburkar: I would not say that. I am just saying that the cumulative effect should have been equality somewhere, but that is not there.

Chairman: If 18 acres are given to an intelligent and hard-working agriculturist like Shri Bhamburkar, who adopts scientific methods, then he can earn about Rs. 4,000 to Rs. 5,000 income out of that, but if it is given to a man like me, I may not even cultivate it. So, equality will not be there; some inequality has to be there. But we have to take the average yield and the average net income of an average intelligent and hard-working man.

Shri P. R. Patel: If he is a hard-working man, he will go to other professions and earn more there.

Chairman: We are concerned only with agricultural land now.

Shri Bhamburkar: I was talking about lands coming under 18 acres perennially irrigated. There are two crops which come under perennial irrigation. One is orchards, and another is sugarcane plantations.

You will find that Government have been kind enough to exempt orchards. They are about 1,20,000 acres in area, and these have been exempted for twenty years, that is, till 1979, while sugarcane has been included, that being a plantation crop. In fact, there is a direction from the Planning Commission....

Chairman: So, orchards have been exempted?

Shri Bhamburkar: Orchards have been exempted, while the sugarcane-crop lands have not been exempted.

The Planning Commission have definitely stated in para 41 at page 196, of the *Second Five Year Plan* that:

> "While determining the general ceiling on agricultural holdings in a State, it will also be necessary to consider the categories of farms to which the ceiling need not apply. Three main factors could be taken into account in deciding upon exemptions from the purview of the ceiling, *viz.*:
>
> 1. Integrated nature of occupations, especially where industrial and agricultural works are undertaken as a composite enterprise;
>
> 2. Specialised character of operations; and
>
> 3. From the aspect of agricultural production, the need to ensure that efficiently managed farms which fulfil certain conditions are not broken up.
>
> If these considerations are kept in view, there would appear to be an advantage in exempting the following categories of farms from the operation of ceilings which may be proposed:
>
> (1) tea, coffee and rubber plantations;
>
> (2) orchards where they constitute reasonably compact areas;
>
> (3) specialised farms engaged in cattle breeding, dairying, wool-raising, etc.;
>
> (4) sugarcane farms operated by sugar factories; and
>
> (5) efficiently managed farms which consist of compact blocks on which heavy investment or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production.".

Chairman: Does not the Act exempt it?

Shri Bhamburkar: No, nothing is exempted except orchards till 1979. They have not exempted in spite of the direction of the Planning Commission.

Shri Kasliwal: What about sugar farms operated by sugar factories?

Shri Bhamburkar: They are also not exempted. I shall come to that presently.

On page 11, I have given comparative statistics which would be of more use to you in appreciating our difficulties. We have said:

"Given below are comparative statistics concerning lands, which will be surplus as a result of Ceiling Act:

(a) Percentage of surplus land to total area is 2.02 per cent;

(b) Percentage of surplus sugarcane lands to total sugarcane lands is 41 per cent;

(c) Percentage of surplus sugarcane area to total surplus area is 10 per cent".

You will thus realise how strenuous this must be on the cultivators this Ceiling Act.

Chairman: Total area is the total area of the State, including mountains, valleys and forests. You must take the cultivable area.

Shri Bhamburkar: The cultivable area is 4,68 lakh acres. 11 lakhs is the surplus, a little more than 2 per cent.

Shri P. Ramamurti: The total area includes all types of dry land. Naturally, there will be concentration in wet areas.

Chairman: Let us take the cultivable area.

Shri Bhamburkar: Yes. Total area is 5,28 lakhs, cultivable area is 4,28 lakhs. Even of the cultivable areas which are actually under yoke, this 11 lakhs is a very small fragment. The percentage of surplus sugarcane land to the total sugarcane lands is 41; percentage of surplus sugarcane area to total surplus area is 10.

Shri A. P. Jain: Let me put this to you. I am a farmer. On part of the area I grow sugarcane, on part paddy and on another part a third crop. Will the ceiling apply to the total area or to sugarcane, paddy and the third crop separately?

Shri Bhamburkar: That question should be put to the Maharashtra Government.

Shri A. J. Jain: As a witness, I want to know from you.

Shri Bhamburkar: As far back as July 19, 1962, we had written a letter to the Chief Secretary of the State Government and sent it by registered cover with copies to the Chief Minister, Ministers of Revenue, Irrigation and Agriculture, the Secretary, Revenue Department, and to two more. Unfortunately, till now no reply has been received.

Shri A. J. Jain: Please see the illustrations given under section 5. A person holds the following classes of land in the Nagpur local area: 9 acres of seasonally irrigated land getting irrigation for two seasons, 12 acres of seasonally irrigated land getting irrigation for one season and 11 acres of dry crop land. For the purpose of ceiling, all these will be converted into one class. Therefore, I am unable to understand how you can say that the surplus sugarcane area will be 41 per cent of the total sugarcane area.

Shri Bhamburkar: I will tell you the difficulties regarding irrigation in my State. It is the block system. They give 12 months irrigation to the sugarcane block only.

Shri A. P. Jain: My point is that the ceiling applies to the total area. Therefore, if I am cultivating different crops on my holdings, you cannot say which of my land will be taken over under the ceiling law. Hence the figure of 41 per cent given as surplus sugarcane land under the ceiling law appears to me to be irre-

levant. Ceiling will not apply separately to sugarcane or paddy or the third crop but in relation to the total area.

Chairman: It has been defined in the Act itself under section 5—where the land held by a person consists of two or more kinds of land, the ceiling area of such holding shall be determined on the basis of one acre of perennially irrigated land being equal to 2 acres of seasonally irrigated land or paddy or rice land.....etc.

Shri A. P. Jain: That is exactly what I mean. All these will be converted into a uniform unit and then the ceiling applied to the total area. Therefore, the figure of 41 per cent for sugarcane land is meaningless.

Shri Bhamburkar: I would explain that point. In Maharashtra, there is what is called command area. When you come under a command area where you agree to take perennial irrigation, there is a block system. If I own land which is under perennial irrigation and also land which is outside the command area, the question comes how much of the total area is affected.

As regards the question put by the hon. Member, I would say the area of sugar farms owned by sugar factories itself comes to 99,000 odd.

As I said, as far back as 19th July 1962, we wrote a letter to the State Government and sent 9 reminders asking whether if we stopped growing sugarcane we would be able to get irrigation facilities for our crops. To this day, we have not received a reply. Therefore, we are not certain whether we would be able to grow different crops. So this total area under sugarcane must be taken into account.

I am moving on to page 17. The method of compensation also seems to be discriminatory and aiming at inequality.

We find from the First Schedule that Thana, Kolaba, Ratnagiri and Bombay Suburban districts each have ceiling areas of Jirayat lands varying from 66 to 126 acres. They are all in one category. Though the ceiling area is uniform in all these districts, the compensation multiples vary. The explanation to clause 5 has not been taken into consideration at all. If that were so, for equal areas there would have been equal multiples. Here that is not so, for Thana it is 55, for Kolaba 60 and for Ratnagiri and Bombay suburban districts 65.

For Bhandara, Yeotmal and Osmanabad the ceiling area varies from 108 to 126 acres uniformly. The compensation multiples are 190 times for Bhandara, 150 times for Yeotmal and 140 times for Osmanabad. While the ceilings for Bhir and Nagpur vary from 96 to 126, the compensation multiples are 140 times and 110 times.

All these facts go to prove that there is no uniformity in applying the Explanation to clause 5, no standard by which the ceiling is fixed. Therefore, there are discrepancies which affect our fundamental rights, and which make one villager jealous of another villager in the same area. It spreads discontent in the rural areas to such an extent that, though there is peace today, it may result in something like an agitation. Therefore, it is my earnest appeal to you that with all these inequalities this Act should not go into the Ninth Schedule.

I will give you one more reason. While this Act was being discussed in the Assembly, we made representations to the Chief Minister, the Revenue Minister and other Members of the Assembly. The Chief Minister was busy, and the Revenue Minister, since he was piloting the Bill, was also busy. We approached several Members and explained to them that it was going to entail great difficulties in the rural areas. We asked them not to proceed with the legislation, and to take us to the Chief Minister to whom we would explain the posi-

tion. We were told on good outhority by the Members—I am before you and I would not tell a lie—that the Chief Minister said that he has convinced Pandit Nehru, the Prime Minister, and the Planning Commission. That nobody could understand better than them, and so his time and the time of the Members should not be wasted. If this Act is to be included in the Ninth Schedule, the result would be that we would be told in clear terms that it is put in the Ninth Schedule by Parliament which is supreme. So, please do not jeopardise our remedy when the sickness is inflicted on us. That is our earnest request to you.

Shri P. R. Patel: Certain fundamental rights are given under the Constitution, and properties are held by agriculturists and non-agriculturists. If these rights are taken away from the agriculturists, and the other property-owners are allowed to retain their properties, would that not be discrimination and against the Constitution?

Shri Bhamburkar: Positively.

Chairman: It is a matter of opinion. It is for Parliament to decide, not for the witness.

Shri J. R. Mehta: He has made out only one point. Throughout his contention has been that there is discrimination on every score and that if this is included in the Schedule, they will not be able to go to the courts and have a remedy against discrimination. I want to ask him what he has to say on the score of compensation.

So far as I understand the scheme of this Bill, we want to define "estate" so as to include ryotwari and other lands, and the ultimate result will be that compensation will not be justiciable. So, if the remedy under article 14 is available, has he any objection on the score of compensation?

Shri Bhamburkar: The compensation given under the Act is absolutely illusory, not only inadequate. Apart from being illusory, it is discriminatory.

Shri Nafisul Hasan: Are you opposed to the principle of ceiling?

Shri Bhamburkar: No. It is the accepted socialist principle and national policy.

Shri Nafisul Hasan: Are you opposed to the principle laid down for determining the ceiling under section 5 of the Act?

Shri Bhamburkar: If it is scrupulously applied, I have no objection to it, but my point is that it is not applied at all. The fixing of ceiling is arbitrarily done, and section 5 is there only on paper as a face-saving device.

Shri Nafisul Hasan: In answer to a question you said it was the schedule which was opposed to the principle enunciated in section 5. May I know which portion of the schedule is so opposed?

Shri Bhamburkar: The entire schedule is based on section 5. It is the only operative part of the Act.

Shri Nafisul Hasan: Since it is based on section 5 to which you are not opposed, you should not be opposed to the schedule also.

Shri Bhamburkar: They have not made it applicable. This Explanation to section 5 is not applied by the State while fixing the ceiling.

Shri Nafisul Hasan: Then you are not opposed to the Act iteslf, but the way in which it is implemented?

Shri Bhamburkar: It is not implemented. And I am opposed to the Act as it stands today. It is a damaging Act to us.

Shri Nafisul Hasan: What is the objectionable part of the Act?

Shri Bhamburkar: The entire schedule is objectionable.

Shri Kasliwal: You say the compensation varying from 55 to 190 times is illusory and not fair, but the Act

has not been implemented, and there has been no case where it has been contested. What are your reasons for saying that the compensation would not be fair?

Shri Bhamburkar: It is 55 to 190 times of the revenue of the land. I know it is ten pies per acre in Bhir. So, even if it is 100 times, it would be only 1,000 pies.

Shri Kasliwal: Do you mean to say that the assessment in Maharashtra as a whole is very low?

Shri Bhamburkar: I do not say that: I say that it has not been revised since 1911.

Shri Kasliwal: You have said that sugarcane farms which have been operated by sugar factories are not exempted. Is there no special provision in regard to the surplus lands like this?

Shri Bhamburkar: In my individual capacity I am appearing before you as a second witness. After this is over, I shall reply to that question then.

Shri Kasliwal: So far as ceiling is concerned, you will agree that the ceiling limit is doubled if there is a larger family.

Shri Bhamburkar: I accept the principle of ceiling. But ceiling should be so reasonable as to allow the real development of the people in rural areas. As it stands at present, in the present Act, the children of village people would never be able to get college education and even if education is taken to their doors, to each district, perhaps with great difficulty they may get arts education but they will never get science or technical education.

Shri Joseph Mathen: The question is whether you are for exempting any particular type of agricultural land from ceiling.

Shri Bhamburkar: I am positively for that when it helps to increase the national income, such as farms producing large quantities of foodgrains or raw materials for processing industry and other industries, such as sugarcane or orchards, etc.

Shri Joseph Mathen: Your suggestion to exempt certain types of agricultural land from ceiling is on the basis of expectation of increasing national income.

Shri Bhamburkar: That is right.

श्री विभूति मिश्र : आप उत्तूलन तो सीलिंग को कबूल करते हैं। हिन्दुस्तान में ३५० मिलियन एकड़ जोत की जमीन है। और देश की आबादी ४५० मिलियन है। मैं जानना चाहता हूं कि बेजमीन वालों को आप किस तरह से जमीन देना चाहते हैं।

Shri Bhamburkar: The point is this It is not only land that is limited; every factor is limited. If I may speak a little boldy on this point, since this question has been put, I may say that in Bombay State for every 1000 male population, there are only 927 female population. Now, what is the solution to that problem? The problem is like that. If hon. Members are going to legislate, that is a different matter. But this is that sort of problem. 8 lakhs of people sleep on footpaths in Bombay while the Secretariat verandahs alone can accommodate two lakhs of them. Can we allow this, losing the sanctity of the premises? Land should be treated as an economic unit. Land is one of the factors of production. People who can produce more from the land should be given land. Land is not for distribution as alms.

श्री विभूति मिश्र : हिन्दुस्तान के इकानमिस्टों की और बाहर के इकानमिस्टों की यह कालकूलेटेड ओपीनियन है कि जो एक या आधे एकड़ के छोटे फार्म हैं उनमें एक एकड़ में ज्यादा पैदावार होती है बनिस्बत बड़े फार्मों के जो कि सौ सौ, दो दो

सौ या पांच पांच सौ एकड़ के फार्म हैं। आपने बम्बई का उदाहरण दिया। लेकिन देश में ३५ मिलियन एकड़ जमीन खेती लायक है और देश की आबादी ४५ मिलियन है। आप इस जमीन का किस तरह से बटवारा करना चाहते हैं।

Shri Bhamburkar: There is some misconception somewhere. I do not know whether there is any economist in the world who says that the smaller the piece of land, the greater is the production. An intelligent farmer can produce more even in a small piece of land. Maharashtra State has proved that in one acre a farmer could produce 130 tons of sugarcane. Can that be taken as a general standard to be applied to all? It depends upon individuals and many other factors.

श्री विभूति मिश्र : हमारे विधान में यह है कि सोशल जस्टिस होगी और सब को समान अवसर दिए जाएंगे। लेकिन आज स्थिति यह है कि एक आदमी के पास जमीन नहीं है। उसके साथ आप विधान के अनुसार सोशल जस्टिस कैसे करेंगे और कैसे उसको समान अवसर देंगे। आप कहते हैं कि गरीबों को जमीन नहीं मिलनी चाहिए। तो क्या आप देश में रिवाल्यूशन लाना चाहते हैं ?

Chairman: That is a matter for argument.

Shri S. Kandappan: May I take it that you accept ceilings but that you want to exempt certain items?

Shri Bhamburkar: Yes, I want that ceilings should be in the interest of the nation. Social justice, land reforms,—whatever may be the form which takes shape, it must look to the national production. If it goes higher in that direction, I have no objection to ceiling.

Shri S. Kandappan: Please specify those items which you want to exempt from ceiling.

Shri Bhamburkar: All plantation crops, such as sugarcane, orchards, etc., but not oilseeds, tobacco, etc., which are money-crops.

Shri S. Kandappan: You mean to say that national income is increased when they are exempted. And so, why not apply the same to the other items?

Shri Bhamburkar: Unfortunately the other items do not need as much irrigation or as much dose of money and labour.

Shri S. Kandappan: What about paddy?

Shri Bhamburkar: As I told you, paddy is a four-month crop.

Shri P. R. Patel: What about cotton?

Shri Bhamburkar: Cotton is not a plantation crop.

Shri Radhelal Vyas: With regard to the assessment of land referred to by you, is it not because of the different quality of the land that there is variation in the assessment of land in the States?

Shri Bhamburkar: It is perfectly right. Assessment is made considering several factors which are given in the explanation to clause 5. Therefore, I say that on the total ceiling area revenue should be equal. I do not say that the revenue on each piece should be equal.

Shri Radhelal Vyas: Because of the different quality of land, different assessments are made, and they vary. So, that means if the land is assessed at the lower rate, the cost would be lower than the cost of the land which is assessed at a higher rate.

Shri Bhamburkar: I entirely agree with you. My point is that either in land revenue or to its price or in the production from land or in the gross income, anywhere, there should have been equality from the ceiling area.

Ceiling area is not equal. It varies from 18 acres to 126 acres. Therefore, land revenue should have been equal or production should have been equal or gross income should have been equal or the land value should have been equal. But none of them is equal.

Shri G. Rajagopalan: If I have understood you correctly from your thesis in all your memoranda, you have no objection to the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, but only to the provisions which you say are discriminatory between peasant and peasant and so on. Otherwise, you are in general agreement with the principle of the land ceilings and the principle of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, provided the discriminations, which you consider are discriminations, are removed. So, what are your concrete suggestions and which are the points on which you think there is discrimination and what is your suggestion as to how it can be removed?

Shri Bhamburkar: My point regarding the removal of the discrimination by the State is that the State should assess land revenue settlement and then fix the amount, whether it is Rs. 100 or Rs. 50, etc.

Shri A. P. Jain: It may take 100 years.

Shri Bhamburkar: It is a fundamental principle affecting the rural population. It may take an age. As Sardar Patel once said: "when the nation has to progress, I do not mind even the entire generation is wiped out". Therefore, whether it takes two years or 25 years, will not make any difference.

Shri G. Rajagopalan: So, assessment of land revenue should be the basic thing before the implementation is done.

Shri Bhamburkar: Before fixing the ceiling.

Shri G. Rajagopalan: You have said that it has not been implemented.

Shri Bhamburkar: Part of it is being implemented, for example, the sugar industry.

Shri G. Rajagopalan: So your main objection boils down to the sugar industry because everytime you mention the sugar industry.

Shri Bhamburkar: Because it has been implemented partly in respect of the sugar industry; and so I have to say that.

श्री पंजहजारी : अभी आपने कहा कि इस एक्ट में डिस्क्रिमिनेशन होता है। यह एक्ट १९६१ का है। आपने इसको अभी तक कोर्ट में चैलेंज क्यों नहीं किया ।

श्री भंभूरकर : हम लोगों को अभी नोटिस नहीं मिला है । इसलिए लीगल ऐक्शन नहीं ले सकते क्योंकि काज आफ ऐक्शन पैदा नहीं हुआ है।

श्री पंजहजारी : जो एग्रीकल्चरल लेबर है वह ज्यादा से ज्यादा गावों में ही काम कर रहा है या दूसरी तरफ जा रहा है ?

श्री भंभूरकर : गांवों से लेबर शहरों को जा रहा है । छोटे एग्रीकल्चरिस्ट तक शहरों की खेती छोड़ कर जा रहा है ?

श्री पंजहजारी : क्यों जा रहे हैं ?

श्री भंभूरकर : गुजारा नहीं होता ।

श्री पंज हजारी : अभी आपने कहा कि आप सीलिंग के उसूल को मानते हैं । क्या आपकी यह भी राय है कि जिस तरह जमीन पर सीलिंग होना चाहिए उसी तरह अगर किसी के पास दस मकान हैं या दस कारखाने हैं तो उन पर भी सीलिंग होनी चाहिए । या कि आप सिर्फ यह चाहते हैं कि जमीन पर ही सीलिंग होनी चाहिए ?

श्री भंभूरकर : सीलिंग तो सब के लिए होनी चाहिए ।

Shri A. P. Jain: I have got some internal evidence from your memorandum. You have given production figures for sugarcane at page 13, where you say that sugarcane production from the ceiling area in the Thana district is 343 maunds. But, I find from page 14 that the lowest gross income from sugarcane ceiling area in Nagpur district is Rs. 9,514. Sugarcane in Bombay sold at Rs. 1-12-0 in the period to which you have referred. In other words, it means that on 18 acres it will be about 5,500 maunds which works out to 300 per acre. Are you prepared, therefore, to accept without reservation that the figures which you have given on page 13 relate to per acre and not to 18 acres?

Shri Bhamburkar: It was admitted long back: there can be a *bona fide* mistake on that point: either a printing mistake or my *bona fide* mistake.

Shri A. P. Jain: My second question is this. You have referred to various factors which should be taken into account in fixing the ceiling and which have been mentioned in clause 5. You have taken these factors separately. But these factors should be taken cumulatively.

Shri Bhamburkar: I have taken them cumulatively.

Shri A. P. Jain: You have mentioned factors such as climate, rain-fall, average yield, the average price of the crop, the commodity, and the general economic condition. These are the factors which you have mentioned but you have taken them separately, but not cumulatively. So, am I correct in inferring that taking these factors separately goes against the spirit of the law?

Shri Bhamburkar: I have taken them cumulatively because I have said that the same factors go to determine the land revenue of the area; the same factors go to determine the production and the value of the land. Therefore, I have taken the cumulative effect of these things. I have ascertained that there is no equality. I have not taken them separately.

Shri A. P. Jain: Now, if you do not mind, I want to put to you some legal questions. Article 31A says that the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall not be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by articles 14, 19 or 31. That is the position today. You have argued your case on the ground that the Bombay law is discriminatory because in certain cases more compensation is given and in certain cases less. In view of article 31A, will you be allowed to argue that this law is discriminatory? You cannot argue it on account of the existence of article 31A. That is my contention. If the Bombay law is included in the ninth schedule under article 31B, that makes no difference whatsoever so far as discrimination is concerned. You will not be allowed to argue it now and you will not be allowed to argue it then. How do you say that the inclusion under article 31B will be disadvantageous to you?

Shri Bhamburkar: This is a wholesale application of the principle contained in article 31A. This is not an individual case of acquisition or requisition. I am telling you what I feel as a farmer and not as a lawyer. Either I run to the law-makers requesting them to modify or change the law or I have to run to the High Court and Supreme Court. I have chosen the law-makers, because of my respect for you. Perhaps I may have difficulties in courts, but I will have no difficulties here if I bring to your notice the wrong that has been done to me. It is your duty to remedy them. So I have come to you.

Shri A. P. Jain: You have not understood me. In view of article 31A you will not be allowed to argue in law courts that this law violates the provisions of article 14. Assuming we include this law in the schedule

nine, it makes no difference, because you are debarred from arguing in law courts even today that the law violates the provisions of article 14.

Shri Bhamburkar: I do not want to go to court. I have come to Parliament for that purpose. It is the Parliament's duty to amend it.

Shri A. P. Jain: We are not sitting as a court of appeal against the State Legislature or the State Government to decide on merits. The only point is whether the law should or should not be included in the schedule under article 31B. If you are not adversely affected by its inclusion, why do you want us not to include it?

Chairman: That is a matter for this committee to decide. Why argue it with the witness?

Shri A. P. Jain: All right, Sir. Have you seen the ceilings laws of other States? In Madhya Pradesh, where the ceiling is 75 acres for dry land . . .

Chairman: He is concerned with the Bombay Act.

Shri A. P. Jain: I want to ask him whether the Bombay Government have treated the farmers of Bombay any worse both with regard to area and compensation, as compared to other States.

Shri Bhamburkar: Yes; other States have exempted certain plantations. Even Kerala has exempted coffee, rubber, pepper, etc.

Shri A. P. Jain: I am not talking of special cultivations. I am on the general question, because you have said that the ceiling would cause discontent among the farmers. Ceiling is the general policy followed all over India.

Shri Bhamburkar: The jealousy between the farmers will result in discontent, because one will get much more under the Government patronage compared to the other.

Shri A. P. Jain: Is it your contention that you have been treated worse in the matter of compensation than the rest of India?

Shri Bhamburkar: I have not studied the Acts of other States. But we have been treated very shabbily on this point. Sugarcane lands are exchanged between the farmers at Rs. 3000 to Rs. 4000 per acre; there is no capitalist coming in there. By way of compensation they will be getting Rs. 80 to Rs. 100 or Rs. 200 per acre; that too in 20 year bonds at 3 per cent.

Dr. L. M. Singhvi: Is it the position of the witness that ceilings, which he does not oppose basically, should be imposed only after the culturable wasteland available in the State is put to adequate use?

Shri Bhamburkar: That is one of my contentions.

Dr. L. M. Singhvi: Are you in a position to give any estimate on the basis of study made by your organisation or any other body as to the quantum of cultivable wasteland available in Maharashtra and whether it would be commensurate with or larger than the land which may be available for distribution as a result of the operation of this legislation?

Shri Bhamburkar: According to the statistics of the Agricultural College, who are experts in the matter, barren and uncultivable land comes to 34·51 lakh acres while culturable wasteland comes to 23.24 lakh acres.

Dr. L. M. Singhvi: Is it your position that your basic objection is only to the schedule and so far as the body of the Act is concerned, you have no specific objection?

Shri Bhamburkar: That which affects me is the Schedule. That is why I am raising objection to it.

Dr. L. M. Singhvi: If that is so, I would like to know whether it is the view of your Association that it is a piece of colourable legislation or legislation which has wilfully ignored

the various contentions that you have just made. In this connection, I would also like to know whether this Act, before it was passed by the State Legislature, was referred to a Select Commitee and, if so, whether you took the opportunity of presenting these contentions before the Select Committee of the State Legislature.

Shri Bhamburkar: Unfortunately, we are very much disappointed with the State Legislature.

Chairman: Was there a Select Committee? Did you lead evidence before the Select Committee?

Shri Bhamburkar: We were not even intimated about the meeting of the Select Committee. For example, in the case of this Joint Committee, a statement was issued in the press that representatives of associations can give evidence and we ran down here. Would we not have gone to Bombay to give evidence if it were possible and if we were given an opportunity?

Dr. L. M. Singhvi: I have heard you say during the course of the evidence that the definition of "landless" in the present statute book of Maharashtra is not satisfactory. How would you wish to amend it?

Shri Bhamburkar: People capable of doing agriculture should have been included. But that is purposely dropped.

Shri Mahtab: May I know whether your Association propose to question the Schedule in the courts? Here we are not concerned with the fundamentals of the problem. Our task is very limited. The existing law imposing some restrictions is there. We are concerned only with the definition of "estate" and also the proposal to include several Acts of various States in the Schedule. I take it that you object to the inclusion of your Act in the Schedule so that you may have an opportunity of questioning that in law courts. If you have no objection to the fundamentals of the law, what is your objection? If you think that the Select Commitee will go back upon the whole thing and consider afresh whether ceiling is necesary or not, you are mistaken. You must know our limitations. So, what have you got to say to my question? Does your Association propose to go to the law courts for that purpose?

Shri Bhamburkar: We will have to, in case we are forced. As a matter of fact, we have no intention to do it today, because no notice has been served on us, saying that the Act is implemented. But, we will have to, in case our grievance is not remedied and continues as it is. Therefore, I am requesting you not to take away the remedy when sickness is thrown at us.

Shri K. K. Desai: As Shri A. P. Jain has stated, even under the present law it is not arguable in a court of law. So, why do you object to its inclusion in the Schedule? Whether it is in the Schedule or not even now you are precluded from going to the court. So, do you intend to go to the court?

Shri Bhamburkar: As I told you, now we have no intention of going to a court. That is why we have come here.

Shri K. K. Desai: If you have no intention of going to court, why do you object to its inclusion?

Shri Bhamburkar: If we look at the way in which Acts are passed by the State Assemblies every year, we will find that thousands or hundreds of Acts are passed by them. It looks as if no attention is paid by the State Legislatures to the details which affect the people. Some novel idea strikes somebody, a draft Bill is prepared and it is passed. Therefore, if this enactment is not included in the Ninth Schedule, one day Bombay

Government will wake up to the realities and correct the mistakes.

Shri K. K. Desai: How are we concerned with that?

Shri Bhamburkar: You are the supreme body in India. Whatever this committee recommends to Parliament will be accepted by Parliament.

Shri A. V. Raghavan: How do yeu say that lands of co-operatives are not exempted?

Shri Bhamburkar: They are not exempte when they exceed the ceiling of each individual member.

Shri A. V. Raghavan: As far as land held by the co-operative is concerned, I find there is no ceiling.

Shri Bhamburkar: Yes, the society as such has no ceiling.

Shri A. V. Raghavan: While going through the schedule of the enactment, I find that there is reasonable classification of acreage as perennial land, seasonally irrigated land for two seasons and for one season, dry land and so on. Why do you say it is arbitrary?

Shri Bhamburkar: If you go through the Explanation, you will find that while the area of irrigated land coming under the ceiling for the whole State is 18 acres, the crop yield varies from place to place.

Shri Kappen: May I take it that you will be satisfied if the plantations are exempted from the purview of this Act?

Shri Bhamburkar: There are so many dispartities that will spread discontent in the rural areas. They have to be reduced, if not removed.

Shri Kappen: So, you would not be satisfied if the plantations are exempted?

Shri Bhamburkar: It will be a minor satisfaction.

श्री रामसेवक यादव : अगर सीलिंग का क्षेत्रफल बढ़ा दिया जाय और मुआविजे की रकम बढ़ा दी जाय तो मैं समझता हूं कि आप संतुष्ट हो जायेंगे ?

श्री भम्बूरकर : नहीं, बिल्कुल नहीं ।

Shri Kashi Ram Gupta: According to the present definition, the lands of even those people who are below the ceiling can be taken away. Even the artisans are included there. Are you satisfied with the present definition or have you given any definition of your own?

Shri Bhamburkar: I am going to give my views on amendment when I am giving evidence after a short while. This memorandum was prepared long back, as soon as the ceiling Act was passed. This amendment came very recently. Therefore, the Association has not expressed any opinion on this.

Shri Kashi Ram Gupta: In other words, you are not authorised to give an opinion on that on behalf of the Association?

Shri Bhamburkar: That is right. I I am going to do it in my individual capacity.

Shri Kashi Ram Gupta: You have stated that 41 per cent of the land under sugarcane crop will be taken away by the ceiling. What will be the economic effect of it, so far as production is concerned and increase of employment is concerned if it is given to landless people?

Shri Bhamburkar: So far as production is concerned, it will go down. It would be about 20 tons lover per acre. The percentage would be about 25 per cent. Further, no more employment; it would remain the same.

Shri Kashi Ram Gupta: How can you prove that? Can it be verified?

Shri Bhamburkar: I will deal with that question. This relates particularly to sugarcane and sugar factories.

Shri Kashi Ram Gupta: Does this 41 per cent land belong only to the joint stock companies' sugar factories or it belongs to others also?

Shri Bhamburkar: There are many private individuals who hold membership of co-operative sugar factories. (We have 14 of them.) Now, members are allowed 25 acres of sugarcane land per individual as the highest. That means that there are 25 acres' cane farms from which individual member could offer sugar cane to the cooperative factory. They have to buy factory shares according to the size of land which they hold. There are at least 20 such number in each factory and so there must be about 280 people having 25 acres sugar cane farms.

Shri Kashi Ram Gupta: How do you differentiate between the two? Will joint stock companies be affected by this adversely, that is, will they give more land or will the individuals give more land?

Shri Bhamburkar: It is the sugar factories.

Shri Kashi Ram Gupta: What will be the proportion?

Shri Bhamburkar: That I could not tell you exactly. There is one difficulty as my friend tells me. We have referred to a letter written to the Government of Maharashtra whether they will be able to give us perennial irrigation for crops other than sugarcane. They have not given any reply to it.

Shri Kashi Ram Gupta: So far as joint stock companies are concerned, you can say just now about the land to be taken from them. Have those companies made any representation for not taking their land?

Shri Bhamburkar: Yes; six of them have gone to the courts, but each one has different issues.

Shri Kashi Ram Gupta: Is this issue also included in that?

Shri Bhamburkar: Yes; ceiling is the main issue, but their stands are different.

Shri Vajpayee: Do you think that land should belong to and be owned by the actual tiller so that he can put his entire energy and resources for increasing production; if so, have you any specific proposals to make in regard to ceiling on land holdings for different crops? Secondly, in reply to a question asked by Shri Yadav, you have said that even if the acreage is increased and the quantum of compensation is also increased, you will not be satisfied; if so, what is the use of saying that you want a ceiling to be put on land holdings?

Shri Bhamburkar: There are two conflicting points which operate in my mind while answering your question. One is that I believe that each individual should be allowed to do agriculture upto his capacity. If that is allowed, there should be no ceiling. His ability itself will put a ceiling. But unfortunately India having accepted the socialistic pattern of society and social justice being predominantly in the minds of the legislators as well as of the administration, under the name of social justice something has to be done to satisfy those who have no land or who have no vested interest. That is the reason why I have said that I do not mind ceiling being imposed, but if you ask my association, we will say: Let agriculture be, as it is in the private sector, upto the capacity of the person who cultivates. If one has the capacity to cultivate thousand acres of land and add more to the national income, I would say, "Welcome"; rather than give it to a thousand people, one acre each, and produce nothing.

Shri K. K. Desai: Would it not create further inequality?

Shri Bhamburkar: No, because the entire idea of planning . . . .

Shri Vajpayee: Do you not think that agriculture requires personal attention?

Shri Bhamburkar: Yes, it does.

Shri Vajpayee: In the case of land holdings which are quite large, how could personal attention be bestowed?

Shri Bhamburkar: There is the technique of programming. All these big landlords, not owners—they have actually taken land on rent—are doing it. You will find, in Maharashtra particularly in the sugarcane area land does not belong to the cultivators. They are the cultivators of the soil and as such have taken land on rent from others. They are cultivating that land and there are individual farms of 1,000 acres, 1,200 acres and so on and so forth.

Shri Vajpayee: How is it that you have not asked for the circulation of this Bill for eliciting public opinion? Is it because you feel that people are generally in favour of the provisions of the Bill?

Shri Bhamburkar: I am afraid, I am not a politician to create troubles.

Shri Vajpayee: It is a reflection on politicians.

Shri Bhamburkar: I am sorry. My point is that once this discontent is spread in rural areas, revolution is round the corner and, I will tell you, all the power will not be able to stop it. Therefore, we have decided that as sober people, as agriculturists, we want stability and not indulge in anything.

Shri Hem Raj: Suppose, there is no ceiling; then, will there not be a revolution?

Shri Bhamburkar: It will take its own course, if at all there is one. But I do not want to accelerate its speed. We do not want to contribute to that.

Shri Kasliwal: You have said in reply to a question that if there is a ceiling, put on sugarcane lands, production will fall. I think, it is your mere guesswork. Have you any concrete example to give in support of that?

Shri Bhamburkar: I have proof with me, but I will discuss that in my individual capacity.

Shri P. Ramamurti: Will you be satisfied if the whole Act is removed?

Shri Bhamburkar: I would say "if at all", since I am told that this august body cannot do anything in the Act. It can either put it in the Ninth Schedule or not put it there.

Shri A. P. Jain: That is what I was saying.

Chairman: Thank you. Now we will examine Shri Bhamburkar, Industrial Economist, in his individual capacity. Shri Shembekar may withdraw.

Shri Bhamburkar: I have no objection to his remaining here.

Chairman: All right.

Shri Bhamburkar: I have submitted a memorandum to you. I would just read the introduction and the conclusion given there. In the introduction, I have said:

> "Planning is an economic activity. Whatever is done under the name of planning its results should be valued in terms of money. Even attempts at land reforms should be analysed in the light of economic activities. Aim of socialism is welfare and Planning is a means to it. Efforts under planning, therefore, must increase the size of the cake so that the share to the participants would grow bigger."

Chairman: You need not read it out. It has been distributed among Members. If you want to add to it or stress any point in it, you can do so.

Shri Bhamburkar: All right. I would invite your attention to page 12 where

I have given important facts about sugar industry. This industry has paid in 1959 as excise duty Rs. 5,99,25,405/-, as sugarcane cess it has paid to the Province Rs. 86,34,925/-.

Shri Kashi Ram Gupta: These figures relate to Maharashtra.

Shri Bhamburkar: These figures are only for Maharashtra.

As irrigation charges it has paid Rs. 39,64,840/- and as income-tax—this figure I could not get accurately—it has paid about Rs. 1,40,75,000/-. To land owners, that is, the rural population, it has paid Rs. 32,78,100/- and to shareholders some of whom may be urban area people and some rural area people, it has paid Rs. 65,17,560/-. To the citizens of Maharashtra—I am mentioning Maharashtra particularly because it refers to Maharashtra—it has made available 55,18,211 maunds of sugar.

Shri Kashi Ram Gupta: In what way?

Shri Bhamburkar: By way of production.

Chairman: They gave the sugar and the people gave the money.

Shri Bhamburkar: And this disbursement has been when the break-up of the sugar price is (page 13 of the Memorandum) cane price 51 per cent, taxes 23 per cent, salary and wages 11 per cent, managing charges 12 per cent and profits 3 per cent.

With this break-up the contribuion which the sugar industry has made to the Government as well as to society has been very substantial.

Shri Kashi Ram Gupta: Does this also include co-operative sugar mills?

Shri Bhamburkar: No, these are private joint-stock companies. Because, cooperative sugar mills have no lands of their own. Members' land they cultivate, and their farms are not taken away. These are private joint-stock companies.

I have given reasons on page 2 of the Memorandum as to why this Act should not be included in the Ninth Schedule. As I have said there, the provisions of this Act are unjust, unfair and discriminating between farmer and farmer, village and village and areas and areas. In short, this Act wants to perpetuate inequalities. I have already given details about it.

Secondly, by this enactment the Government of Maharashtra has flouted the mandates of the Planning Commission and the National Development Council. The report of the Planning Commission is accepted by the National Development Council and further, I think, approved by the Parliament also in general. In the report of the Planning Commission positive mandates are given that when culturable wastelands are available in large numbers, ceiling is not necessary, and secondly in the exemptions the land of sugar areas is to be exempted. These two categorical recommendations, I may call them, if the expression positive mandates is wrong, are made by the Planning Commission. And both of them have been flouted by the Maharashtra State by not exempting the sugarcane farms from the purview of this Act.

Thirdly, the Government of Maharashtra by this enactment has disregarded the direction given by Prime Minister Pandit Jawaharlal Nehru and the Congress Resolution at Avadi. This is a book which has been written by Pandit Jawaharlal Nehru, *Towards a Socialistic Order*, published by the Indian National Congress and edited by Shri Shreeman Narayan. In this book....

Shri A. P. Jain: We are concerned with the witness's opinion and not with the opinion of others.

Shri Vajpayee: He wants to reinforce his opinion by quoting the Prime Minister's opinion.

Shri Bhamburkar: I want to quote the Prime Minister as an authoritative interpretation..

Shri Wasnik: If it is already in his Memorandum he need not repeat it.

Shri Bhamburkar: There he says:

> "If by adopting some method, which in theory appeals to you we reduce our production, then we are in effect undermining the growth towards socialism although that particular step may be called a socialistic step."

Then on page 19 on this book, the resolution of Avadi....

Chairman: You have given it in your Memorandum. It is not necessary to repeat it.

Shri Bhamburkar: This has also been disregarded.

This land ceiling in Maharashtra seems to be specially designed to destroy the prosperity of rural areas as sugar-cane plantations and cane-farms of joint-stock sugar undertakings are the main targets severely hit by its provisions.

41 per cent of the land under sugarcane is taken away.

Chairman: We are concerned here only with the inclusion of this Act in the Schedule to this Bill. Please let us know how it affects the sugarcane industry. We are not concerned with the provisions of the Bombay Act, because that has been passed, and it is for the Bombay Legislature to look into it. The attempt here is to include that Act in the 9th Schedule to this Constitution Amendment Bill. How that inclusion affects the sugar industry would be relevant. You may confine yourself to that.

Shri Bhamburkar: Please refer to Table I, Sugar Production, at the end of this Memorandum. Here I have given 11 sugar factories which are in joint-stock companies. Under Factories Own Area I have given the area in acres, the cane in tons and the per-acre average in tons. They take cane from outside, which is just the same locality round about, and I have given their figures also. This is for 1957-58 and the figures are taken from the Government's statistical compilation. You will find that in the factories own area the per-acre average production is 54·48 tons, while in the same locality, in the adjacent area outside, where the sugar factory has no control, the tonnage is 40·27 tons per acre.

Shri Khandubhai Desai: Is it your case that all lands which the ordinary peasants are cultivating for sugar should be handed over to the factories?

Shri Bhamburkar: No, I am not making that case. I am referring to the loss of production; I am talking from the point of view of production, that is loss of production. If all these lands are taken away from the farms of sugar factories and handed over to anybody else, the result would be an average production of 40.27 tons while the tonnage of the factories is 54.48 tons, nearly a loss of 14 tons per acre, or about Rs. 2 crores in terms of money.

And in 1960 the position is a little different. They must have gone to 60 tons, while the outside cane has remained at 40 tons. The loss would be 20 tons per acre if the lands are taken away from their management.

For some reason or other you will find....

Chairman: As regards these factories, are they all individual owners?

Shri Bhamburkar: They are not owners of the land. They may have taken it on rent. The farms are under the control of the factories and joint stock companies. Their production is 54·48 tons per acre on an average, while individually you will find . . .

Chairman: They have taken it from the individual tenants.

Shri Bhamburkar: Yes, individual land-owners. And the other parties, where they take cane, they have increased the capacity of sugar mills thinking that they will be able to take more water and more land.

Chairman: Has any notice been issued to the individual owners that if they hold lands above the ceiling, then they will be taken over by the State?

Shri Bhamburkar: Yes, it has been issued.

Chairman: To the factory or to the individuals?

Shri Bhamburkar: It has been issued to the factories. The individual owners have gone to the court saying that the factory should not hand over their areas to Government as surplus land, and that they want to come back as cultivators. That discontent, to which I have referred earlier, has already started. There are about 300 applications pending in the Bombay High Court. This will be the picture of the sugarcane industry, if these areas are taken away from the sugar factories and handed over to any other body. That is my contention.

I would like to submit that sugar farms are accepted as an integral part of the joint-stock sugar factories. Here, I would like to refer to page 10 of my memorandum where I have dealt with this point.

I would also point out that the Bombay legislature had appointed a committee known as the Kamath Committee in 1932, to go into the question of irrigation, why it does not pay and so on. That Committee has come to the conclusion:

"On the main points which lie within his special sphere, the sugar Technologist corroborates the opinions already formed by the majority of the committee from the evidence laid before them. These are:

1. . . . .

2. . . .

3. That sugar factories must control their own plantation... ".

So, this was the decision of the committee which was appointed by the Maharashtra State legislature, that is, the then Bombay Legislature.

Shri Kasliwal: It is 30 years old.

Shri Bhamburkar: Because that assurance had come from Government, the factories had started their own plantations, and some of them have completed 25 years of existence and some of them about 30 years of existence. Not only have they started, but as has been mentioned at page 9, you will also see the progress made by the sugar industry as regards the production of sugarcane on their own farms. While at the beginning of the factory, the average production was 36·60 tons per acre, in 1959, it has come up to about 54 tons per acre which means that they have achieved a rise of 18 tons per acre. The sugar recovery was 9·50 per cent before, and now it is 11·80 per cent. That is, the per-acre yield of sugar is more.

Chairman: You are now pleading for the industrialists and not for the farmers. Have the industrialists authorised you to plead for them?

Shri Bhamburkar: Well, it is not necessary for me to get their authorisation. As a citizen, I think I can plead this.

Chairman: They have not submitted any memorandum to us.

Shri Bhamburkar: They have gone to the High Court.

An. Hon. Member: They have already surrendered. This is what he says in his memorandum.

Shri Bhamburkar: Some of them have surrendered, while others have not. I think that only five of them have surrendered.

Shri A. P. Jain: Seven of them have surrendered, one of them has no surplus, and five of them have not so far surrendered, according to your own memorandum.

Shri Bhamburkar: That is right Even if five have gone to the High Court, then the matter is before the court.

Shri A. P. Jain: What is your suggestion? Do you want that these lands should be taken back from the cultivators and handed over to the factories again?

Shri Bhamburkar: That is not my point. According to the scheme of the Act, Government take over these lands and cultivate them as a farm belonging to the State for five years, and then they will form the Joint-Farming Society or whatever it is. My contention is that if five years are required to form a joint farming society or whatever other organisation it may be, then why take away the lands from them at all?

Shri A. P. Jain: The period of five years is the maximum period. It may be in six months' time or it may be in one year's time.

Shri Bhamburkar: So long as that is not done, the lands may be allowed to remain with the present companies.

Shri Bhamburkar: This has to be scientifically seen. This is vertical rationalisation. Some time back, we had allowed the cotton textile industry to rationalise, and a lot of foreign exchange was utilized for the purpose. The sugar industry has done this rationalisation without any foreign exchange liability, but we are, not treating it on a par with the cotton textile industry; we are cutting its leg and taking away its base. That is very unfortunate.

श्री विभूति मिश्र: इस में यह बात नहीं दी हुई है कि कितना कास्ट आफ प्राडक्शन उन्होंने लगाया है और कितना आप लोगों ने लगाया है।

Shri Bhamburkar: There is a fear expressed by an intelligent class of people that these lands, particularly the lands of the joint-stock sugar industry have been taken away because most of them belong to minorities.....

Chairman: What do you mean by minorities?

Shri Bhamburkar: For example, in Maharashtra, Gujarats would be minorities, and Parsis would be minorities....

Chairman: You mean that this is discrimination against a particular class of persons?

Shri Bhamburkar: Not against a particular community as such, but it seems and it appears to be like that.....

Chairman: After all, they are limited companies, and everybody holds shares in them, and Maharashtrians also hold shares.

Shri Bhamburkar: But the management has been in the hands of people who are non-Maharashtrians. Therefore, it seems that it is directed....

Shri P. R. Patel: The question is not one of Maharashtrians *versus* non-Maharashtrians but one of Brahmins *versus* non-Brahmins.

Shri Bhamburkar: That was partly true. If you want the whole truth, I may say that the problem is one of *Sethji* and *Bhattji versus* the others. *Sethji* means a person belonging to the business community and *Bhattji* means a person belonging to the Brahmin community. After Mahatma Gandhi's death, the *Bhattjis* were finished, and the Sethji class is now being taken up. It is a force of disintegration. If we want national integration, then I would demand that scope for such feelings should not be given.

Shri Khandubhai K. Desai: Is the Joint Committee the forum for all these arguments?

Shri Bhamburkar: All right, I would withdraw that argument.

Chairman: It is not for us to go behind for the motives.

Shri A. P. Jain: The memorandum is clear, and there might be just one or two questions that we would like to put.

Shri Kashi Ram Gupta: What about the definition of the term 'estate'?

Shri Surendranath Dwivedy: Have you any objection to the definition in the Bill?

Shri Bhamburkar: No objection, but I would suggest one limitation. The definition of the term 'estate' is a very controversial matter for the Supreme Court as well as for others.

The difficulty which the rural individual farmer experiences is that his best lands are picked up in acquisition and requisition, and he cannot go anywhere for remedy. I can give you an instance; in a particular State Government have acquired about 40 acres of land for seed farm. That land is still lying there, but very recently, just a few days back, they have served a notice on some cultivator to vacate his lands on the ground that those lands are required for seed farms. The cultivator asked 'What have you done to the forty acres of land which you have already got?', and the reply was given 'You are not concerned with that'. These are the difficulties which the villagers have to undergo and suffer from.

Therefore, I would like one limitation to be put in whatever definition is made. We have accepted the socialistic pattern, and the question of social justice is also there, and we would not object to that, but I would only suggest one limitation.

I, therefore, suggest that if the Parliament wants to give such wide powers to Government an assurance clause must be inserted in Article 31-A that if Government lands are available in the area, no private land would be taken. Towards this end, a proviso as mentioned below should be inserted in article 31-A, namely :

> "Nothwithstanding anything contained in Article 31-A no acquisition or requisition of lands belonging to private individuals or institutions will be made if in the area Government lands, belonging to State Government or Central Government are available.".

In this proviso, the term 'area'—because the definition of 'Estate' is given and therefore the trouble started—the term 'area' denotes village, gram panchayat, municipality or municipal corporation or any such demarcated locality in which boundary the acquisition or requisition is proposed.

Shri P. R. Patel: If 'estate' is defined as land in excess of ceiling, will the farmers not be protected?

Shri Bhamburkar: Ceiling differs from one State to another.

Shri P. R. Patel: Whatever be the ceiling in all States, when it is in excess of that ceiling, Government may do anything with the estate.

Shri Bhamburkar: Yes, there will be no objection.

Shri P. R. Patel: Today we have Congress Ministries. Tomorrow there may be some other Ministry. If by legislation some day they take to cooperative or collective farming, will there be anything which would give protection to the agriculturists?

Shri Bhamburkar: If an authoritarian or totalitarian government comes in, no reason will work.

Shri P. R. Patel: They may give one rupee per acre. Will that require amendment of the Constitution?

Shri Bhamburkar: It is very difficult for me to answer that.

Shri Kasliwal: You have mentioned in the memorandum about 13 sugar mills. Out of these, 6 or 7 have surrendered their land to the Government. How do you say that production has fallen by 20 tons per acre.

Shri Bhamburkar: Production will fall.

Shri Kasliwal: That is your guess.

Shri Bhamburkar: I have invited attention to it in Table I at the end. They have handed over last month. The old farms are yet in the hands of the old management.

Chairman: You have no facts or data to show that production will fall

or rise. It may rise with a better crop in the limited area available.

Shri Kasliwal: You are not saying that in the area surrendered to Government, production has fallen.

Shri Bhamburkar: It was surrendered last month. There are no data available.

Chairman: It is only a surmise.

Shri Bhamburkar: Taking into consideration the fact that Government has no experience of farming, it is a natural conclusion.

Shri U. M. Trivedi: Can you give any reason for your surmise.

Chairman: He has given certain figures whereby he has sought to show that production in private joint stock management lands is more whereas if it is under individual landless persons it will fall. That is his argument.

Shri Kasliwal: What exactly do ou mean when you say 'It is commonly felt that the joint stock sugar industry in Maharashtra has been made to suffer only because this is mainly in the hands of minority community' in page 14?

Chairman: He has already said that.

Shri Radhelal Vyas: You have given in Table I the figures of production in the factories owned by joint stock factories and other agencies. In individual production also, it varies. In certain cases, it might be even higher than that under joint stock companies.

Shri Bhamburkar: I entirely agree. I made a submission in the very beginning that an individual cultivator is like Bradman playing cricket. He secures 130 tons per acre. But that cannot be the average. In Maharashtra, the average is 27 tons per acre. In co-operative sugar factories, it is 42 tons per acre, under joint stock companies it is 4·48 tons per acre. I am taking only the 1959 figures. Here I have shown a contract in table I that localities being the same, what the position is in sugarcane farms which are under the control of joint stock companies and those which are not under their control. In the former, it is 54·48 tons per acre and in the latter it is 40·27 tons per acre.

Shri Radhelal Vyas: What are the factors responsible for that?

Shri Bhamburkar: Efficiency and inefficiency.

Shri Radhelal Vyas: Is it not a fact that the factories have better resources, more money for investment, mechanised cultivation, etc., whereas the individuals are lacking in these and therefore this result?

Shri Bhamburkar: That could be a substantial reason. It is a matter of individual efficiency, initiative and drive. Suppose a factory, has a crushing capacity of 1000 tons a day. It must get that much ripe cane on that particular day. So it has to programme cane production accordingly. Similar is the case with the number of days in the season. Whereas it is possible for a large farm to programme in this way, it is not possible for a small farm.

Shri Radhelal Vyas: With the expansion of service co-operatives and co-operative credit, would it not be possible for individuals also to go ahead and progress in this manner and compete with joint stock companies in due course of time?

Shri Bhamburkar: On that point, I have to give out something which I did not want to. I do not want to prejudice you on this. However, you will find that in Maharashtra a few years back Rs. 800 were given towards the cost of sugarcane to an individual cultivator by the co-operative society, today that rate has gone up to Rs. 1500 and rural indebtedness has increased. Ten years ago the first factory was

[Shri Bhamburkar]

set up under the co-operative system and in these ten years the average has not gone from 42 to 43 tons per acre while indebtedness has been going up. This unfortunately is a fact.

Shri A. P. Jain: Your tables I and II are very interesting. You have worked out on the basis of averages. In fact, you would not rely on individual production. For Belapur Sugar, the average per acre is 49·51 tons in the factory's own area, while in the outside area it is 49·35, practically the same. For Walchandnagar the respective figures are 48·26 and 48·30 tons. In the area outside the factory the production is higher. In Brihan Maharashtra, it is 59 and 59. Am I correct in inferring that it varies from factory to factory and from individual to individual, and therefore any conclusions based on averages would be wrong. There is nothing to show that the factory's farms produce more than the farms outside? It all depends on how people work their farms, and not upon the ownership, because there are cases where the farms outside are producing more, cases where they produce the same and cases where they are producing less.

Shri Bhamburkar: Sometimes outside farms produce more. But their area is so low. For instance, in Walchandnagar the factory's farm area is 4,000 acres while the other area is only 713 acres.

Shri A. P. Jain: How does it matter when you are taking the production per acre.

Coming to your second table, Keregaon Sahakari's figures are 37·5 and 50; Shivaji Sahakari 40·90 and 40·92; Kopargoan Sahakari 47 and 47. This does not establish that in all cases the factory farms are producing more than the others.

Shri Bhamburkar: There are no factory farms at all in this case.

Shri A. P. Jain: But you have given the same heading here.

Shri Bhamburkar: These tables are taken from the Statistical Companion given by Government. Nothing is mine. They represent Government statistics. The co-operatives have no farms of their own. It is the individual members who cultivate. Therefore, you will find there is not much of difference in their averages, but where there is control of sugar factories, there is a difference of about 14 tons per acre.

Shri A. P. Jain: You talk about programming the amount of sugarcane supplied to factory on particular dates. Are you aware that in other parts of the country co-operative cane-supply societies have been set up, which work out a programme and supply daily to sugar mills the quantity of sugarcane needed. There is no peculiarity about this programming in the case of Bombay factories?

Shri Bhamburkar: But you will find from page 9 that the sugar content of these mills has increased from 9·3 to 11.8.

Shri A. P. Jain: What does it show?

Shri Bhamburkar: The increase is due to the effort of the mills.

Shri A. P. Jain: The factory-cum-farm unit exists generally in Maharashtra. Why do you want this discrimination to be maintained in favour of Maharashtra?

Shri Bhamburkar: I only insist on the best. The average yield per acre in Bihar is 8·37 tons.

Shri Bibhuti Mishra: It is for 9 months, while for Maharashtra it is for 18 months.

Shri Bhamburkar: Then for 18 months it comes to 17 points, that is all. In U. P. the average yield is 10·12 tons, and recovery 9·6; in Maharashtra it is 27·13 tons and 11·46; in

the co-operative factories area it is 42·18 tons and 11·6; in joint stock companies it is 54·48 tons and 11·8. They could achieve this because they have control over the farms. Let us imitate that which is the best.

Shri A. P. Jain: Are these your own views, or have you been briefed by the joint stock companies?

Shri Bhamburkar: These are my own views, and I have made that clear in my memorandum.

Dr. L. M. Singhvi: You are trying to convey to us that it would be better not to impose the ceilings from the point of view of more efficient production and management. As an industrial economist, have you worked out, or is there any optimum available for the size of a farm for sugarcane production in the co-operative private or factory-owned sector; or are we only groping on the basis of some guesswork? What is the basis of your conclusions?

Shri Bhamburkar: I think, all circumstances being equal, the larger the farm, the better it would be for industry. There is no optimum as such, and I could not work out also because in Maharashtra most of the mills have 400 tons crushing capacity which they have increased to 1,200 tons. Unfortunately, the land and water supply are limited and therefore they could not increase it further, and they had to concentrate more intensely on the lands, and the results are encouraging.

Shri Rohit Manushankar Dave: You have said that a number of cases are pending before the Bombay High Court regarding this Act. Are these cases based on issues which are relevant to articles 14, 19 and 21?

Shri Bhamburkar: I cannot say.

Shri Rohit Manushankar Dave: Because we are only concerned with that part. All the rest is irrelevant.

Shri P. Ramamurti: There are a number of co-operative farms which work out their own schedule and are able to supply sugar mills the requisite quantity and quality of sugarcane on particular dates. Are you aware that Messrs. Parry and Co., whose factory is probably the biggest in India, do not own their own sugarcane farms but nonetheless are able to work out the schedules from the cultivators, and on that basis the factory is being run very efficiently?

Shri Bhamburkar: On that point I would say that the Maharashtra agriculturists seem to have more regard for the individual freedom than the rest.

Shri P. Ramamurti: In table No. 1 of this pamphlet, you will find that there is a fairly big difference in production. Kolhapur sugar mills have an acreage of 728 acres and the average production is about 44 tons. The outside area's average comes to 35 or 33 tons, which is the average of a much larger area, nearly four-five times than that of the sugar farm. Therefore, your statistics are based on the fact that with regard to cane farms owned by the factories which are concentrated farms, the average is higher than the average with regard to other areas which is dispersed areas. Therefore, as an industrial economist you cannot say that when this land is handed over to somebody else, production is going to fall.

Shri Bhamburkar: The point is this. It is going to be with the Government and Government has no experience in the matter. I consider Government taking over as third party taking over.

Shri Kashi Ram Gupta: You want an assurance clause to be put: so long as there are Government lands no private lands should be taken over. You mean, lands even in excess of the ceiling limits fixed by the States.

Shri Bhamburkar: Yes. That is the intention of the Planning Commission also: if there is a large area available no ceiling should be there.

Shri Kashi Ram Gupta: You say that in such cases Government must have its own farm.

Shri Bhamburkar: My suggestion is not that. If Government is capable of producing more than what is produced at present, it can do so. There is a saying in Gujarati which says that when rulers start business, the subjects become poor.

Shri Kashi Ram Gupta: You are against Government farming.

Shri Bhamburkar: Against inexperienced yeople farming I have qualified what I said.

श्री विभूति मिश्र : टेबल १ म आइटम नम्बर्ज २, ६ और ८ में शूगर फैक्ट्रीज का और आउटसाइडर्ज का परसेंटेज बराबर दिया हुआ है । दूसरी बात यह है कि आप ने नहीं देखा है कि जमीन की क्वालिटी क्या है । तीसरी बात यह है कि कितनी फैक्ट्रीज ऐसी हैं, जिन्होंने सरकार से लोंज लिये हैं, कितना उन्होंने सरकार के टैक्सों को मारा है . . . .

श्री रघुनाथ सिंह : कितना ब्लैक-मार्किटिंग किया है, कितना कुरप्शन किया है ।

श्री विभूति मिश्र : अगर किसी फैक्ट्री ने सरकार से २० लाख लोन लिया तो ऐसा भी हुआ है कि उसी फैक्ट्री के मालिक ने किसान को पांच रुपये भी ट्रैक्टर की रिपेयर के लिये नहीं दिया है । कम्पैरिजन तब होता है जब दोनों पार्टियां एक समान हों । फैक्ट्रीज को ज्यादा सहूलियतें मिलती हैं । उनको सरकार से भी पैसा मिल जाता है, इनकम टैक्स भी जो उनको देना होता है, नहीं देती हैं । इससे यही साबित होता है कि एक वर्ग है जिसके साथ जसटिस नहीं हो रहा है । एक तो वह वर्ग है जो खाते-खाते मरता है और दूसरा वह जो बिना खाने के मरता है । इसलिए यह लैंड सीलिंग बिल लाया गया है कि . . . .

Chairman: Let us not argue with the witnesses.

Shri Bhamburkar: These are all Government statistics.

Chairman: Thank you. The Committee will meet again at 3:30 P.M.

Shri Surendranath Dwivedy: How many witnesses have we for tomorrow?

Chairman: Two.

Shri Surendranath Dwivedy: Let us not sit in the afternoon: we can have the evidence of this witness also tomorrow.

Chairman: They have been asked to come today and we will finish them today. The number of days we are going to sit depends upon the number of witnesses that have come. We will decide the programme etc. tomorrow. Today we meet again at 3.30 P.M.

(The witnesses then withdrew)

(The Joint Committee then adjourned to meet again at 15·30 hours)

(The Committee reassembled at 15.30 hours)

III. The Bhal-Nalkanatha Khedut Mandal, Gundi (Ahmedabad).

Spokesmen:

1. Shri Phuljibhai Dabhi
2. Shri Ambubhai Shah

(Witnesses were called in and they took their seats)

Chairman: Do you know Hindi?

Shri Ambubhai Shah: We will speak in Gujarathi and it has been arranged that the gentleman sitting to my left will translate it into English.

Chairman: The evidence that you give will be treated as public. It is liable to be published. Even if any portion is to be treated as confidential it will be printed and circulated to members of the Committee and Members of Parliament. You may now

stress any particular point that you would desire before the Committee.

Shri Ambubhai Shah*: We support the proposed Bill. Our proposal is that certain laws of Gujarat should be included in the Ninth Schedule. Especially we want to stress that Act No. 68, The Bombay Land Tenure Abolition Laws Amendment Act, should be included in the Ninth Schedule. There are considerable lands covered under the talukdari tenure. There are about 500 to 600 villages covered by these tenure laws. There are about 50,000 tenants who are likely to be affected by this. An area of 14 lakh acres is covered by them. The tenants of these talukdari lands are staying in these villages and cultivating these lands since generations. The Britishers, for their own political ends, had given a certain type of protection to the talukdars. There was no law giving protection to the tenants. After the Mutiny of 1857, by the laws of 1861—1881 and 1882 a special protection was given to the interests of talukdars. The talukdars were paying to the Government a certain percentage of land revenue recovered by them. Usually it was 40 per cent to 60 per cent. The talukdars were recovering as rent from these persons 75 naye paise in a rupee of assessment or in certain cases even Rs. 1·25 to Rs. 1·50.

Shri A. P. Jain: 70 per cent of what?

Shri U. M. Trivedi: If the assessment was Re. 1, it was 75 naye paise and in some cases even Rs. 1·50. In all cases they made some profit from the land revenue.

Shri Ambubhai Shah: Out of the rent recovered from the tenants the talukdars were giving a certain percentage to the Government and appropriating to themselves the rest. The tenants have been cultivating these lands since generations. The talukdars had never any right to remove them from their lands. They had also no right to increase the rent once fixed. The record of rights prescribed under the Land Revenue Code was not maintained in the talukdari villages. The Government had direct relations with the talukdars. It had no relation with the tenants. Therefore, there was no record of relations between the talukdars and the tenants. The Government was not maintaining any record of the relationship of the tenants with the talukdars. The Government had no record and the tenants had nothing with them to show their rights. The talukdars were maintaining certain records for their own purpose. The talukdars were powerful and influential. They were having relations with the officers and they were keeping records in such a way as to preserve their own interests. They were even making some manipulations in the records so that their interests will be protected as against the interests and rights of the tenants. Certain taluqdars are having villages numbering 5, 25, 50, 60 and so on. The talukdars have 5,000 acres of land, 10,000 acres of land, 25,000, 50,000 and 60,000 acres of land. The power to keep the institution of revenue patels and police patels was also with the talukdars. In these circumstances, the rights of the talukdari villages were suppressed under the thumb of the talukdars. When the Tenancy Act came into effect in 1938, the taluqdars, through their representatives, had opposed that measure also. Whenever Government has tried to protect the interests of these tenants, these taluqdars have tried all measures to oppose them. In 1949, the Government abolished the taluqdari tenure. As a result thereof, the taluqdars who were required to pay only a certain percentage of the land revenue assessment were required to pay full assessment. The permanent tenants in these talukdari villages who were cultivating since generations were given rights to become oc-

*The witness gave his evidence in Gujarati which was translated into English.

cupants of parcels of land which were six multiples of assessment. As I said earlier, there were no records of rights in the talukdari villages. Therefore, the Government, on the abolition of the tenure, started preparation of the record of rights through their own officers. The circumstances were such that for preparing this record of rights, reliance had to be had only on records maintained by the talukdars. But the talukdars were producing only the records in which they had made manipulations so as to show that these tenants had newly come and they were purposely not producing the records which would show that these tenants are cultivating since generations. Therefore, Government, in the year 1953, enacted a law for the recovery of records from these talukdars. But that law could not be implemented because, in spite of that law, the talukdars did not surrender their records.

Shri A. P. Jain: Please give a little more detail of what that law was, what was the penalty for the person who would not produce the records, etc. That is very important. I would request the Chairman to secure a copy of that law for us.

Shri Ambubhai Shah: I do not know the details of that 1953 law.

Chairman: You can get a copy of that Act.

Shri Ambubhai Shah: In these circumstances, the Government issued instructions by a resolution that the persons who are cultivating since over three generations should be entered in the record of rights as permanent tenants. But that GR was set aside by the decision of the high court. In the year 1958, by law No. 18, the Government laid down that whenever there is an exchange of tenancy, if the original rights were those of the permanent rights, the rights on the new land would be also permanent rights.

Shri Ram Sewak Yadav: On what grounds was that law struck down by the high court?

Shri Ambubhai Shah: There is a provision in section 83 of the Land Revenue Code which has been adopted by the Taluqdari Tenancy Abolition Act which says that if the tenant can show that he is cultivating the lands since generations, he could get the right, but if he cannot show that beyond a certain date he was not cultivating, then he could not get the rights, because according to the law the responsibility for proving this was on the head of the tenant. For these reasons, the high court set aside that GR laying down that persons cultivating since three generations should be entered as the permanent tenants.

Thereafter, as I said earlier, law No. 18 was enacted in the year 1958 which laid down that when a person who was a permanent tenant cultivating since generations a certain land, and when that land was exchanged with another even then, the holder of the new parcel of the exchanged land shall also be deemed to be a permanent tenant.

Chairman: Was not this decision given by the Bombay high court? Not the Gujarat high court, I believe.

Shri Ambubhai Shah: I do not definitely remember that. It was in 1956. Even today, law No. 18 of 1958 is in force. But in spite of that, they cannot prove that they were permanent tenants because even today the responsibility to prove that he was a permanent tenant of the earlier land is still on the head of the tenant. In these circumstances, such tenants cannot avail of the benefits given by section 5A *viz.*, to become occupants on payment of six multiples of assessment. Therefore, the Bombay Government had to enact Law No. 57 of 1958, by which the burden of proof was cast on the head of the talukdar. Certain talukdars went to the Supreme Court against this law. The Supreme Court decided that that law was *ultra*

vires of the Constitution. So, if this law of 1958 is not included in the 9th schedule, the consequence will be that the tenants who are cultivating the land since centuries will not be able to avail of the provisions of section 5A, by which they could become occupants. In these circumstances, our request is that this Act should be included in the 9th schedule, so that the permanent tenants holding talukdari lands may be able to get the benefits of section 5A by becoming occupants under that section. If this Act is not included in the 9th schedule, they will have to pay compensation under the Tenancy Act.

When the Tenancy Act was enacted, the idea was that the persons actually cultivating the land should be made occupants, but at that time regard was also had to the occupants of the ryotwari tenure lands and since such occupants were presumed to have devoted some labour and money towards that, some more benefits were given to them, while for the tenants of certain tenure lands like talukdari tenure, an exception was provided in section 87A saying that the provisions of the Tenancy Act will not apply to the tenants occupying these tenure lands. These talukdars are of the type of tenure holders in Saurashtra. They are intermediaries who have never laboured on the lands. These tenants have laboured on the lands for generations and made uncultivable lands cultivable. So, they should not have to pay higher compensation under the Tenancy Act. The judgement delivered by the Supreme Court is a majority judgement and not unanimous. Even the three hon. Judges have given that judgement only on technical grounds saying that it is *ultra vires*. The two hon. Judges who have given the dissenting judgement have already said that this law is for giving benefit justifiably to the tenants. Therefore, our request is, not only on technical grounds, but for giving social justice to these tenants, protection should be given to their rights by the inclusion of this law in the 9th schedule.

Shri P. R. Patel: Is it a fact that these talukdars have never cultivated these lands for 5, 6, 7 or even 25 generations.

Shri Ambubhai Shah: Yes; these talukdars have never cultivated these lands. For generations the tenants have been cultivating these lands.

Shri P. R. Patel: Is it a fact that these tenants residing in talukdari villages are there on these lands since generations and are cultivating these lands since generations?

Shri Ambubhai Shah: These tenants are cultivating the lands since centuries. Even today the lands are in their possession.

Shri P. R. Patel: If these tenants are not held as permanent tenants and they have to be paid compensation under the Tenancy Act, how much compensation has to be paid?

Shri Ambubhai Shah: If these people have to be paid compensation under the Tenancy Act, it will be something from 20 multiples of assessment to 200 multiples of assessment. In certain areas, Government have laid down certain maxima less than 200 multiples, namely, 100 multiples or 80 multiples.

Shri P. R. Patel: You have stated that the agriculturists, the tenants, in some cases have to pay 75 nP of a rupee as assessment and, in some cases, one and a half times the assessment, not more. If they are given 20 to 200 times, multiple of assessment, do you not think that this Act will do injustice to the agriculturists?

Shri Ambhubhai Shah: There would be gross injustice to the tenants. To substantiate this, I would cite an example of some estates in my area. The area held by a talukdar, or in possession of a talukdar, is 64,500. The land

revenue of this land is Rs. 1,02,000. On an average, he is recovering two multiples of assessment of rent; that is, he is collecting Rs. 2,04,000 as rent. Out of that, he is paying Rs. 1,02,000 to Government as land revenue. Thereby, he is saving for himself Rs. 1,02,000. For managing his estate, he is maintaining his private servants, such as *Talatis*. For that he is spending Rs. 20,000 to 25,000. Hence, the net income from the estate is something like Rs. 75,000 to 80,000. Now, if the tenants are given occupancy rights under the existing Talukdari Tenure Abolition Act, then the talukdar will get a compensation of about Rs. 6 lakhs. But if this Act is not included in the Ninth Schedule, the tenants will not be able to get occupancy rights under the Talukdari Tenure Abolition Act; they will have to come under the Tenancy Act and they will have to pay 20 to 200 multiples of assessment to the talukdars. The compensation that would have to be paid will range from Rs. 20 lakhs to 2 crores. It would not be just if only for technical grounds the talukdars are allowed to reap such huge benefits when the tenants are really entitled to pay very much less.

Shri P. R. Patel: So, according to you, the talukdars will be benefited by the abolition of tenures?

Shri Ambubhai Shah: The benefits of the land reform measures should really go to the cultivators, the tenants of the soil. Under this scheme, the talukdars will get the benefit while the tenants, who are the real cultivators, will not get any benefit.

Shri P. R. Patel: Our difficulty is this. All the Acts that have been passed after the Constitution have been questioned in courts of law and some sections of the Acts have been found to be *ultra vires* the Constitution. What is the remedy? Is it to amend the Acts or amend the Constitution?

Chairman: That is too much for him to answer.

Shri J. R. Mehta: If I have followed you correctly, your contention seems to be that if this Act is not protected, those people will have to be paid far greater compensation than they would have to be paid otherwise. Apart from the compensation, which they have to pay in a comparatively larger figure, is there any other disability under which they suffer if this Act is not protected?

Shri Ambubhai Shah: There would be one further difficulty if they come under the Tenancy Act. It is true that they will have to be paid higher compensation. Then, there are two types of tenures prevalent in Gujarat. Under the Tenancy law when a man becomes an occupant, on payment of compensation, he gets a right for holding it impartible. But, if he gets occupancy rights under the Talukdari Tenure Abolition Act, he gets the rights of the old tenure. By that he can sell, mortgage or partition the land.

Shri J. R. Mehta: It has been stated that there are two classes of tenants under talukdari tenures—permanent and non-permanent. Does this classification apply to tenants outside the talukdari area also?

Shri Ambubhai Shah: There are both types of tenants, permanent and non-permanent, in talukdari estates as well as outside talukdari estates. But the distinction is this that the tenants, that is the permanent tenants, of the talukdari lands can become occupants under that Act on payment of six multiples of the assessment, while the permanent tenants of the other ryotwari tenancy lands can become like that only on payment of six multiples of the rent.

Shri J. R. Mehta: What difference does it come to?

Shri Ambubhai Shah: The difference is this that the assessment is the Government land revenue. For example, if a permanent tenant tills one acre of land, having got Rs. 2 assessment, he would have to pay Rs. 12 as compensation; but if he has to claim as permanent tenant of other ryotwari tenancy land he would have to pay 4 multiplied by 6, that is 24 rupees.

Dr. L. M. Singhvi: May I ask the witness what is the size of the smallest talukdari known to them and how much compensation would be payable to the smallest talukdar in Gujarat?

Shri Ambubhai Shah: The small-holding talukdars hold from 5 to 25 acres, like that. But these people are cultivating these lands personally by themselves; they are not letting them out to tenants. Only big talukdars holding 25,000 acres or more have given these lands for cultivation to the tenants.

Dr. L. M. Singhvi: May I know whether the witness is aware that by changing the definition of 'permanent tenant' in the impugned Act to which he was referring, a large number of small talukdars would also be deprived of any substantial compensation?

Shri Ambubhai Shah: I have no information.

Dr. L. M. Singhvi: May I know whether the witness is aware of any classification as to the different sizes of talukdari land in Gujarat and whether he can tell us as to how much land in talukdaris come under the category of 25 to 50 acres of land and how much land comes under the category of more than 50 acres of land?

Shri Ambubhai Shah: I have not got that information.

Dr. L. M. Singhvi: May I know whether in the Act as it was originally conceived the definition of 'permanent tenant' was such as to allow a much larger compensation than the compensation which is admissible to them now; and, if that is so, whether the witness can tell us whether it is known generally that the main purpose of changing this definition was to deprive the talukdars of substantial or larger compensation which was admissible to them under the original Act?

Shri Ambubhai Shah: It is not a fact that by the new Act the compensation is given less, because even under the original Act the permanent tenants could become occupants on payment of six multiples of the assessment.

Dr. L. M. Singhvi: May I know from the witness whether in certain areas of Gujarat, talukdars are as numerous as cultivators of land, because they cultivate their own land?

Chairman: He has already said that the small talukdars are cultivating their own land.

Dr. L. M. Singhvi: Whether they are as numerous as the cultivators?

Chairman: The number he does not know.

Shri Bibhuti Mishra: इस ६०,५०० एकड़ ज़मीन में कितने किसान ज़मीन जोतते हैं ?

Shri Ambubhai Shah: About 64,500 and not 60,500 tenants are there on these lands.

Shri Bibhuti Mishra: कम से कम कितनी जमीन एक किसान जोतता है और ज्यादा से ज्यादा कितनी जमीन एक किसान जोतता है ?

Shri Ambubhai Shah: From one acre to sixty-five acres.

Shri Bibhuti Mishra: यह जो सानन्द स्टेट की जमीन ह उनके परिवार में कुल कितने आदमी हैं ?

Shri Ambubhai Shah: He has got only one son, who is staying with him. There are two or three daughters; they are married and they are staying in the places of their husbands.

श्री विभूति मिश्र : यह जो कहा जाता है कि पुश्त दर पुश्त से यह किसान जमीन को जोतते आये हैं तो उन दिनों यह ताल्लुकेदार साहब उन किसानों को कोई रसीद वगैरह दिया करते थे या नहीं ?

Shri Ambubhai Shah: In some cases, the receipts etc. are given, and in some cases, they are not. Mostly, the tenants did not insist on receipts, and these people also did not give the receipts, because the tenants knew that they were cultivating the lands, and, therefore, they would continue to cultivate those lands.

श्री विभूति मिश्र : यह जो जमीन जोतते थे वे ताल्लुकेदार साहब को मालगुजारी काइंड में देते थे या कैश में देते थे ?

Shri Ambubhai Shah: They were paying the rent in cash.

श्री विभूति मिश्र : पहले जो कानून बना उस कानून को सुप्रीम कोर्ट ने अलट्रा-वायरेस डिकलेयर कर दिया। उसके पहले किसान समझते थे कि हम को एक रुपये का ४ रुपये लगान देना पड़ेगा या १ रुपये का जैसा कि ताल्लुकेदार समझते थे कि २०० रुपया देना पड़ेगा, किसान क्या समझता था ?

Shri Ambubhai Shah: The tenants were very clear in their minds, when this Act was enacted, and even thereafter, that they were entitled to become occupants on payment of six multiples of assessment, and, therefore, the tenants who had not got the money borrowed the money from the co-operative banks, and this borrowing was to the tune of about Rs. 15 to 17 lakhs. They tendered this money to the talukdar, but he refused to accept the same, and, therefore the money was deposited with the mamlatdar concerned, and the money is still lying with the mamlatdar.

श्री विभूति मिश्र : यह जो संविधान में परिवर्तन हो रहा है इस का उन किसानों पर क्या असर हो रहा है ?

श्री एमबूभाई शाह : इसका बहुत अच्छा असर पड़ रहा है। संविधान में अगर इसे दाखिल किया जाये तो किसानों पर इसका बहुत अच्छा असर पड़ेगा। खुद किसानों को मांग है कि इसको दाखिल करना चाहिए।

Shri A. P. Jain: You say that the purchase price for tenants at the rate of not less than 20 times and not more than 200 times of the assessment was laid down by the Bombay Tenancy and Agricultural Land Act of 1948. Then, an amendment came in 1954 when the permanent tenants could purchase occupancy rights on payment of six times the assessment. During the period between 1948 and 1955, could any tenants buy the occupancy rights in the talukdari area? I shall make the question clearer. During the period when a tenant could purchase occupancy rights on payment of 20 to 200 times the assessment, could any tenant or set of tenants purchase the occupancy rights in the talukdari areas?

Shri Ambubhai Shah: The fact is that in these talukdari villages, till the 1958 law stood, these tenants were always thinking of getting the rights on payment of six multiples of assessment, and, therefore, there was no question of acquiring rights under the Tenancy Act of Bombay on payment of twenty to two hundred multiples, and no such purchase actually took place. After the Supreme Court decided that the law was *ultra vires* certain tenants tried to get occupancy rights, but these lands were not talukdari lands, but they were a

special quality of lands which are called in Gujarati as the *lal-likhi* lands or 'red-lined lands' which were specifically exempted for the purposes of the *jamiat* of the *talukdari* estate, and in respect of those lands to which the Tenancy Act was applicable, some tenants might have tried that.

Shri A. P. Jain: In other words, am I correct in understanding that in the talukdari area, when a tenant could purchase the occupancy rights on payment of 20 to 200 times the assessment, the tenants were actually unable to buy those rights and they could not buy those rights?

Shri Ambubhai Shah: No, they could not buy.

Shri A. P. Jain: The 1958 Act lays down in section 4 the definition of tenant as a person 'who on the date of the commencement of the Act was holding any tenure land'. That is to say, it refers to a person who was holding any tenure land in 1949. What type of proof could a tenant adduce that he was holding the land prior to 1949?

Shri Ambubhai Shah: The tenure was abolished in 1949, and after that Government were maintaining the record of tenancies. So it could be determined who was cultivating that land from the date of abolition onwards.

Shri A. P. Jain: The witness has mentioned Act 50 of 1953 for the recovery of records. The tenure-holders were required to submit their records to the collector or to some other authorised officer. Did any tenure-holder, that is, the *talukdar* submit his records to the collector or the authorised officer, or did the law remain infructuous?

Shri Ambubhai Shah: That law simply remained on paper and could not be implemented.

Shri A. P. Jain: It provides for a penalty of Rs. 200 against the landlord. Was any landlord punished?

Shri Ambubhai Shah: I have no information.

श्री राम सेवक यादव : जैसा अभी बताया, कबजा जमीन पर मौके पर किसान है इसके साबित करने का भार तो किसान पर है । ऐसी हालत में अगर इसको ९ वें शड्यूल में शामिल कर दिया जाये तो इससे कैसे किसान को सहारा मिल सकेगा ।

श्री एमबूभाई शाह : वह सबित करने की जिम्मेदारी तो ताल्लुकेदार पर है ।

Shri Kashi Ram Gupta: The witness has been stressing only for the inclusion of certain Acts in the 9th schedule. But he has not given any idea of his own about the definition of the word "estate". Does he possess some idea as to the present word "estate" which includes all cultivators inclusive of ceiling and non-ceiling lands ? Has he thought over it?

Shri Amhubhai Shah: According to me, the idea underlying this amendment is only removal of intermediaries and making occupants the persons who are actually in possession and are cultivating the lands.

Shri Kashi Ram Gupta: When the definition is quite clear that any land belonging to any person can be taken over, how does he understand it to mean only removal of intermediaries?

Shri Ambubhai Shah: So far as our State is concerned, the ryotwari tenure land is already included in the definition of estate and hence Government can acquire it even today. Unless the Legislative Assembly passes some other law adopting another type of compensation, the compensation has to be paid according to the normal law.

In spite of that, as the hon. Member pointed out, if anybody's land could be taken away at any time by this type of amendment, my view is

that such definition should not apply to the persons actually cultivating the land and holding less than the ceiling area.

Shri Hem Raj: Witness has said that if Re. 1 was to be paid as land revenue, out of it 70 nP. would be charged by the talukdar. but in some other cases, they were charging Rs. 1·25 and Rs. 1·50. Was that valid under any law?

Shri Ambubhai Shah: The talukdars were not entitled to vary the rent, once agreed upon.

Shri Hem Raj: How were they charging Rs. 1·50 then when the rent was fixed at Re. 1?

Chairman: That is land revenue fixed by Government. But the rent is taken by talukdars.

Shri P. R. Patel: After the abolition of land tenure they had to pay more assessment. They charged more than they were doing before. That is my information.

Shri Hem Raj: Whether those permanent tenants who had been there on the land for generations had their homesteads and catlesheds in that very land?

Shri Ambubhai Shah: In these talukdari villages, tenants have their own lands and they have got their house sites and sites for tethering cattle etc.

Shri Hem Raj: Beyond the jurisdiction of the talukdari land?

Shri Ambubhai Shah: Within the jurisdiction of talukdari land.

Shri Hem Raj: Before the passing of this Act, was there any ejectment by talukdars of permanent tenants and was any compensation paid to them?

Shri Ambubhai Shah: No such permanent tenants were evicted and no question of compensation, therefore, arose.

Shri U. M. Trivedi: You have said that you represent the Bhal-Nalkantha Khedut Mandal, Gundi. How big is the village Gundi?

Shri Ambubhai Shah: The population of the village is 1900.

Shri U. M. Trivedi: You speak on behalf of the agriculturists of all the talukdari villages in Gujarat State?

Shri Ambubhai Shah: We represent the Bal-Nalkantha Khedut Mandal as stated at the top of the memorandum, and we also represent the tenants of the talukdari lands in Gujarat.

Shri U. M. Trivedi: How do you represent the agriculturists of the talukdari villages, on what basis?

Shri Ambubhai Shah: I am not representing the tenants of the talukdari lands in Gujarat, but I am representing the question of the tenants of talukdari lands in Gujarat.

Shri U. M. Trivedi: Do you know that in the talukdari villages in Panchmahals District the rent charged from tenants in the talukdari villages was much less than what the British Government charged?

Shri Ambubhai Shah: Yes.

Shri U. M. Trivedi: Do you also know that as a result of this, without paying a farthing as compensation, the lands of these owners have been taken away by virtue of the new provisions of the Bombay Tenancy Act, because they were kind enough to charge less from their tenants?

Shri Ambubhai Shah: The matter is not like that. The British Government, for their own purposes, were recovering from certain persons reduced assessment. Our Govenment decided that such a concession should not be there, and therefore full assessments are being recovered from those persons. There cannot be any compensation for this type of right to pay less than the assessment.

Shri U. M. Trivedi: That is not my question. Those who were brought under the Bombay Tenancy Act of 1948 and who were charging less than what had been assessed by the Collector or the Settlement Officer, were deemed to have sold their lands, and Government did not pay them a farthing. The tenants got the land without any payment of compensation to anybody.

Shri P. R. Patel: My State was part of Bombay State at that time, and I was a party to this legislation. He is committing a mistake.

Shri U. M. Trivedi: I am a victim of it, my whole community is a victim of it.

Shri Ambubhai Shah: I do not know anything about it.

Shri P. R. Patel: In Bombay and in Gujarat, "estate" is defined in the land revenue code as including any interest in the ryotwari land also, but if we do not put this ryotwari land in this amendment, do you not think that in future some Government of some other ideology would take away all lands for co-operative and collective farms?

Chairman: It is a hypothetical question.

Shri P. R. Patel: If a communist government comes in future, it would do it.

Shri Wasnik: They will scrap the Constitution.

Chairman: It is a matter for us to consider. He need not ask the witness's opinion.

श्री पंजहजारी : यह जो सन् १९५० का एक्ट पास हुआ, इसके पास होने के बाद कितने किसान जमीन के मालिक बने ।

Shri Ambubhai Shah: A large majority of these permanent tenants of talukdari estates have still not got occupancy rights, because for getting that their names should be on the records as permanent tenants. So, only a very small portion of such tenants, where the talukdars did not dispute their right, have been able to get, but a large majority still remain without any occupancy rights.

श्री पंजहजारी : क्या आप को यह अन्दाजा है कि इस एक्ट के बनने के बाद कितने किसान जमीन से बेदखल किये गए ?

श्री एमबूभाई शाह : ताल्लुकेदार को बेदखल करने का तो अधिकार ही नहीं है ।

श्री पंजहजारी : वे जो दो एक्ट पास हुए क्या इनके सिवा महात्मा गांधी के सूबे की सरकार ने किसानों के फायदे के लिए और भी कुछ किया ?

Shri Ambubhai Shah: There is one Act to give relief to agricultural debtors.

श्री पंजहजारी : उस में कुछ किसानों को मिला ?

Shri Ambubhai Shah: The agriculturists have been benefited by that Act. The other is the Bombay Tenancy and Agricultural Lands Act.

Shri Kappen: Is it a fact that the Act of 1958 was cut down by the Supreme Court on the ground that the legislature was incompetent to enact that legislation and if so what is the use of including it in the 9th Schedule?

Shri Ambubhai Shah: We believe that in order to provide for social justice the Lok Sabha can provide for social justice in spite of the ruling of the Supreme Court and it can make a suitable law.

Shri Hem Raj: The witness says that the onus has now been shifted to taluqdari to prove that the permanent tenant is not entitled to perma-

nent tenancy. After the enactment of that law, how many permanent tenants have got their rights established?

Shri Ambubhai Shah: All the tenants are permanent tenants. As the 1958 Act could not be implemented, the result would not be so much.

Chairman: Thank you very much.

(The witnesses then withdrew).

(The Committee then adjourned).

JOINT COMMITTEE ON THE CONSTITUTION (SEVENTEENTH AMENDMENT) BILL, 1963

Minutes of Evidence given before the Joint Committee on the Constitution (Seventeenth Amendment) Bill, 1963

Saturday, the 12th October, 1963 at 10.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bibhuti Mishra
3. Shri Surendranath Dwivedy
4. Shri Kashi Ram Gupta
5. Shri Ansar Harvani
6. Shri Harish Chandra Heda
7. Shri Hem Raj
8. Shri Ajit Prasad Jain
9. Shri S. Kandappan
10. Shri Cherian J. Kappen
11. Shri L. D. Kotoki
12. Shri Lalit Sen
13. Shri Harekrushna Mahatab
14. Shri Jaswantraj Mehta
15. Shri Bibudhendra Misra
16. Shri Purushottamdas R. Patel
17. Shri T. A. Patil
18. Shri A. V. Raghavan
19. Shri Raghunath Singh
20. Chowdhry Ram Sewak
21. Shri Bhola Raut
22. Dr. L. M. Singhvi
23. Shri M. P. Swamy
24. Shri Radhelal Vyas
25. Shri Balkrishna Wasnik
26. Shri Ram Sewak Yadav

Rajya Sabha

27. Shri Rohit Manushankar Dave
28. Shri Khandubhai K. Desai
29. Shri Nemi Chandra Kasliwal
30. Shri Dhirendra Chandra Mallik
31. Shri Joseph Mathen
32. Shri Nafisul Hasan
33. Shri P. Ramamurti
34. Sardar Raghbir Singh Panjhazari

35. Shri S. D. Patil
36. Shri Kota Punnaiah
37. Shri G. Rajagopalan
38. Shri Atal Bihari Vajpayee
39. Shri J. Venkatappa.

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVE OF THE PLANNING COMMISSION

Shri Ameer Raza, *Joint Secretary, Planning Commission.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. Gujarat Ex-Talukdars' Association, Sanand (Ahmedabad).

1. Shri R. D. Sinh
2. Shri Balwant Singh
3. Shri N. C. Chatterjee
4. Shri J. B. Dadachanji
5. Shri S. M. Dave

II. All India Supari Federation, Koppa-Kadur (Mysore)

1. Shri A. Bhima Bhat
2. Shri B. V. Hanumantha Rao
3. Shri Bhoopalam R. Chandreshekharaiah.

I. Gujarat Ex-Talukars' Association, Sanand (Ahmedabad).

Spokesmen:

1. Shri R. D. Sinh
2. Shri Balwant Singh
3. Shri N. C. Chatterjee
4. Shri J. B. Dadachanji
5. Shri S. M. Dave.

(*Witnesses were called in and they took their seats*)

Chairman: Whatever evidence you give, may be published in the newspapers also, and even if you want any portion to be treated as confidential, it will have to be printed and circulated to our Members. Your memorandum has been circulated to all the Members. If you want to stress any point or make out any new point, you may do so now. I take it that Shri N. C. Chatterjee will be speaking on behalf of all the five.

Shri N. C. Chatterjee: Yes; if there are any factual details which any hon. Member may want to know Shri Dave is here.

Chairman: After you finish your oral evidence, Members may have to put further questions.

Shri N. C. Chatterjee: I ought to tell you, the Chairman, and also the hon. Members, that the association whom I represent—the Ex-Talukdars' Association—has really lost all their talukdaris; and they are not talukdars any longer. Actually, they are taking up an attitude which I shall submit is reasonable. They are not taking up an extreme or an unreasonable attitude. They do not want to obstruct the policy of land reform or agrarian reform. As a matter of fact, as I will place the judgment of the Supreme Court before you, you will realise that there is no question of really any agrarian reform or land

reform here. It is a question of confiscation of certain amount which is due to a creditor under the legislation which was then imposed. I ought to tell you that from page 5 of our memorandum you will find a short history which is given in paragraph 6. It starts by saying:

> "The members of the aforesaid association beg to narrate in brief hereunder the various enactments passed by the Bombay legislature which affected their rights and interests in their lands and also other facts and circumstances pertaining to their case."

First, we say that the tenure of the ex-talukdars of Gujarat was abolished on the 15th August, 1950 by an Act known as the Bombay Talukdari Tenure Abolition Act (Act LXII of 1949). Actually, the talukdari tenure was first abolished and then their incidence was abolished, the result of which we have described in clause 2. Then, under the aforesaid Abolition Act, the talukdars were made occupants (direct ryotwari holders) paying full land revenue to Government. But the said Act did not affect the position of the ex-talukdars as intermediaries. That means, the tenants continued under them and they remained intermediaries. The term occupants was defined in the Bombay Land Revenue Code and that was the definition which was applicable to them; that means, the direct holders under the Government.

Shri A. P. Jain: Will you please explain a little more in detail the import of your statement that under the "aforesaid Abolition Act the talukdars were made occupants paying full land revenue to Government but the said Act did not affect the talukdars?" What was the function left to the intermediaries then?

Shri N. C. Chatterjee: What happened was that they became occupants which term was defined in the Bombay Land Revenue Code. Section 3 (16) of that Code says: "Occupant means a holder in actual possession of unalienated land other than a tenant." Therefore, they became actully holders in actual possession of the land. Of course, they were not tenants.

Chairman: But they were in actual possession?

Shri N. C. Chatterjee: They continued in actual possession, meaning, they were holders in actual possession of the land, but not as tenants. Therefore, we are pointing out that at that time they became occupants, although some of their rights had gone, but the tenants under them continued to be the tenants.

Shri A. P. Jain: You say that they were paying the assessment direct to the Government. After all, they are intermediaries performing certain functions. One of the principal functions is, when they recover rent from the tenants, they retain a part of it themselves. If they were not performing any functions, do they not become extinct?

Shri N. C. Chatterjee: May I read to you section 5 of the Talukdari Tenure Abolition Act which reads as follows:

> "Ability of the talukdari landholder for the payment of land revenue: Subject to the provisions of sub-section (2) of the Talukdari Land Abolition Act, the talukdari lands are and shall be liable to payment of land revenue in accordance with the provisions of the Code and the rules made thereunder."

Then,

> "Talukdar holding any talukdari land or an inheritor of a talukdari family holding any talukdari land inherited for the purpose of maintenance immediately before the coming into force of the Act shall be deemed to be the occupant within the meaning of the Code. Nothing under sub-section (1) shall be deemed to affect the right of any

person to pay the amount under agreement" and so on.

Therefore, the liability of the talukdar was to pay the land revenue to the Government.

Shri A. P. Jain: My question is a very straight one. Did they not become *functus officio*, and if they became *functus officio* how did they continue to be intermediaries?

Shri N. C. Chatterjee: They were like the Bengal or Bihar zamindars who were governed by the permanent settlement of Bengal. They were absolute proprietors, but that position was changed and that right had gone. Now they became merely occupants and under them there were tenants. The tenants paid their dues to the talukdars and the talukdars paid the land revenue to the Government. Therefore, they became really mere intermediaries.

Chairman: Were you paying less than the land revenue or more before the Talukdari Abolition Act came into effect?

Shri N. C. Chatterjee: We were paying much less before.

Chairman: By this Act, you were charged full land revenue and only to that extent you became occupants?

Shri N. C. Chatterjee: We were paying roughly half, say, 50 or 60 per cent. The result of the Act was our liability increased. We lost our proprietary interest and became only intermediaries and in that sense became occupants.

Shri A. P. Jain: But the talukdars retained part of the recoveries made for their own use as intermediaries?

Shri N. C. Chatterjee: Naturally, he used to get something from the tenants. Out of that he paid the land revenue assessed. What he was getting was more than the assessment. Therefore, that portion remained with him.

..**Shri Nafisul Hasan:** How was it possible when the payment was made directly by the tenants?

Shri N. C. Chatterjee: Actually, what happened was the tenants continued to be tenants under the talukdars. The talukdars lost the proprietary interest and became merely occupants.

Chairman: The talukdars were paying something less as land revenue to the Government and after this Act you were charged full land revenue and they continued to be in possession of the land?

Shri N. C. Chatterjee: They used to pay and it was their duty under section 5 to pay full land revenue to the Government.

Shri A. P. Jain: Was the status of the tenant in anyway changed?

Shri N. C. Chatterjee: No; not at that time. Later on, it was fundamentally altered. At the next page, you will find this.

Kindly turn to the next page. There we have said:

"In 1955, however, by an addition of section 5A to the said Abolition Act it was provided that the permanent tenants and inferior holders of the Representationists could become occupants, *i.e.*, owners of the lands held by them on payment of six times and three times the assessment (Government Land Revenue) respectively to the representationists Nearly 13 thousand such tenants have already become occupants under the said provisions. The question as to who were permanent tenants of the said tenureholders was never a matter of doubt as section 83 of the Bombay Land Revenue Code, 1879 which defined permanent tenants always applied to lands held by the tenants of the ex-talukdars as it applied to other tenants of other landlords throughout the State of Bombay".

Now, the vital change was made by this section 5A. Shortly put, the permanent tenants practically ousted us, the talukdars, and they became occupants or proprietors. Actually they paid six times the assessment and on payment of that, which was very useful for them, they became the owners. They practically ousted us and we have lost all interest and all rights to get anything from them thereafter. Therefore, so far as permanent tenants are concerned we are out of the picture, they have got complete right and there is no question of any intermediary interest.

Then, if you look at the next paragraph, paragraph No. (iv) on page 6 we have said:

> "With the coming into force of the amended Bombay Tenancy and Agricultural Land Act, 1948 on 1st August, 1956, under the provisions of section 32 of the said Act, from 1st April, 1957, all the non-permanent tenants of your Representationists were made owners or occupants of the lands they cultivated and your Representationists only became entitled to compensation which was to be determined by the tribunals appointed by Government under the said Act as provided in the said Act and was to be paid by the tenants."

Therefore, first of all the permanent tenants were made the occupants and we were ousted. Now, by virtue of this Act all non-permanent tenants also became owners and your representationists only became entitled to compensation which was to be determined by the tribunals appointed by Government under the said Act as provided in the said Act and was to be paid by the tenants. Then we have said:

> "The relation of the ex-tenure-holders with their tenants was, therefore, thereafter, as observed by the Supreme Court, not of a landlord and tenant but that of a creditor and debtor."

Shortly put, the Supreme Court has held that agrarian reform was complete so far as the elimination of intermediaries was concerned. That was the main object of agrarian reform. First of all we lost our proprietary rights and we became merely tenants. After that the permanent tenants became the owners and we completely lost interests which were in the possession of permanent tenants. Then the non-permanent tenants were also given the right to pay compensation and they were made owners. Actually they became the owners and only the question of compensation remained. Therefore all right, title and interest of talukdars were completely extinguished and so far as the agrarian reform aspect is concerned, as the Supreme Court rightly points out, if I may say so with respect, the thing was complete and the relationship was only of a debtor and creditor. Only the compensation was to be paid. In the case of permanent tenants it was six times the assessment and in respect of non-permanent tenants and others it was to be between 20 times and 200 times the assessment. The actual proportion was to be decided by tribunals according to certain criteria, principles and rules to be specified in the Act itself. Therefore, there was a complete legislation showing how the compensation would be determined. I may tell you that there were altogether 45,000 tenants involved—30,000 permanent tenants and 15,000 non-permanent tenants. In respect of 25,000 tenants the compensation has been determined and paid.

Shri Khandubhai K. Desai: How many such cases were decided by the tribunal?

Shri N. C. Chatterjee: 12,000. Compensation has been paid in most of the cases and in the case of others it is being paid. What I am pointing out is, so far as land legislation or agrarian reform is concerned, that is finished.

Now, what has happened is, after that an Act was passed which was

impugned before the Supreme Court. I am referring to Act No. 57 of 1958 called the Bombay Land Tenure Abolition Laws (Amendment) Act. That Act is now sought to be validated by the Constitution (Amendment) Bill. It is put down as item No. 68. I will tell you, shortly, what was the position. We are now completely eliminated. Whatever intermediary rights or proprietary rights were there have been taken away from us. With regard to permanent tenants there was no trouble because six times the assessment was to be paid as compensation. With regard to non-permanent tenants it was 20 times, 30 times or even 50 times—nobody got 100 times or 200 times—and that was to be determined by tribunals. The compensation was determined by the tribunals according to principles laid down in the Act. What happened is an artificial definition was put in this Act No. LVII of 1958. It is a very short Act of six sections. The most important sections are 3, 4 and 6. Section 3 of the Act says:

> "Persons entered in record of rights etc., as inferior holders, permanent holders or permanent tenants to be continued so for the purpose of certain Acts and rules."

Shortly put, non-permanent tenants—I have told you that permanent tenants were those who were defined in the Land Reform Code and the Acts which provided for compensation proceeded on that basis, and all others were non-permanent tenants—only by changing the definition, have been made permanent tenants. By a legal fiction, a retrospective legislation was enacted whereby any person who was in occupation for 12 years was made a permanent tenant.

This came before the Supreme Court. If I may read from page 6 of our note:

> "The relation of the ex-tenure-holders with their tenants was, therefore, thereafter, as observed by the Supreme Court, not of a landlord and tenant, but that of a creditor and debtor. Nearly in 13,000 such cases, the tribunals have already determined the purchase prices and in most cases they have already been paid up.
>
> Unfortunately, in 1958, i.e. two years after coming into force of the aforesaid Act and after the tenants had become owners of the lands which they cultivated, an Act named the Bombay Land Tenure Abolition Laws (Amendment) Act LVII of 1958 referred to above in para 1 (item No. 68 of the List) was passed by the Bombay Legislature which deprived the Representationists of their legitimate right to receive the aforesaid compensation by a device whereby they artificially and retrospectively defined a permanent tenant which practically made all the tenants of the petitioners permanent and thus confiscated a large part of lawful dues of compensation of the Representationists."

This Act was challenged in the Supreme Court. Our argument before the Supreme Court was two-fold. One was that it is contrary to the fundamental rights and unreasonable restrictions have been imposed. The second argument was that it is a colourable piece of legislation and that it does not fall within any of the Entries in List II or List III. Therefore, the State Legislature was not at all competent to enact it and under the guise of passing an agrarian reform under Entry 18, they have passed this legislation.

I shall briefly quote from the headnote—AIR 1962 Supreme Court page 821:

> "The petitioner was a taluqdar of certain estates. He was the absolute proprietor of all these lands subject to payment of land revenue to the State Government. Under him were tenants, some permanent, some non-permanent. In the year 1949, the Bombay Provincial Legislature enacted the Bombay Taluqdari Tenure Abolition Act, 1949 which came into

force on August 15, 1950. As a result of the provisions of the Act the taluqdari tenure as such was abolished and certain properties such as wells, tanks, waste lands, uncultivated lands, etc. were acquired by the State; and the Taluqdar was converted into a mere occupant as defined in section 3(16) of the Bombay Land Revenue Code, 1879 and was to pay land revenue in accordance with the provisions of that Code. In 1955, the Bombay Taluqdari Tenure Abolition Act, 1949 was amended and Section 5A was inserted. This section in effect gave a permanent tenant as described in S. 83 of the Bombay Land Revenue Code, 1879 in possession of taluqdari land the right to become an occupant if he paid six times the assessment for acquiring the right of occupancy. So, before the coming into force (that is 10-6-1958) of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 the status of a permanent tenant in possession of any taluqdari land was to be determined by the two circumstances mentioned in S. 83 of the Bombay Land Revenue Code . . . .

The petitioner contended that he would lose about Rs. 14 lacs as a result of the provisions of the impugned Act, 1958. Hence the constitutional validity of the aforesaid provisions was challenged by the petitioner on the following grounds: (1) the Bombay State Legislature was not competent to enact the impugned Act, which is a piece of colourable legislation inasmuch as under the guise of defining a permanent tenant or changing a rule of evidence it has really confiscated a large part of the purchase price which the petitioners were entitled to under section 32H of the Tenancy Act, 1958 . . . . Secondly, the impugned Act contravenes the rights of the petitioners guaranteed by the Constitution under Arts. 14, 19 and 31 and Article 31A does not save it. On behalf of the State of Gujarat, the argument was that the impugned Act, 1958 merely changed a rule of evidence for determining who were permanent tenants in possession of taluqdari lands; it did nothing more than that and was not, therefore, bad on any of the grounds urged on behalf of the petitioner."

If you kindly look at the judgment, which I have printed and circulated, in page 13, it is said:

"It is to be noted that on April 1, 1957—this is called the Tillers' Day—the petitioners ceased to be the tenure-holders of the lands held by non-permanent tenants and as held by this Court, ss. 32 to 32R of the Tenancy Act, 1948 clearly contemplated the vesting of the title in the tenants on the tillers' day, defeasible only on certain specified contingencies. This Court held that those sections were designed to bring about an extinguishment, or in any event a modification of the landlords' rights in the estate within the meaning of Art. 31A (1) (a) of the Constitution. If that was the true effect of ss. 32 to 32R of the Tenancy Act, 1948, then on April 1, 1957 the petitioners were left only with the right to get the purchase price under s. 32H. That right of the petitioners was undoubtedly a right to property . . . The right of the petitioners to the purchase price under s. 32H of the Tenancy Act, 1948 from those of their tenants who were non-permanent on April 1, 1957 was a right of property in respect of which the petitioners have a guarantee under Art. 19(1)(f). The provisions in ss. 3, 4 and 6 of the impugned Act, 1958 in so far as they laid down that in certain circumstances a tenant shall be deemed to be a permanent tenant from the date of the Taluqdari Abolition Act, 1949 adversely

affected the right of the petitioners with retrospective effect; it practically wiped off a large part of the purchase price which the petitioners were entitled to get. If section 6 of the impugned Act, 1958 is to be tested on the touchstone of reasonable restrictions in the interests of the general public as laid down in clause (5) of article 19 of the Constitution, it must be held that it does not impose a reasonable restriction."

That is the first point on which the learned Judges have given their opinion. Then, if you look at page 14, they have said:

"We are unable to hold that the six months' limit imposed by section 6 of the impugned Act, 1958 is, in the circumstances, a reasonable restriction within the meaning of Article 19(5) of the Constitution."

Then they further say:

"We are clearly of the view that the time limit imposed by section 6 of the impugned Act, 1958 is in these circumstances, an unreasonable restriction and cannot be justified under Article 19(5) of the Constitution."

They have stated in the next para:

"In view of this finding it is unnecessary to consider the effect of Article 31 of the Constitution. On behalf of the respondent State reliance was sought to be placed on Article 31A of the Constitution. That article, in our opinion, has no application to the present cases, inasmuch as there was no acquisition by the State of any estate or any rights therein or the extinguishment or modification of any such rights. On April 1, 1957 the tenure-holders had ceased to be tenure-holders in respect of lands held by non-permanent tenants. The relation between the tenure-holders and the tenants had changed from that of landlord and tenant to that of creditor and debtor. When, therefore, the impugned Act, 1958 affected the right of the petitioners as creditors to get a certain sum of money from the debtors it did not provide for the acquisition by the State of any estate or of any rights therein, nor did it provide for the extinguishment or modification of any such rights. Therefore, Article 31A has no application and cannot save the impugned Act, 1958."

Therefore, they say there was no question of rights because the rights have already been extinguished long before. The judgment further goes on to say:

"It has been contended before us that while implementing the provisions of section 5A of the Taluqdari Abolition Act, 1948 it was found that because of the failure or inability of the ex-taluqdar to produce old records concerning the tenants it was difficult for the tenants to take the benefit of that provision; therefore, it became necessary for the Legislature to define permanent tenant in such a way that the tenure-holder might not defeat the provisions of section 5A.

That it was stated, was the reason for enacting sections 3, 4 and 6 of the impugned Act, 1958. We are unable to accept this argument as correct. If the reason was as stated above, then the tenure-holder should have been given a chance to contest the claim of the tenant whenever he made a claim of being a permanent tenant. It appears to us that the true scope and effect of the provisions in sections 3, 4 and 6 of the impugned Act, 1958 is to considerably reduce the purchase price payable to the petitioners and this has been secured by the device of defining permanent tenant in such a way that the tenure-holder has no real opportunity of contesting the

claim of the tenants. In that view of the matter, the impugned Act, 1958 does not fall within any entry of List II or List III of the Seventh Schedule to the Constitution and is a piece of colourable legislation."

We are now on the second part of the argument, and there the Supreme Court has held that it does not come within any entry and, therefore, it is absolutely and inherently outside the competence of the State Legislature to enact such a law. What is colourable legislation was also explained by saying:

> "What is colourable legislation was explained by this Court in Gajapati Narayan Deo & Others Vs. the State of Orissa (4) (See pages 10-11 of the report) 1954 S.C.R.I. This court said that the idea conveyed by the expression colourable legislation is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed those powers the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. We are of the view that that is what has happened in the present case. Under the guise of defining a permanent tenant or changing a rule of evidence what has been done is to reduce the purchase price which became payable to the tenure-holders, on April 1, 1957."

The argument of the Solicitor-General (the present Attorney-General) was that it is covered by entry 18, land or rights in land, and it is only a land legislation and, therefore, a wider interpretation should be given to it. But the Supreme Court has held that there is no question of land legislation because the rights in lands have been extinguished long before. It was over in 1954. So, the Supreme Court says:

> "We are of the view that that is what has happened in the present case. Under the guise of defining a permanent tenant or changing a rule of evidence what has been done is to reduce the purchase price which became payable to the tenure-holders, on April 1, 1957.

For these reasons, we must hold that sections 3, 4 and 6 of the impugned Act, 1958 in so far as they deem some tenants as permanent tenants in possession of taluqdari land are unconstitutional and void. Under the guise of changing the definition of a permanent tenant, they really take away a large part of the right of the petitioners to get the purchase price under section 32H of the Tenancy Act, 1948 from some of their tenants."

So, the situation is perfectly clear. Now may I make a reference to article 31B? The Supreme Court has struck down the impugned Act on two grounds—one is contravention of fundamental rights and, therefore, under article 13 the Act should be declared void and, secondly, it is a piece of colourable legislation because it is not covered by any entry. Therefore, the State Legislature was completely incompetent to enact it. Here I will refer to article 31B. It says:

> "Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, on the ground that such Act or Regulation or provision is inconsistent with or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power or any competent Legislature to

repeal or amend it, continue in force."

What I am respectfully asking the hon. Members to remember is article 31B was consciously enacted to remove one bar. What was that bar? The invalidity of voidness of an Act or Regulation. So, it must be an Act, a properly enacted statutory enactment, within the powers of the Legislature. It cannot be an Act if it is not covered by any of the entries where alone that Legislature can function. Therefore, in order that article 31B may become applicable, there should be an Act. Under article 13:

> "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void?"

Therefore, first of all, it must be a valid law. In order to be a valid law, it must be passed by a competent Legislature. Articles 245 and 246 refer to the distribution of legislative powers between the Centre and the States. Article 246 says:

> "(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 . . . .
>
> (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 . . .
>
> (3) Subject to clauses (1) and (2) the Legislature of any 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 . . . ."

The Supreme Court has held that this legislation is not covered by any of the entries or any of the matters enumerated either in List II or List III. Therefore, under the guise of legislating under Entry 18 you have trespassed upon and assumed jurisdiction over something in respect of which you have no competence. It is therefore completely void.

I have read out to you the language of the judgment. If you will look at page 14 of the judgment, it is said there: "It appears to us that the true scope and effect of the provisions in ss. 3, 4 and 6 of the impugned Act, 1958, is to considerably reduce the purchase price payable"—that is confiscation of money— " . . . In that view of the matter, the impugned Act, 1958 does not fall within any entry of List II or List III of the Seventh Schedule to the Constitution and is a piece of colourable legislation."

What I am submitting for your consideration and for the consideration of the hon. Members of the Joint Committee is that if it is so, how can it come within the scope of article 31B? Article 31B presupposes that there must be an Act. You can only validate an Act. An Act also is perfectly good as an Act, but it may not be operative in some aspects because of article 13 on account of the contravention or infringement or violation of the fundamental rights.

Shri A. P. Jain: What about the latter part of 31B, "notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."?

Shri N. C. Chatterjee: It means: if the Supreme Court or any High Court or any court has declared this Act to be void because of this infirmity—the infirmity being violation of the fundamental rights or infraction of the fetter imposed by the fundamental rights. The Supreme Court has said if is a fetter. You have complete freedom to legislate. But in your field

there is a certain fetter, a certain prohibition, a certain restriction. Therefore, you cannot violate that restriction, although operating in your field.

Therefore, what 31B says according to my submission is that this infirmity, due to infraction or violation of the fundamental rights, even if pronounced upon by judgment of the court, is being removed. And that is why it is put down there and it starts by saying "any Act or Regulation which is inconsistent with the fundamental rights or takes away or abridges the fundamental rights".

Therefore, I would like Parliament to have all the powers that is possible. But I am submitting that the Constitution-makers have definitely made 31B with a limited import and scope. And that is this: Article 13 makes it absolutely void to the extent of the repugnancy; therefore I will remove that infirmity, even if a court has pronounced it. That is the scope. But I submit that that cannot possibly authorise the validation or the incorporation of a statute which is inherently void on account of legislative incompetence which is not covered by any of the entries.

You cannot say—with great respect I wish to submit, let me not be misunderstood—you cannot say "As the Constitution stands today, although the Bombay Legislature had no authority to enact the law and no competency to enact under List II, Entry 18, and although the Supreme Court has held that it is absolutely bad, and not covered by any of the Entries, still I am validating it". I submit that that power is not there. You can validate an existing law which is subject to certain fetters in Part III, Fundamental Rights, of the Constitution, but not a law which is not a law at all, something which is not an Act at all. A Bill must be introduced in the Legislature, it has got to be passed. When there is no inherent legislative competence the whole thing is void *ab initio*. Therefore, it cannot be put in the Ninth Schedule under the provisions of article 31B.

What I am pointing out is that the Supreme Court struck it down on two grounds: one on fundamental rights and the other on the ground of complete legislative incompetence. About fundamental rights you have the power. But it is inherent legislative incompetence, because it is not covered by any of the Entries. The impugned Act does not fall within any of the Entries under List II or III and therefore I submit that there is no power for validating a colourable legislation of this character.

Shri A. P. Jain: There are three judgments in this case, one by two judges, one by a single judge and one by the remaining two judges. You have read from the judgment of the first two judges that the law is not within the legislative competence of the Legislature. Will you please point out similar remarks by the single judge?

Shri N. C. Chatterjee: I am obliged to Mr. Jain. It is a very pertinent point that he has made. Mr. Justice Das delivered the judgment and Chief Justice Sinha agreed with him. If you please see p. 15 . . .

Chairman: There were three judgments.

Shri N. C. Chatterjee: One is by the Chief Justice and Justice Das. One is agreeing with them, Justice Rajagopala Ayyangar, and therefore they form the majority. And I will show to you that Mr. Justice Rajagopala Ayyangar has completely agreed with Chief Justice Sinha and with Mr. Justice S. K. Das.

Shri A. P. Jain: In the conclusion. But will you kindly point out any portions in the arguments?

Chairman: We will look into it. The copies have been distributed.

Shri N. C. Chatterjee: If you look into it on the question of legislative competence absolutely there is no difference. May I read out to you that portion of the judgment? In Mr. Justice Rajagopala Ayyangar's judgment it is put down:

> ". . . the entire object and purpose of the impugned enactment which is given effect to by its operative provisions enacts not a rule of evidence for determining who permanent tenants are under the pre-existing law, but to define, create and as it were add a new class of permanent tenants *i.e.*, those who satisfy the requirements of s. 4".

Mr. Justice Rajagopala Ayyangar begins like this:

> "I entirely agree with the order proposed to be passed by my Lord the Chief Justice and my learned Brother S. K. Das J. The only reason for my separate judgment is because of the views I entertain regarding the import of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 (Bombay Act LVII of 1958) hereinafter referred to as the impugned Act, and in particular of s. 4 thereof."

That section 4 has only an impact on fundamental rights. So far as the legislative competence or incompetence is concerned there is absolutely no difference, there is entire agreement. If you will kindly look at page 34, the penultimate para, in the last four or five lines it has been stated that:

> "I am therefore clearly of the opinion that the entire object and purpose of the impugned enactment which is given effect to by its operative provisions enacts not a rule of evidence for determining who permanent tenants are under the pre-existing law, but to define, create and as it were add a new class of permanent tenants, *i.e.* those who satisfy the requirements of s.4.
>
> If this were the proper construction of the impugned enactment it was not seriously contested that the enactment would be void and unconstitutional and liable to be struck down. I agree therefore that these petitions should be allowed.".

So, His Lordship has agreed with the other two judges.

Now, it is clear that it has been struck down on two grounds, namely infraction or violation of Fundamental Rights, and legislative incompetence.

Shri A. P. Jain: My question remains unanswered.

Chairman: Let him finish his evidence first and then you can ask questions.

Shri A. P. Jain: We shall not be able to go into these intricate points later on. Since he is reading out a part of the judgment, I just want to ask only one question.

Chairman: Then, every Member will claim the same right.

Shri A. P. Jain: I do not know whether this procedure will help.

Shri S. D. Patil: May I suggest that Shri A. P. Jain may be given an opportunity to put his question now, because he has studied the matter thoroughly, and his questions may even be beneficial to the other Members also?

Shri N. C. Chatterjee: I shall finish in one minute. I have practically finished, and I have nothing more to add. All that I am pointing out is this that taking the Supreme Court judgment, firstly, it is not an agrarian legislation, secondly, it has nothing to do with rights in land, thirdly, all rights in land have been completely extinguished, and fourthly, it is only a question now of your right to get some money from somebody, and,

therefore, it is a thing which is not covered by any entry in List II or List III. Now, you purport to enact legislation confiscating that right partially or wholly. And that has been declared unconstitutional. I would submit that that is not within the scope of article 31B, and it is not capable of validation, because validation can only arise if you put in a proviso to the effect that 'Provided it is a law', 'Provided it is an enactment', or 'Provided it is a statute passed by competent legislature', but you cannot put in something which is declared by the Supreme Court which is the highest court as being thoroughly incompetent, *ab initio* incompetent and not covered by law. That is my whole submission.

Shri A. P. Jain: My question still remains unanswered. You have read out extracts from the judgment of the two judges to the effect that the Bombay Legislature did not have the legislative competence to pass the law. Is that observation supported by Mr. Justice Das or Mr. Justice Ayyangar?

Shri N. C. Chatterjee: Yes, completely. It is a very pertinent question which you have put. Kindly look at para 1 at page 29, which reads as follows:

> "I entirely agree with the order proposed to be passed by my Lord the Chief Justice and my learned Brother S. K. Das J. The only reason for my separate judgment is because of the views I entertain regarding the import of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 (Bombay Act LVII of 1958) hereinafter referred to as the impugned Act, and in particular of s. 4 thereof.".

The reason for his separate judgment is because of his views on section 4, and section 4 has nothing to do with the question of legislative competence, but it deals only with the question of the reasonableness or unreasonableness of the restrictions.

Shri A. P. Jain: I do not contend that Mr. Justice Ayyangar has agreed in the final order. But my question is in regard to legislative competence. So far, you have not been able to point out any portion from Mr. Justice Ayyangar's judgment where he agrees with the observations of the other two judges so far as the question of legislative competence is concerned.

Shri N. C. Chatterjee: The very first sentence in his judgment reads:

> "I entirely agree with the order proposed to be passed...."

Shri A. P. Jain: That is not an order, but where is the support in arguments.

Shri N. C. Chatterjee: Then, he says:

> "The only reason for my separate judgment is because of the views I entertain regarding the import of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 (Bombay Act LVII of 1958) hereinafter referred to as the impugned Act, and in particular, of s. 4 thereof.".

So, the reason for his separate judgment is that he had something to say on section 4, and section 4 has nothing to do with legislative competence, and it deals only with the question of the reasonableness or otherwise of the restrictions.

Shri A. P. Jain: Has he said anything about legislative competence in his judgment?

Shri N. C. Chatterjee: I am submitting that the very first sentence of his judgment says that he agrees with the judgment of the Chief Justice. The only reason for his writing a separate judgment is that he wanted to say something on section 4. With great respect, I want to point out, particularly to Shri Jain, that when you say that you agree and you only want to add something, then you add something which has reference to a little variation of emphasis, only with regard to that section 4. The whole of his judgment deals only with section 4, which has nothing to do with the question of legislative competence.

Shri A. P. Jain: Surely, you do not mean to say that when a Justice says that he agrees with the order, it means that he agrees with all the arguments on which the order is based?

Shri N. C. Chatterjee: That is the practice of the Supreme Court, and you can take it from me that that is the practice there, and it does not have any other meaning. I have been there from 26th January, 1950 up till today.

Shri A. P. Jain: I cannot claim that much standing, and so I cannot cross swords with Shri Chatterjee.

Shri N. C. Chatterjee: Apart from that, when a judge says that he entirely agrees with the order and then he says that this is the only point on which he wants to add something, then he only adds to the same conclusion.

Shri A. P. Jain: Will you agree that the quantum of compensation is the crucial to all land reform legislations? I may point out to the opinion of one of the leading authorities on land reforms, namely Mr. Forbis, who has said that if the compensation is prescribed at the market rate or at a rate which the tenants cannot afford to pay, then the whole object of land reforms is defeated. Would you agree with that observation?

Shri N. C. Chatterjee: I do not know what the observation is. Shri Jain may please show it to me.

Shri A. P. Jain: The point is that if the compensation is based on a rate which the tenants cannot pay, that in which it is beyond the capacity of tenants, then the objective of land reforms is defeated.

Shri N. C. Chatterjee: I am afraid I have not been able to make myself clear.

Shri A. P. Jain: You have made yourself very clear. I am taking you to the other point. So far you have talked as a lawyer, but I want you to consider the matter from the point of view of a legislator, who deals with policy. Do you agree with the opinion that compensation is a very crucial matter in land reforms, and if the compensation is fixed at a rate which is beyond the capacity of the tenant to pay, then the whole object of the land reform is defeated?

Shri N. C. Chatterjee: May I answer it in this way? That is correct provided you are making a legislation in regard to land reform or agrarian reform. My sole point is that this is not a land legislation nor is it an agrarian legislation.

Shri A. P. Jain: Now, I want to take you to the general policy followed by the Indian Parliament ever since it came into existence.

First, I would invite your attention to article 31(4) which deals with pending Bills, and which says:

> "If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2)."

Then, I would take you to clause (6) of article 31 which provides for the

validation of certain laws which had been enacted not more than eighteen months before the commencement of this Constitution. Then, I would invite your attention to article 31A which was enacted in 1951 and 1955.

Shri N. C. Chatterjee: I was a Member of the Joint Committee in 1955 and so, I remember it very well.

Shri A. P. Jain: I am glad that I am talking to a person who is not only a lawyer but who has also been a legislator, and who may be a legislator in the future also.

Shri N. C. Chatterjee: I was in this very room—I remember.

Shri A. P. Jain: Will you agree with me that the policy of the State—I am not using the word 'Government'—has all along been that land reforms should be given special and privileged position, and if any provisions of the Constitution come in the way of land reforms, then certain concessions might be made to make land reforms effective?

Shri N. C. Chatterjee: Generally I do agree.

Shri A. P. Jain: You have argued your case mostly on the basis of legislative competence. Assuming we agree with you—personally I do not agree with you because the relevant observations are not part of the operation order.

Shri N. C. Chatterjee: It has been struck down on two grounds.

Shri A. P. Jain: By two Judges.

We are policymakers. If we find that the objectives of land reforms are being defeated because of a legal lacuna, that is, the Bombay legislature had not the legislative competence, shall we not be within our rights to give legal validity to these provisions by a proper legal device? It may be inclusion of it in 31B; it may be passing a separate law incorporating the same provisions by Parliament.

Shri N. C. Chatterjee: If you look at 31B, it deals with validation of Acts.

Shri A. P. Jain: My question is wider. If once we come to the conclusion that Act 57 of 1958 of the Bombay legislature is defective, because that legislature had not the legislative competence, and we give legal sanctity to it, will you have any objection?

Shri N. C. Chatterjee: I am pointing out it cannot be given legal validity. You can validate an Act provided it is a statute passed by a competent legislature.

Shri A. P. Jain: Suppose we protect it under 31B or pass a separate law in Parliament to validate the provisions?

Chairman: You cannot validate—that is his stand.

Shri N. C. Chatterjee: If you legislate, it will be parliamentary legislation. Then a Bill will have to be introduced and Parliament will have to exercise its legislative judgment and apply its mind to it. It has been laid down by the Supreme Court that while legislating, the legislature must exercise legislative judgment.

Chairman: That is what Parliament is doing, by amending the Constitution.

Shri N. C. Chatterjee: You are not passing this Bill. Mr. Jain's point is—suppose Parliament takes it up to legislate.

Shri A. P. Jain: By proper legal device. It may be anything. We will have to decide whether to include it in 31B or to pass a separate law.

Shri N. C. Chatterjee: I thought over this matter. I do not think residuary powers cover validation of a void Act or a void statute. It is not an Act at all. Residuary powers are given for the purpose of legislating on some entry which is not there. Suppose we have sales tax, this tax and

that tax and if we want to put in a marriage tax or some such thing, then Parliament may pass it. But you cannot say that validation of a void Act will be within your legislative competence.

Shri A. P. Jain: You have based your case on the legal arguments. I am expressing my views on the basis of policy. Suppose we do not validate it in Parliament because you say that it is not a law, but we incorporate the same provisions in an independent legislation, will you have any objection?

Chairman: He will never agree to it.

Shri N. C. Chatterjee: You will have to kindly consider one aspect—as things stand today, has Parliament got the power to do it, to validate a void statute?

Shri A. P. Jain: I am not validating it; I am saying we will pass a law containing the same provisions so that your argument that it is a colourable transaction disappears.

Shri P. R. Patel: Here it is only a question of inclusion of that Act in the schedule, not of passing a separate law.

Shri A. P. Jain: If he has no objection on principle, it will be for us to decide whether to include it in 31B or to pass a separate law.

Shri N. C. Chatterjee: Parliament has got supreme power and if it thinks it has got the power to do it, it may, but the only thing is that as things stand today, it cannot be done.

Shri A. P. Jain: The Bombay legislature passed a law relating to recovery of records, and the tenure-holders were required to submit the records to the Collector or another authorised authority within a certain period. A penalty was provided for non-compliance. Why did not the landlords submit their records under that law?

Shri S. M. Dave: The land records were not with the talukdars but with Government. There was an Act, No. 6 of 1888, known as the Gujarat Talukdars Act. Under sec. 4 thereof, it was provided that talukdari lands would be surveyed and settled and all that. So all the talukdari lands were surveyed and settled and thereafter Government prepared 'fasal patras', settlement registers, and they used to have 'panik patras' every five years of the talukdari lands. These fasal patras gave the names of the tenants, area, assessment; everything was properly recorded. Similarly, in settlement registers also, all these entries were there. So the talukdars had not the records; they were not just jagirdars, they were only landlords, but they had certain additional privileges. That was the position.

So the records were with Government. The talukdars had only their books of accounts. So the talukdars said that they had no records—which were with Government; the names of tenants were also with Government—and this Act did not apply to them. When the talukdars did not just carry out the provisions of the Act, Government could have punished them under the Act. But Government could not because the records were with Government and not with the talukdars. That was also one of the arguments advanced by the Solicitor-General before the Supreme Court; the Court did not accept the argument that the records were with the talukdars.

Shri A. P. Jain: After all that you have said, I cannot get out out of the feeling that the legislature or Government act in a reasonably honest manner. If the Bombay Government had all these records, why should they have enacted the law for the recovery of records? Surely you do not mean that it was a mad people's Act.

Shri P. R. Patel: We were there at that time. Please do not use that expression.

Shri A. P. Jain: Then it is further confirmed.

Shri S. M. Dave: The Act did not apply only to the talukdars, but to all tenure-holders. There were many tenure-holders, as for example, inam holders. So the talatis were appointed by Government and all the records were kept in accordance with the provisions of government rules. Those records were recovered by the Government from the inamdars. Talukdars are only proprietors of the land, their position is quite different.

Shri Kasliwal: If you had no records, how did you manage to collect the rent?

Shri S. M. Dave: As I said, we had our books of account, and also certified copies of the Government records.

Shri A. P. Jain: It is not my contention, you have the legal and formal records. The records you were required to submit were the accounts maintained by you, which would have helped the Government in ascertaining whether a tenant was a permanent tenure-holder or an ordinary tenant. Why did you not cooperate?

Shri S. M. Dave: When the talukdari tenure was abolished, Government introduced fresh records of rights in all the talukdari villages. At the time of the preparation of the fresh records, they issued instructions to their subordinate officers that the names of all tenants who were tenants from the time of their grandfathers should be recorded as permanent. They did not look to section 83 of the Bombay Land Revenue Code which applies to all the landlords of Bombay State, which provides that only such tenants should be recorded as permanent whose antiquity or commencement of tenancy could not be traced. But Government changed the rules of procedure by an executive order. I have got a copy of the instructions they circulated to their officers. The talukdars had to prove that a particular tenant commenced from a particular date, and only then their names were taken off the record of rights, and that way the record was fully, completely and properly prepared.

Shri A. P. Jain: I am not relying on the executive orders passed by Government. When this particular law was passed in 1953, it became the duty of talukdars to help the State in finding out who were the permanent tenure-holders and who were not. You had records with you though not the formal records prescribed by law, through which you realised rent etc. Why did you non-cooperate? Why did not produce those records?

Shri S. M. Dave: By January 1956 the records were completed and all those who were regarded as permanent tenants were determined. This was possible because we co-operated, we produced all the records, we could trace the dates of tenancy.

Shri Bibudhendra Misra: May I draw your attention to the affidavit filed by the Government of Gujarat in this writ petition? I am reading out the relevant portions, and I do not think it was contradicted by you:

> "In the course of the administration of the Bombay Talukdari Tenure Abolition Act and other tenure abolition Acts, it was found that the ex-tenure holders who were in possession of records either suppressed the same or omitted to produce the same on the ground, *inter alia,* that they were misplaced or failed to keep their records complete, thus making it practically impossible for the permanent tenants and the inferior holders to establish their rights."

Dr. L. M. Singhvi: Is the Minister in possession of the contradiction? If so, he can place it on record.

Shri Bibudhendra Misra: We are trying to get the records, but the Gujarat Government officers say there

has been no contradiction. If they have contradicted, they can tell us.

Shri S. M. Dave: We have filed a rejoinder in reply. I am sorry I have not brought it.

Shri N. C. Chatterjee: I ought to point out in all fairness that this identical point was stressed by Mr. Daphtari, the Solicitor-General. You will find it at page 833, para 14, where it is said:

> "It has been contended before us by the Solicitor-General re: section 5(a) of the Talukdari Abolition Act, that it was found that because of the failure or inability of the ex-talukdars to produce their records concerning the tenants, it was difficult for the tenants to take the benefit of this provision, section 5(a), and therefore it became necessary for the legislature to define a permanent tenant in such a way that the tenure-holders might not defeat the provisions of section 5(a)."

Then they have said that they are unable to accept this argument as correct, and therefore they rejected it.

Shri Bibudhendra Misra: The argument may be incorrect. I am talking of the facts.

Shri N. C. Chatterjee: Anyhow, we shall look up the records. We did not bring it here. We shall send it to you. If this was a fact, they would have said it was a good ground.

Shri A. P. Jain: Section 6 of the 1958 Act gives an opportunity to the talukdars to prove that a particular tenant is not a permanent tenant. Why did the talukdars not take advantage of it?

Shri S. M. Dave: Because they had a fundamental objection to section 4. Section 6 refers to section 4, and under that the talukdars had to prove that a permanent tenant was not there for 12 years. There were 8 lakhs of tenants in Gujarat State. I have a cutting from the press of a statement made by the Revenue Minister of Gujarat State that 6,72,000 cases have been dealt with and 75 per cent of the compensation has been paid by the tenants to the landlords applying section 83 of the Bombay Land Revenue Code which provides that only if the commencement of a tenancy cannot be traced, the tenant should be considered permanent. If the Gujarat State could follow that section in nearly seven lakhs of cases, we do not understand why for the small class of talukdars, who were absolute proprietors of the land, they should make a special enactment and deprive them of compensation. There are only 45,000 tenants of talukdars. Out of them, 13,000 were declared permanent under section 83 of the Bombay Land Revenue Code, and on payment of six times as compensation they have already become occupants. For 12,000 others under sections 32(g) and (h) of the Bombay Tenancy Act compensation of 35 to 40 times has been paid.

Shri Khandubhai K. Desai: Who were those tenants? Were they tenants of the so-called landlords, or subtenants of the tenants

Shri S. M. Dave: The 13,000 I referred to were tenants of the talukdars in most cases. In a few cases they may be sub-tenants.

Shri A. P. Jain: Am I correct in understanding that your position is that the talukdars did not co-operate under section 6 because they were angry with the provisions of the Act?

Shri S. M. Dave: That was not correct. We thought an injustice was being done.

Chairman: So, you protested against the provision of section 4.

Shri S. M. Dave: We were being deprived of what we could have got in 1957.

Shri A. P. Jain: Have you worked out or can you work out the figures of total compensation payable to all talukdars as it would work out according to the Act of 1948 as also according to the Act of 1948 as modified by the Act of 1958?

Shri S. M. Dave: I have not worked it out but if you give me time, I can work it out in some cases.

Dr. L. M. Singhvi: I would like Mr. Chatterjee to tell us, as a jurist, as to what he considers as to the propriety of a legislation to validate a constitutional legislation declared void by the Supreme Court.

Shri N. C. Chatterjee: May I tell Dr. Singhvi that the Supreme Court Bar Association and the Bar Association of India and some other bar associations, apart from Gujarat Bar Association, have passed resolutions. I ought to tell you also that the Additional Solicitor-General of India was the Chairman of the sub-committee appointed by the Supreme Court Bar Association. I was also associated with another committee. They have all taken the view that it will not be proper, apart from the technicalities, to make a so-called statute completely immune from any attack by this process of inclusion in the 9th Schedule.

Shri Bibudhendra Misra: I think you are referring to the Bombay Act.

Shri N. C. Chatterjee: I think Dr. Singhvi's question was with reference to that. The Supreme Court has held:

> "Under the guise of changing the definition of a permanent tenant, they really take away a large part of the right of the petitioners to get the purchase price. . . ."

What has been done is to confiscate part of the purchase price. This sort of legislation should not be validated by this process.

Dr. L. M. Singhvi: I would like to have from him a more comprehensive analysis of the judgment of the court which has been circulated to us, in particular entry 18 of List II of the Constitution and to throw light on the point whether this particular legislation relates to relationship between landlord and tenant as adambarated by justice Sarkar and justice Mudholkar.

Shri N. C. Chatterjee: Entry 18 is land, that is to say, rights in land or over land, land tenure including relation of landlord and tenant. It will be presumptuous on my part to try to improve on the Supreme Court judgment but the majority has held that this has got nothing to do with rights in land or over land: they are completely extinguished in 1955: it has nothing to do with land tenures because they were abolished in 1950 and 1955. The Supreme Court says:

> "The relation between the tenure-holders and the tenants had changed from that of landlord and tenant to that of creditor and debtor."

Dr. L. M. Singhvi: I would like to draw your attention to page 14 of the judgment circulated to all of us:

> "It appears to us that the true scope and effect of the provisions... is to considerably reduce the purchase price payable to the petitioners and this has been secured by the device of defining permanent tenant in such a way that the tenure-holder has no real opportunity of contesting the claim of the tenants. In that view of the matter, the impugned Act, 1958 does not fall within any entry of List II or List III of the Seventh Schedule to the Constitution and is a price of colourable legislation."

In reply to an earlier question by Mr. Jain whether he finds this to be in common ground with the observations of Justice Ayyangar—

> "I am clearly of the opinion that the entire object and purpose

of the impugned enactment which is given effect to by its operative provisions enacts not a rule of evidence for determining who permanent tenants are. . . but to define, create and as it were add a new class of permanent tenants, i.e. those who satisfy the requirements of s. 4".

My purpose is to find out if the witness agrees that these are observations which give us the common ground of agreement and strengthen the majority opinion.

Shri N. C. Chatterjee: I am thankful to hon. Member. I think he is right. It is really reaffirmation of the view of the majority judgment. They are saying that it is a piece of colourable legislation.

Dr. L. M. Singhvi: Therefore, it would not be correct to say that Justice Ayyangar has concurred with the operative part only. It would be more correct to say that Justice Ayyangar has also agreed with the argument.

Shri N. C. Chatterjee: I stand corrected; that will be a proper way of putting it.

Dr. L. M. Singhvi: I would like to know from the distinguished witness whether he considers the validity of constitutionally validating legislation as proposed under the present Bill would also be challenged in view of the fact that what is sought to be validated is not in existence at all.

Shri N. C. Chatterjee: I should not use any language of threat. It is only a caution that I am administering: that it will not cease to be vulnerable.

Dr. L. M. Singhvi: I would like to know from the distinguished witness whether the compensation which was to be provided under the original Act was excessive. Could he give us—this is perhaps a modified repetition of the question put by my hon. friend, Shri A. P. Jain—an estimate of what compensation would have been payable roughly under the original enactment for any piece of land, and what would have been the compensation or the price recoverable by the ex-talukdars now after the definition of permanent tenant has been changed? Can he give some idea of the proportion between the two prices payable?

Shri S. M. Dave: Roughly, the government charges of land revenue which are known as the assessment in the State of Gujarat and the State of Bombay, on talukdari land vary from Re. 1-4-0 to Rs. 1-12-0 per acre. That is the assessment by the Government. Under the Act of 1956—the Bombay Tenancy and Agricultural Lands Act, —under which the non-permanent tenants became the owners of land, the compensation payable would be 20 to 200 times, but what the Government has done is this: in most of the talukdari cases, they have declared the talukdari villages as backward villages, and now, in the Act, there is a provision that if Government declares any particular area as backward, they can reduce the maximum and the minimum. So, in the case of talukdari villages, what they have done is, they have reduced the maxima from 200 to 100. So, the compensation which ranged from 20 to 200 in the case of the talukdars has now been reduced from 200 to 100. The minima would be 20. Nobody is getting the maximum. Supposing, the productivity of the land and the land revenue have improved they might get 40 to 50 times, or Rs. 50 would be the compensation per acre that would be payable to them under the Bombay Tenancy and Agricultural Lands Act, 1956. Under this Act, the compensation those people would get will be only Rs. 6. I may point out that in certain cases the villages are not at all backward. They are lands whose market value is from Rs. 500 to Rs. 1,000 per acre. The tenants, if they are illegally selling amongst themselves, are getting Rs. 1,000 in the talukdari areas. Supposing this enactment is not validated, the position,

would be the compensation payable would be Rs. 30 or Rs. 40 per acre. If this Act is validated, they will have to pay Rs. 6 per acre.

Dr. L. M. Singhvi: That is to say, the tenants are not incapable or they have the capacity to pay the price which was determined under the original Act. It is not so excessive, in your opinion.

Shri S. M. Dave: With due respect, it is not at all excessive because it is only a nominal price fixed under the Bombay Tenancy and Agricultural Lands Act. 25,000 cases have already been decided and in several cases the prices have been paid. It is a question of application to 20,000 cases where the request of the talukdars is that section 83 of the Bombay Code which defines the permanent tenant should apply. I may point out that there were 6,79,000 cases of tenants in the whole of Gujarat State and in these cases the prices have been determined under section 32 of the Bombay Tenancy and Agricultural Lands Act, that is, from 20 to 200 times. In these cases, the assessment was up to Rs. 5 per acre. The tenants have not found it excessive or exorbitant to pay it. There is a press-cutting which says that Rs. 18,62,000 was the price determined or fixed by the tribunal appointed by the Government under section 32(g) of the Bombay Tenancy and Agricultural Lands Act. Out of that only Rs. 630 lakhs remain to be paid. Out of that, Rs. 448 lakhs have already been recovered. So, 72 per cent of the price fixed by the tribunal has already been recovered. If in such a large number of cases, the price should be paid by the tenants, without a feeling that it was excessive, how could it be that in 20,000 cases they found it excessive or exorbitant and so that they want this Act to be validated? That is our grievance.

Dr. L. M. Singhvi: I want to know whether the witness thinks that the minority judgment of Mr. Justice Sircar and Mr. Justice Mudholkar is based on a particular construction in the statute, that is to say, that the proposed amendment only seeks to change the rule of evidence or to shift the onus of proof or is it the opinion of the witness that the minority judgment also does not go to show that if the result of the amended statute were as is contemplated by the majority, they would not have held it to be *intra vires*?

Shri N. C. Chatterjee: That is the correct view.

Shri A. V. Raghavan: I would like to know, if this Committee wants to agree with the minority judgment, whether Parliament has got the power to validate the Act.

Chairman: He says you cannot; you will be validating an invalid Act, which is not an Act at all.

Shri A. V. Raghavan: The question is whether Parliament has got the power to give protection.

Chairman: He has said you have got the power to change it too but that it will not be proper.

Shri A. V. Raghavan: My hon. friend was saying that it is absolute proprietorship. What was the origin of the talukdari? Was it acquired by money or was it a grant?

Shri S. M. Dave: They were there before the British came. They were holding estates when the British came in that part of Gujarat. But the British recognised them only as absolute proprietors and they were subject to payment of land revenue. Some privilege was given to them to pay less because they were full proprietors. 60 per cent of the assessment was paid to the Government as land revenue.

Shri Khandubhai K. Desai: I would like to draw your attention to the minority judgment given on page 28, which says that there can be no question regarding the impugned Act as a colourable one because it directly falls under entry 18 and deals with matters which have a bearing on the re-

lationship of landlords and tenants. And the other judges differ from this and they say that it does not fall under entry 18. Mr. Justice Ayyangar does not give any opinion about it. So, what you contend is not on all fours even among the judges.

Chairman: What is your question?

Shri Khandubhai K. Desai: My question is that there is a weighty opinion of the two judges; the majority judgment is of two judges. Mr. Justice Ayyangar does not give any opinion at all.

Chairman: He concurs.

Shri N. C. Chatterjee: I have already indicated that I agree with the judgment. Mr. Justice Sinha and Mr. Justice Das say "I entirely agree with the judgment and I am only writing this because of my interpretation of the section."

Shri A. V. Raghavan: Under the Bombay Act, what happened to the tenants who do not opt to go to the tribunal to purchase the talukdari rights?

Shri S. M. Dave: It is not a question of rights only. It is a question which applies to all the tenants and the landlords in the State of Bombay. That is the provision in the Bombay Tenancy and Agricultural Lands Act. Supposing a tenant does not opt, and if the landlord has got certain ceiling areas, say, 50 acres—I do not remember exactly—the position is, the land would go to the Collector who would give it to any other person in the list of priority which is laid down under the Bombay Tenancy and Agricultural Lands Act. The price that would be realised while giving it to the other person shall be paid over to the tenant who does not opt to take the land for his use.

Shri A. V. Raghavan: My point is this. The Supreme Court has held that from a particular date the relationship of landlord and tenant has changed to that of creditor and debtor. What happens to the particular tenant who does not opt to go to the tribunal and wants to continue to be a tenant?

Shri S. M. Dave: Then the land goes to the Collector and it would be given over to the other tenants. That applies to all the tenants and landlords.

Shri A. V. Raghavan: Suppose the tenant did not have the means to purchase according to the Tenancy Act. What happened to him?

Shri S. M. Dave: Under the Tenancy Act, compensation can be paid in 12 instalments which can be extended by two or three more instalments. So, they have to pay the price in 15 instalments. If the tenant does not pay, the land goes to the Collector who gives it to the other tenants. This applies to all landlords including taluqdars.

Shri Khandubhai K. Desai: Apart from the legal aspect, it is question of facts. I remember your saying that the Talukdari Act of 1894 or something like that conferred the rights of taluqdari on these talukdars. What was the position previous to that?

Shri S. M. Dave: Never did the British Government confer any rights of taluqdari on the taluqdars. That is the legal position. Their proprietorship ante-dated the British rule.

Shri Khandubhai K. Desai: In those days, there were tenants?

Shri S. M. Dave: All tenants may not be there. There might be waste land, some tenants might have gone away and the position might have changed. We do not know because such a long time has elapsed.

Shri Khandubhai K. Desai: Those tenants who were there when the Taluqdari Act came into force have built up these villages and settled there?

Shri S. M. Dave: That is not true.

Shri Khandubhai K. Desai: When a tenant dies, how does the land pass? Does it pass to his heir?

Shri S. M. Dave: The taluqdar continues his heir to cultivate the land, because he is the landlord.

Shri Khandubhai K. Desai: Your contention is that from generation to generation the same tenants and their heirs do not hold the land?

Shri S. M. Dave: I did not say that. In some cases, he may be holding.

Shri Khandubhai K. Desai: According to your knowledge as a super-manager of the taluqdari villages . . .

Shri S. M. Dave: I beg to correct the statement; I am not a super-manager. I am an adviser advising the taluqdars.

Shri Khandubhai K. Desai: You have absolutely no knowledge about the passing of the land from father to son, which can only happen if they are permanent tenants?

Shri S. M. Dave: No, Sir; that is not the position. A permanent tenant, of course, has the right of alienation and all other rights. In the case of a tenant at will, if a landlord wants to continue his son or grandson, he continues.

Shri Khandubhai K. Desai: So, it does not pass automatically?

Shri S. M. Dave: No.

Chairman: Is it on the volition of the taluqdar?

Shri S. M. Dave: Yes. Of course, the sons of permanent tenants inherit the land and they have got all the rights of transfer, etc. But if they are non-permanent tenants, if the taluqdar chooses he may continue his son to cultivate the land. Usually, they were allowed to cultivate.

Shri Khandubhai K. Desai: Your contention is they were only ordinary tenants?

Shri S. M. Dave: Some were permanent tenants and in some cases they were non-permanent tenants.

Shri Khandubhai K. Desai: I put it to you that about 40,000 tenants' cases have not yet been decided.

Shri S. M. Dave: As far as my information goes, that is not correct.

Shri Khandubhai K. Desai: How many cases have been decided according to you under the Tenancy Law of 1948?

Shri S. M. Dave: There were in all 45,000 cases. Out of that, 25,000 cases have already been decided and in those cases, the purchase prices had been mostly paid. 20,000 cases remain.

Shri Khandubhai K. Desai: You may not be maintaining any records, but you may be maintaining the so-called account books. Did you make those account-books available to the Government?

Shri S. M. Dave: It is not so-called account books. We maintain account books for the purpose of collection of rent from the tenant.

Shri Khandubhai K. Desai: That also you did not supply to the Government?

Shri S. M. Dave: There was no question of supplying them. Only land records had to be supplied to the Government. We produced all the records we had before the Collectors and other authorities, and showed that under section 83 a tenant whose name was recorded as a permanent tenant was not a permanent tenant.

Shri Khandubhai K. Desai: You denied that you were intermediaries and said you were proprietors.

Shri S. M. Dave: I did not deny. I said, we were landlords. As landlords, we paid land revenue to the Government and collected rent from the tenants. So, we were intermediaries.

Shri Khandubhai K. Desai: You were intermediaries in the sense that you were in the nature of revenue farmers who used to keep some portion of the amount to you and pay 60 per cent to the Government?

Shri S. M. Dave: No, Sir. We were not revenue farmers. We were absolute proprietors.

Shri Khandubhai K. Desai: After the Taluqdari Tenure Abolition Act, you think you have got more powers and that Act has been passed in favour of the taluqdars?

Shri S. M. Dave: How can that be the position?

Shri Khandubhai K. Desai: Because your connection changed.

Shri S. M. Dave: By the Taluqdari Abolition Act, they deprived us of some of our properties like uncultivated land, unbuilt village sites, tanks, wells, etc. Of course, we could make non-agricultural use of our land. That was our position. From absolute proprietors, we were made mere occupants, *i.e.* holders of unalienated lands under the Government. Our position was not improved by the passing of the Taluqdari Tenure Abolition Act.

Shri Khandubhai K. Desai: You said that the son does not automatically inherit the land which his father was cultivating. Is that your contention?

Shri S. M. Dave: Yes. In the case of permanent tenants they could inherit and in the case of non-permanent tenants if the landlord allowed they could do so.

Shri Khandubhai K. Desai: Would you be able to place before the Committee, if not now at least you may write to us, a statement showing how many were permanent tenants in the Sanad Estate and how many were non-permanent tenants?

Shri S. M. Dave: There are Government record of rights. I shall produce those entries to show how many were permanent and how many were non-permanent tenants.

Shri Khandubhai K. Desai: Mr. Chairman, here there are certain questions of facts which are being contested one way or the other. So I would request you to call as a witness for evidence the representatives of the Government of Gujarat.

Shri P. Ramamurti: Quite apart from the legal technicalities that you are raising, I would like to find out from you certain facts. The facts, according to me, are that these talukdars were holders of large pieces of land which they were not cultivating personally or through members of their own families.

Shri S. M. Dave: In some cases they were big talukdars and others were all small talukdars. The small talukdars used to cultivate some land themselves and they also used to lease out certain lands to tenants. There have been 11,000 such talukdar .

Shri P. Ramamurti: Is it not a fact that a larger proportion of the land held by them as talukdars was being physically culivated by these tenants, whether permanent tenants or non-permanent tenants?

Shri S. M. Dave: That was the case in some of the big estates only.

Shri P. Ramamurti: Secondly, is it a fact that with regard to these non-permanent tenants there were no records available with the tenants to prove the duration of their tenancy?

Shri S. M. Dave: That position is not correct, because the talukdars as landlords used to give receipts to the tenants for the rent that they recovered. In those receipts the survey number of the land cultivated by the tenant and the amount paid were entered. They can produce those receipts to prove the period of tenancy.

Shri P. Ramamurti: Was there no lease deed entered into between the talukdars and tenants stating the terms on which a particular piece of land bearing a particular survey number was leased out to a tenant?

Shri S. M. Dave: Yes, regular lease deeds were passed giving the date on which a land was leased out, the survey number of the land, the terms of tenancy etc. In the case of non-per-

manent tenants, because the talukdars were the landlords, those lease deeds were kept with the talukdars, and when the tenants paid the rents they were given proper receipts.

Shri P. Ramamurti: In that case, where was the difficulty in proving the tenancy? Were they not registered?

Shri S. M. Dave: The Transfer of Property Act and the Registration Act provided that only when a lease was for more than a year it should be registered.

Shri P. Ramamurti: Therefore, the talukdars, according to you, were passing lease deeds from year to year?

Shri S. M. Dave: No. Generally they were not passing lease deeds because they were allowing the tenants to continue.

Shri P. Ramamurti: My third question is, after the passing of the 1958 Act, on the date on which it became a law they became owners of the land and only the purchase money had to be paid. Even after that date these non-permanent tenants were continuing to till the land. So they were tilling the land before and they were tilling the land even after the passing of the Act even though the purchase price had not been fixed.

Shri S. M. Dave: That is not the position. In many cases the price was fixed.

Shri P. Ramamurti: What about those cases where it was not fixed?

Shri S. M. Dave: Even the talukdars did not remain landlords after that. The tenants did not pay any rent to the talukdars because they thought that they had become owners.

Shri P. Ramamurti: They were tilling the land before and they were tilling the land even after that.

Shri S. M. Dave: How are the talukdars concerned with it. They might have continued to till the land or they might have transferred the land. We do not know the position.

Shri P. Ramamurti: With regard to these tenants the Supreme Court has created a new notion that these tillers of land are no longer tillers and they are only debtors and creditors. It was on that basis the whole judgment was passed that you cannot reduce the purchase price. Am I right?

Chairman: That is a matter for argument.

Shri P. Ramamurti: In creating this debtor-creditor relationship, I take it that the tenants had no part and it was created by means of a legislation.

Shri S. M. Dave: That is not the position. The Supreme Court has held in a writ petition that on 1st April, 1957 every tenant became an occupant or owner of the land.

Shri A. V. Raghavan: The question is whether the tenant had any part in creating this new relationship of creditor-debtor or whether it was imposed on him?

Shri S. M. Dave: It was not a question of two parties agreeing to it. It was a question of fact. By law all tenants became owners or purchasers and thereby became debtors to the landlords who became creditors.

Shri Rohit Manushanker Dave: I would like to know from Shri Chatterjee whether it is a fact that the purpose of including this particular Act in the Ninth Schedule is to see that some of the injustices that might have been there so long are removed and also to see whether any fundamental right is technically violated as a result of the removal of a particular injustice?

Shri N. C. Chatterjee: That is correct, according to my reading.

Shri Rohit Manushanker Dave: If that is the case as far as the particular impunged Act is concerned, the purpose of this impunged Act was two-fold, firstly, to protect those people who were actually tilling the land but who were not in a position to show their titles, or to prove their titles conclusively, by creating some legal

fiction whereby they were transformed into permanent tenants from temporary tenants and, secondly, since if the purchase price of the temporary tenants was so big that it was not possible for the small tenants to pay that purchase price, again by creating a legal fiction to see that those who were tilling the land for a long time but were not in a position to prove their titles because of certain technical difficulties or because of the absence of supporting documents, or also because of the fact that they were not in a position to exercise their right as a temporary tenant by paying exorbitant prices and purchasing the right in the land; in order to protect these people who, according to the legislation, had the right over the land but were not in a position to exercise that right because the lack of means or title, to that extent this particular Act was meant to be a land reform legislation, though because of certain technical grounds the Supreme Court has ultimately held that it was not a land reform but was a certain other Act. Would that be a correct reading of the situation?

Shri N. C. Chatterjee: With regard to the first part of the question, it is covered by the judgment. Regarding the first part, it is a question of infraction of the fundamental rights and so on and that can be cured by putting it in the Schedule under article 31B. But, in regard to the second part, the State simply stated that there may be difficulties in proving the inception of the tenancy or the duration of the tenancy and, therefore, they are putting it as a matter of evidence. But the question of the hon. Member presupposes lack of ability to pay. There is no evidence placed before the Supreme Court and in fact no argument was propounded that they were resorting to this kind of legal fiction, which means in effect confiscation of bulk, three-fourths of the compensation payable or the purchase price payable, due to paucity of means. That was never put forth at all. This is the first time we are hearing it. The State never made that case. On the other hand, they were always referring to some difficulty of proving the inception of the tenancy or the duration of the tenancy.

Shri Rohit Manushanker Dave: Obviously, the distinction between temporary tenants and permanent tenants is in the matter of compensation. In one case, the quantum of compensation is very high. In another case, the quantum of compensation is fairly low. So apart from the legal aspect, the only real effect of this legislation, if it was a vaild law, would have been that the compensation or purchase price that has to be paid by a temporary tenant would have been the same as compensation which has to be paid by a permanent tenant, because of this legal fiction. So, obviously, the Legislature passed the law with some object in mind; not simply transforming the temporary tenants into permanent tenants for the sake of it. Because of this transfer, it was possible for a large number of tenants to become occupants by paying a lower compensation. It was not passed merely to define technically temporary tenants or permanent tenants.

Shri N. C. Chatterjee: All that I am pointing out is that the State knew that there are both permanent and non-permanent tenants and the Legislature naturally thought, and I submit appropriately thought that there should be two scales of compensation or purchase price payable; permanent tenants must pay less and non-permament tenants, as they are becoming owners, have to pay more. That was the policy which was adopted by the Government. What the Supreme Court has pointed out is, after having said that, you cannot by one stroke of the pen, create an artificial distinction, retrospectively confiscating the purchase price which ought to have been paid. Therefore, you are really doing something which is not warranted by the Constitution

at all. It has nothing to do with land, nothing to do with relief of the small peasant proprietor, nothing to do with agrarian reform but it is confiscation.

Shri Rohit Manushanker Dave: What would be the remedy for the State Legislature? The Legislature originally thinks that, as far as permanent tenants are concerned, let them pay a lower compensation and the temporary tenants may pay a higher compensation. At that time, the Legislature was thinking that if a particular person was actually tilling the land for a particular time, he would be deemed to be a permanent tenant. But, then, it finds that there are some administrative difficulties in proving that some people are permanent tenants.

Chairman: That is a matter for us to consider.

Shri Rohit Manushanker Dave: I am trying to find out from the witness whether at least it was not the intention of the Legislature to make the impunged Act an agrarian Act, a land reform Act, although the Supreme Court has said that it is not so.

Chairman: He has denied that it is an agrarian Act.

Shri N. C. Chatterjee: All that I am respectfully reminding the hon. Member is, the question is whether it comes within entry 18, rights in land or over land, and on that the Supreme Court has clearly stated that there is no question of rights in land or over land, because if it has been so, article 31A would have been applied. Therefore, there is no question of extinguishment, modification or termination of the right.

Shri Rohit Manushanker Dave: So, according to you, because it has ceased to be an Act because of legislative incompetence, there is no sense in including it in Schedule IX?

Shri N. C. Chatterjee: I am not merely saying that there is no sense. If I may quote another distinguished lawyer friend of mine, who is also a Member of Parliament, it is an exercise in futility, a futile exercise of power.

Shri Rohit Manushanker Dave: If it is not an Act at all, its inclusion or non-inclusion according to you will not make any difference. If it is an Act, if it is included in the Ninth Schedule, it will make the legislation protected at least against arguments based on fundamental rights.

Shri N. C. Chatterjee: Of course, if it is an Act. But I make my submission that it is not an Act. The Supreme Court has said so, and I suppose what it says is the law of the land.

Shri Rohit Manushanker Dave: Suppose it is an Act, is there any other argument?

Chairman: He has already taken the view that this Act is beyond the competence of the Bombay Legislature. What is the point in questioning him further?

Shri Vajpayee: What is your view about the inclusion of those Acts whose validity has not been challenged in a court of law and which have not been struck down by any court of law?

Shri N. C. Chatterjee: I have to tell you that I have not studied all the laws. Although I am in the Committee of the Indian Bar Association, to be frank, I had no time to go through all the statutes. As a matter of fact, I have come here only to deal with the small point dealing with the Bombay Act. I do not know anything about the other Acts. Ordinarily, if an Act has been struck down by any court as being repugnant to fundamental rights, there is no sense in including it. Otherwise, whether an unchallenged Act should be included or not is a question for Parliament to decide. It has to decide

whether for greater safety, *ex abundante catela* it has to be put in.

Shri Surendranath Dwivedy: According to the Supreme Court, sections 3, 4 and 6 of the Bombay Act are invalid. So, even if this Act is included in the Ninth Schedule, so far as those sections are concerned, they remain inoperative and any action taken under those sections will be illegal. So, how will it prejudice the case of talukdars if this Act is included in the Schedule?

Chairman: He has explained it by saying that whereas formerly they were entitled to get a higher compensation now they will get only a meagre amount as compensation.

Shri N. C. Chatterjee: As a matter of fact, if sections 3, 4 and 6 go, only the short title and preamble will remain!

Shri Surendranath Dwivedy: I do not know whether Shri Chatterjee can give this information, but I would like to know whether the Bombay Government has passed any other legislation amending this particular section after the judgment of the Supreme Court.

Shri N. C. Chatterjee: No, not at all.

Shri Kashi Ram Gupta: The number of ex-talukdars is given as 11,000. Will the witness be able to let us know how many of them are self-cultivators, how many were cultivating and also giving it to the tillers, and how many are those who are totally non-cultivators?

Shri S. M. Dave: Most of the talukdars, after the Abolition Act came into force, began to personally cultivate. So they are cultivating. But they had tenants and in those cases the purchase price is to be fixed.

Shri Kashi Ram Gupta: How many small talukdars are there who have been cultivating the land themselves formerly, and even now? Yesterday one witness said that there are small talukdars who are cultivators.

Shri S. M. Dave: Yes, I say that all the talukdars are now cultivating. Even the small ones had their tenants and there the question of purchase price comes. Similarly the big ones are also cultivating the lands allowed to them.

Shri Kashi Ram Gupta: You mean to say that all the talukdars were not fully cultivating their lands but only parts?

Shri S. M. Dave: They have been cultivating formerly, and afterwards also, the lands under their cultivation. The small talukdars used to cultivate their lands.

Shri Kashi Ram Gupta: What reasons led the Government to pass the Act of 1958 when the number was so small, both of tillers and talukdars?

Shri S. M. Dave: The number of the talukdars was not small, it was big.

Shri Kashi Ram Gupta: I mean to say tillers—45,000 in comparison to 7 lakhs of land-owners. What reasons led the Government to pass this legislation of 1958?

Shri S. M. Dave: How can I state the reasons? It is very difficult for me to state the reasons, even if I know them.

Shri Kashi Ram Gupta: You are on the spot. You must know the background for bringing this sort of legislation before the Legislature.

Chairman: We will look into the Objects and Reasons.

Shri Kashi Ram Gupta: What is the total area now left to be decided for all these 20,000 cases?

Shri S. M. Dave: I have no statistics about it.

Shri Kashi Ram Gupta: When the compensation has already been paid by the Act of 1958, by validating it in another form will it be possible by law to take back that land of the tillers which has been paid for in excess?

Shri S. M. Dave: If they want they may reopen the question.

Shri Kashi Ram Gupta: What had been the difference between the other land-owners and the talukdars before the tenancy legislation was passed?

Shri S. M. Dave: Before the Tenancy Act was passed there was no difference at all. But before the Talukdari Tenure Abolition Act was passed in 1949 there was a difference that the talukdars enjoyed certain privileges: they had to pay less than full land revenue to the Government, they were full proprietors of the land and they could make non-agricultural use of the land without permission from the Government.

Shri Kashi Ram Gupta: What were the reasons for giving these concessions to the talukdars?

Shri S. M. Dave: The concession was because they were absolute proprietors of the land. The grant was by the British Government. They recognised their absolute proprietorship, and considering that they gave this concession to them.

Shri Kashi Ram Gupta: But other land-owners were also absolute proprietors.

Shri S. M. Dave: In the case of khalsa lands they were of course owners, but they were known as occupants. Suppose they wanted to make non-agricultural use of the land. They had to take permission from the Government. That was not so in the case of the talukdars.

Shri Kashi Ram Gupta: Were there any forest lands there?

Shri S. M. Dave: Actually, in Panchmahals there were some forest lands. Under section 6 of the Talukdari Tenure Abolition Act they all vested in the Government. And the Government has paid compensation, so far as I know, to the ex-tenure-holders.

Shri Kashi Ram Gupta: What is the average land revenue in the talukdari area, per acre?

Shri S. M. Dave: It is from ten annas to Re. 1-4 or Re. 1-8 per acre.

Shri Kashi Ram Gupta: Will you be able to make out a case in future as to what would be the position if this 1958 Act is validated and what will be the difference if the old Act of 1948 remains?

Shri S. M. Dave: That I said already.

Shri Hem Raj: I wanted to know whether the rents charged from permanent and non-permanent tenants were different or the same.

Shri S. M. Dave: From the non-permanent tenant more was charged. For the permanent tenant it could not be changed, because there was a permanent rent and the same rent he used to pay.

Shri Hem Raj: What were the special rights which the permanent tenants had as compared to the non-permanent tenants?

Shri S. M. Dave: The permanent tenants could inherit those lands, sell, transfer or mortgage them. All these rights were there with the permanent tenants.

Shri Hem Raj: You said that the rates of this compensation were not excessive. What will be the ratio of the compensation to the actual produce of the land, per acre?

Shri S. M. Dave: It may not be even one year's produce, less than that in many cases.

Shri Kashi Ram Gupta: May I ask the witness one more question? What is the average holding of a tenant in the talukdari area?

Shri S. M. Dave: It goes from 100 to 150 or 200 acres.

Shri Kashi Ram Gupta: Tenants.

Shri S. M. Dave: Tenants? These the tenants are holding.

Shri Kashi Ram Gupta: And they are cultivating the same area?

Shri S. M. Dave: Yes, and sometimes sub-leasing without letting it known by the Government or any other person.

Shri Hem Raj: The witness has stated that the permanent tenants used to have the lease deeds written. May I know whether those lease deeds remained with the talukdars or with the tenants?

Shri S. M. Dave: You are asking in the case of permanent or non-permanent tenants?

Shri Hem Raj: Both.

Shri S. M. Dave: If permanent tenancy rights were given to tenants they were given by registered documents. So there are registered documents in the registry and in the possession of the tenants as well as in the possession of the ex-talukdar. In cases where the tenancy could not be traced, naturally the leases were not traceable and they became permanent tenants.

Shri Hem Raj: What about non-permanent tenants? With the jagirdars?

Shri S. M. Dave: Not jagirdars but ex-talukdars....

Shri Hem Raj: It remained with you and they had no proof, no lease deed in writing.

Shri S. M. Dave: They had the receipts of rents of the lands leased to by them.

Shri S. D. Patil: Mr. Chatterjee, there is a majority judgment and a minority judgment. Which is considered as the judgment, the majority judgment or the minority judgment? How for is the minority judgment utilised for the purpose of the judgment?

Chairman: That is for you to consider.

Shri S. D. Patil: I am asking him as a jurist, as an experienced person.

Chairman: It is not a question. You may ask some other question. That is for us to consider. Generally the majority judgment is taken into consideration.

Shri N. C. Chatterjee: It is the majority judgment which is binding under the Constitution on all courts and all authorities in India.

Shri S. D. Patil: On page 33 of this printed judgment of Shri Ayyangar, while discussing sections 4 and 6 of this particular Act of 1958 he says:

> "In this connection it has to be noticed that s. 6 does not specify the grounds upon which the tenure-holder might object to a tenant being treated as a permanent tenant and it is on the absence of those provisions that the learned Solicitor-General bases his argument suggesting that the objections of the tenure-holder would extend to disproving that the tenant was a permanent tenant under s. 83 of the Code. It is not possible to accede to this submission."

When the landlords, that is the talukdars, were asked to produce their evidence, how is it that they did not exercise their right under section 6?

Chairman: He has answered that already.

Shri S. M. Dave: It referred to sections 4 and 3 of the impugned Act. Under that section, if the talukdar had to prove that a particular tenant was not there for twelve years, as provided in section 4, then it was said that it was a useless thing.

Chairman: They objected to section 4 and that was why they did not co-operate.

Shri S. D. Patil: Was there no opportunity for the landlords to prove that a particular tenant was not a permanent tenant, and was there also no opportunity for the tenants to prove that they were permanent tenants, earlier than this Act?

Shri S. M. Dave: There was ample opportunity provided to the tenants. I have got records with me.

Chairman: The hon. Member is asking about opportunity for the talukdars.

Shri S. D. Patil: For the talukdars as well as for the tenants. That is, I am referring to opportunity to the tenants to prove that they were permanent tenants and for the talukdar to dispute it.

Shri S. M. Dave: After the Talukdari Tenure Abolition Act, Government ordered fresh records of rights to be prepared in respect of the talukdari lands. At that time, if any tenant came forward and said that he was a permanent tenant, his name was recorded as a permanent tenant in the *kutcha* record of rights. Then, if the talukdar could disprove by leading evidence that he was not a permanent tenant, then only the name was struck off, but otherwise it remained in the register, and he was a permanent tenant. So, the tenant and the talukdar both had ample opportunity, and particularly, the burden of proof was put on the talukdar, and the talukdar had to discharge that burden of proof properly.

Shri N. C. Chatterjee: Thereafter, the record of rights was finalised.

Shri S. D. Patil: Was it the second time that the Bombay Legislature tried to define a permanent tenant by means of this Act?

Shri S. M. Dave: Yes. The records were prepared in 1956. For two and a half years, Government did not think that their record of rights was not correct. This should have been realised when the records were being prepared and were finalised in 1956; the talukdars had not co-operated, and had not produced evidence, and so, the records were not correct. It was only in 1958 just to deprive the talukdars of the compensation, due to some reasons, that they enacted this Act.

Shri S. D. Patil: Has the 1958 Act validated the pending proceedings which might have been there before the courts for settling the price under section 32? Was that Act made applicable to the pending proceedings?

Shri S. M. Dave: They have said nothing about that in that Act. In cases, where the prices were fixed and the orders were made, the Act was actually in force, and it was in operation and there was no difficulty about that.

Shri N. C. Chatterjee: It was made retrospective. Therefore, it would affect also all pending proceedings.

Shri S. D. Patil: Was it open for the Bombay Government to give relief to the tenants, that is, the non-permanent tenants, by bringing down the limit of 20 to 200 multiples of assessment?

Shri S. M. Dave: Yes, the Bombay Tenancy Act provides that if a particular area was considered to be a backward area, then the minima as well as the maxima could both be reduced.

Shri S. D. Patil: What was the position in the talukdari areas? Was this provision applied for the lowering of the minima in those areas?

Shri S. M. Dave: Actually, all the talukdari areas are not backward areas. As I have told you, there are tenants who hold 200 or 300 or 400 acres. Such big tenants are there. In spite of that, Government reduced the maximum from 200 to 100 times.

Shri P. R. Patel: May I know whether it is within the competence of the Supreme Court to revise the judgment some day in the future?

Chairman: They can always do that.

Shri N. C. Chatterjee: They can do that, but they are very reluctant to do it. There is no bar. In fact, they have done it in one or two cases, but that is done by the full court or by a bigger court.

Shri P. R. Patel: In section 83 of the Land Revenue Code, Bombay, the definition of the terms 'permanent tenant' and 'non-permanent tenant' is given. I think that it is within the competence of the State Legislature to amend that section. Do you agree to that?

Shri N. C. Chatterjee: Yes.

Shri P. R. Patel: It is also within the competence of the State Legislature to give a different definition of the term 'permanent tenant' in any special law?

Shri N. C. Chatterjee: Quite so.

Shri P. R. Patel: In this Act, a special definition or a different definition of 'permanent tenant' was given. So, that becomes a procedural matter. Is that not so?

Shri N. C. Chatterjee: The only trouble is this. When there is a subsisting relationship of landlord and tenant, you can do something. But when that relationship is over and there is no question of any landlord-tenant relation, and there are no interests in land subsisting, so far as the ex-talukdars are concerned, I submit that there is no question of having any change in the definition of 'permanent tenant'.

Shri P. R. Patel: The rule of evidence is a rule of procedure and it applies to the cases pending in the court.

Shri N. C. Chatterjee: Quite so.

Shri P. R. Patel: If this rule of procedure, namely the rule of evidence is amended later, would it not apply to pending cases?

Shri N. C. Chatterjee: I think that that is the minority view. The majority has taken a different view. The majority has said that it is not the rule of evidence that we have to look to. What we have got to do is to pierce through the veil, or to lift the disguise or the guise and see what in substance you have done. And when they find that in substance, what you have done is a confiscation of a money claim due to somebody under the statute, they say that you cannot enact it under entry 18, and you cannot enact it as a land legislation.

Shri P. R. Patel: I am not referring to it. Perhaps I have not put my question clearly. Some cases are pending in the court regarding talukdari lands, and the question is whether a tenant is a permanent tenant or a non-permanent tenant. If, during the pendency of the cases, the definition is revised, then it is only a rule of procedure which is revised.

Shri N. C. Chatterjee: Normally, that is so.

Shri P. R. Patel: So, it would apply to pending cases?

Shri N. C. Chatterjee: Normally, yes, unless you make discrimination in which case it will be hit by article 14. Apart from that, the Supreme Court has said that even a procedural law must satisfy the requirements of equality.

Shri P. R. Patel: You have said in your deposition that about 13,000 cases of non-permanent tenants have been settled.

Shri N. C. Chatterjee: That is correct.

Shri P. R. Patel: I want to know whether these 13,000 cases are all about *lal-likhi* lands or whether they relate to some other types of land also.

Shri S. M. Dave: Some are *lal-likhi* lands and some are talukdari lands.

Shri P. R. Patel: What is the number of cases relating to *lal-likhi* lands?

Shri S. M. Dave: I am not in a position to give the figures just now.

Shri P. R. Patel: Can you tell me whether the majority of the cases out of these 13,000 cases relate to *lal-likhi* lands?

Shri S. M. Dave: No, that is not so.

Shri P. R. Patel: You will agree that *lal-likhi* lands are something different from the talukdari lands?

Shri S. M. Dave: They were alienees under the Talukdars, and they had to pay some *judi* to the talukdars. That was the position.

Shri P. R. Patel: Those lands are absolutely not covered by the Talukdari Abolition Act?

Shri S. M. Dave: They are covered by the Abolition of talukdari lands enactment. That is the decision of Government, and they have applied the Talukdari Tenure Abolition Act to these lands also.

Shri P. R. Patel: What was the total income of the taluqdar of Sanad?

Shri S. M. Dave: Nearly Rs. 2 lakhs.

Shri P. R. Patel: Out of this, what were the management charges etc.?

Shri S. M. Dave: I cannot say offhand.

Shri P. R. Patel: What was the net income, whether it exceeded Rs. 1 lakh or was below Rs. 1 lakh?

Shri S. M. Dave: I have to find out and tell you.

Shri P. R. Patel: Under the Talukdari Abolition Act of 1888, am I to know that talukdars were restrained from disturbing the position of tenants?

Shri S. M. Dave: It does not deal with that relationship at all.

Shri P. R. Patel: You could get the information from your clients.

Shri S. M. Dave: I know the law. That was not the position at all.

Shri P. R. Patel: You just consult your clients. Are you prepared to consult your clients on this point?

Shri S. M. Dave: I know it definitely.

Shri P. R. Patel: You are not prepared to consult your clients on this.

Shri S. M. Dave: I am prepared to consult my clients, but on what?

Shri P. R. Patel: That the talukdars were not permitted to disturb the position of tenants, whether permanent or non-permanent.

Shri S. M. Dave: My clients say that that was not the position. If there were non-permanent tenants, they could take back the land; as regards permanent tenants, they could not take it back.

Shri P. R. Patel: Were the talukdars permitted to enhance the rent?

Shri S. M. Dave: Yes, in the case of non-permanent tenants.

Shri P. R. Patel: Under what rule?

Shri S. M. Dave: Because they were landlords and the provisions of the Transfer of Property Act and other Acts applied. So they could ask the tenants to pay increased rent if they wanted to continue as tenants. There was no special law in that regard.

My clients say that they had leases in which it was said that the rent could be increased and they were tenants at will.

Shri P. R. Patel: In how many acres was the rent below Re. 1, and above Re. 1, that is, Rs. 1-8 and Rs. 2?

Shri S. M. Dave: I have not got the figures with me.

Shri P. R. Patel: Can you give even one instance where the rent was more than Rs. 2 per acre?

Shri S. M. Dave: Not just now. I can supply the information if the Committee wants it.

Shri P. R. Patel: Looking to the net income and the fact that this Act is to help the tillers of the soil, will you please tell me what the interest on Rs. 1 lakh at 6 per cent would be?

Shri S. M. Dave: That is not the way of calculation. It is a question of proprietory rights.

Shri P. R. Patel: Am I to understand that this land reform does injustice to the agriculturists more than justice?

Shri S. M. Dave: No, it is injustice done to the talukdars.

श्री विभूति मिश्र : क्या ताल्लुकेदारों के पास एकाउंट बुक्स थीं, उन में सारा हिसाब किताब सहा सही लिखा हुआ था ?

श्री एस० एम० दवे : जी हां ।

श्री विभूति मिश्र : जब उनके पास एकाउंट बुक्स थीं, तो उनको यह जिम्मेदारी थी कि वे ट्रिब्यूनल को उनको दिखाते और कहते कि किस तरह की जमीन किस के पास है । मैं जानना चाहता हूं कि इन एकाउंट बुक्स को क्यों नहीं दिखाया गया ?

Shri S. M. Dave: I said they were shown. कब्जा लेना चाहते थे । They wanted to take possession of it.

श्री विभूति मिश्र : आपने कहा था कि हमने नहीं दिखाई थीं ।

श्री एस० एम० दवे : दिखाई थीं ।

श्री विभूति मिश्र : कौन जमीन किस के पास है, इसका दूसरा रिकार्ड आपके पास नहीं था । सिर्फ एकाउंट बुक्स ही थीं । जितना पैसा आप लेते थे, क्या वह एकाउंट बुक्स में सही लिखते थे ?

श्री एस० एम० दवे : जी हां ।

श्री विभूति मिश्र : तब आपने क्यों नहीं गवर्नमेंट को उनको दिया ?

Shri S. M. Dave: Government wanted to take possession of these records, they wanted to have them. They wanted to deprive us of these records. So we did not; otherwise we showed them to the officers. It was necessary for evidence purposes. On the basis of the records, the rights were prepared by the Government.

श्री विभूति मिश्र : क्या यह सही है कि गवर्नमेंट इसलिए पोजेशन में लेना चाहती थी ताकि सारी चीज को मालूम करके किसानों का जो उचित पोजेशन है, उसको बतावे ?

Shri S. M. Dave: No.

श्री विभूति मिश्र : जमींदारी ताल्लुकेदारी एसोसिएशन में कितने परमानेंट और कितने नान-परमानेंट टेनेंट हैं ?

Shri S. M. Dave: The figures have to be gathered and then we can supply.

श्री विभूति मिश्र : नान-परमानेंट टेनेंट अधिक से अधिक कितनी जमीन जोतते हैं और कम से कम कितनी जमीन जोतते हैं ?

Shri S. M. Dave: Non-permanent tenants, 300, 400 and 200 acres. Permanent tenants were very few; in some

cases there were big permanent tenants also. In their case, the holding was a little less than that of non-permanent tenants.

श्री विभूति मिश्र : नान-परमानेंट टेनेंट्स की पर एकड़ जमीन की क्या कीमत है ?

Shri S. M. Dave: Non-permanent tenants—from Rs. 300 to 400 to nearly Rs. 1000 per acre.

श्री विभूति मिश्र : नान-परमानेंट टेनेंट कितने हैं जो बीस गुना तक दे सकते हैं और कितने हैं जो दो सौ गुना तक आपको कम्पेंसेशन दे सकते हैं ?

Shri S. M. Dave: Generally so far as I know, the tenants are prosperous. Their condition is very good. They can pay the amount of compensation.

श्री विभूति मिश्र : चार गुना और छः गुना के मुताबिक कितना मुआवजा होगा और दो सौ गुना के मुताबिक कितना होगा ?

Shri S. M. Dave: I cannot say.

श्री विभूति मिश्र : टेनेंट जो मुआवजा देना चाहते हैं वह आपके मुताबिक कितना होगा और जो आप उनको देने के लिये कहते हैं, वह कितना होगा ?

Shri S. M. Dave: I am sorry I cannot give it.

श्री विभूति मिश्र : क्या आपको यह मालूम है कि बिहार, बंगाल, उड़ीसा और असम में आक्युपेंसी टेनेंट्स के अन्दर जो सब-टेनेंट्स होते थे, उनको बारह बरस के बाद आक्युपेंसी के राइट मिल जाते थे ?

Shri N. C. Chatterjee: At first, it was not so. Ultimately, they were given occupancy rights.

श्री विभूति मिश्र : कब दिये गये ?

Shri N. C. Chatterjee: It was some years back. I cannot give the date.

श्री विभूति मिश्र : क्या आपको यह भी मालूम है कि बिहार, बंगाल, असम और उड़ीसा में किसान जो खेत में पेड़ भी लगाता था, उसका भी आधा उसको जमींदार को देना पड़ता था ।

Shri N. C. Chatterjee: I do not know whether the analogy exactly fits in here. The position was different so far as Bengal and Bihar were concerned.

श्री विभूति मिश्र : क्या यह सही नहीं है कि जब महात्मा गांधी चम्पारन में गये थे उस वक्त सर्वे करके रिकार्ड में यह दर्ज करा दिया गया था कि किसान को तीन कट्ठ में नील की खेती करनी होगी और उसके लिये मुआवजा अंग्रेज सरकार ने लिया ?

Shri N. C. Chatterjee: The indigo farmers were dishonest. But I think....

श्री विभूति मिश्र : क्या यह सही नहीं है कि उस समय की सरकार ने, अंग्रेज सरकार ने कमिशन बहाल करके उस में गांधी जी को रखकर, किसानों को उनके हक दिलाये ?

क्या यह विधान में नहीं है कि सोशल जस्टिस, इक्वेलिटी और फ्रेटर्निटी को ध्यान में रखते हुए हमें काम करना चाहिये और इस चीज को ध्यान में रखते हुए क्या इस एक्ट को एमेंड करने की जरूरत नहीं है ?

मेरे इन सवालों का कोई जवाब नहीं दिया गया है । मैं एक दूसरा सवाल पूछना चाहता हूं । आपने अपने मैमोरेंडम में बताया है कि तेरह हजार किसान हैं । आपने यह भी बताया है कि सारे किसानों के मामले तय हो गये हैं, थोड़े से आदमियों के बाकी हैं । क्या मैं जान सकता हूं कि थोड़े से कितने हैं ?

Shri S. M. Dave: Twenty thousand cases, less than half.

श्री विभूति मिश्र: आपने कहा है कि सारे किसानों के मामले तय हो गये हैं और आपको मुआवजा मिल गया है । अब तक कितना मुआवजा आपको मिला है ?

Shri S. M. Dave: In some cases where the tenants were permanent, six times the assessment. The total figure I cannot supply.

श्री विभूति मिश्र : टोटल मैं जानना चाहता हूं ।

Shri S. M. Dave: Not just now.

श्री विभूति मिश्र : क्या ताल्लुकेदार एसोसियेशन हम को ये फिगर्ज दे सकता है कि कितना मुआवजा आपने ले लिया है ? कमेटी यह जानना चाहेगी ।

Shri S. M. Dave: I do not know what amount they have recovered. I am not in possession of the figures. The Gujarat Government has got the figures, they can supply.

Chairman: He wants to know whether you can supply.

Shri S. M. Dave: Just now we have not got. We have to move from village to village and from person to person, and then only find out. The Government has appointed tribunals, and they get returns every month and every week.

श्री विभूति मिश्र : क्या आप बाद में बता सकेंगे ?

Chairman: He has said it is difficult.

श्री विभूति मिश्र : इन्होंने लिखा है कि हमारे मामले तय हो गये हैं, थोड़े से आदमियों के मामले बाकी हैं । हम को जो मुआवजा पाना था वह ले लिया है । इनको मालूम है कि अब तक कितना लिया है । गवर्नमेंट की बात अलग है । इन्होंने कितना ले लिया है ?

Shri S. M. Dave: It is for the tribunals to decide the compensation according to productivity, fertility of the land etc.

श्री विभूति मिश्र : कितने किसानों के मामले अभी अटके हुए हैं और उन से कितना मुआवजा आप चाहते हैं ? ट्रिब्यूनल के पास कितने केसिस पेंडिंग हैं और कितना मुआवजा आप लेना चाहते हैं ?

Shri S. M. Dave: There are so many talukdars. They have to be consulted. Without that I cannot reply.

Shri Bibhuti Mishra: You are appearing here on behalf of the Talukdars' Association.

Shri S. M. Dave: They say from 20 to 100 times in backward areas, and from 20 to 200 times in other areas. That is what they want.

Shri Kasliwal: Shri Chatterjee said that if an Act was not struck down by any court, it was not necessary to include it in the amending Bill. He has also been arguing that if an Act is struck down, it is not desirable to include it. Then which Act is to be included?

Shri N. C. Chatterjee: I have not studied all the Acts. I have come here only with reference to one Act which has been struck down. Shri Vajpayee put a general question whether it was desirable to include in the schedule any Act which has not yet been struck down by a court as unconstitutional, and I replied ordinarily it should not be done, but it is a question of policy for Parliament to decide.

Shri Kasliwal: The representation is by R. D. Singh. I believe he is a talukdar of Sanand.

Shri S. M. Dave: He is the son of the talukdar.

Shri Kasliwal: How much land is in the possession of the Talukdar of Sanand now?

Shri S. M. Dave: There is no land in the possession of the Talukdar except the land which he is personally cultivating. His son is cultivating 80 to 100 acres personally, and he himself is cultivating 300 to 400 acres personally.

Shri Kasliwal: How much compensation have they received?

Shri S. M. Dave: Because of the litigation in the Supreme Court, he has not received any compensation.

Shri Kasliwal: But the land continues in the possession of the tenants?

Shri S. M. Dave: Yes, they are cultivating it, paying no rent to him.

Shri Kasliwal: Besides him, to how many other big talukdars are you adviser? You can give me the names of some big talukdars who are cultivating their own lands.

Shri S. M. Dave: I am advising the Association as such. There is the Thakur Saheb of Gangur, for instance, who has only 18 acres of land under personal cultivation. All the rest of his lands are in the possession of the tenants.

Shri Kasliwal: Has he received any compensation or not?

Shri S. M. Dave: He has got compensation in respect of 150 of his tenants, at the rate of 35 to 45 times the assessment of the land.

Shri Kasliwal: Have you got any personal knowledge about the affairs of any other talukdar?

Shri S. M. Dave: No.

Shri Radhelal Vyas: Before the tenancy reforms were introduced, was any committee appointed by Government to enquire into the conditions of the talukdars and tenants?

Shri S. M. Dave: No such committee was appointed by Government to my knowledge.

Shri Radhelal Vyas: I think it is correct to say that the settlement is on the ryotwari system in Gujarat.

Shri S. M. Dave: The settlement was in respect of ryotwari lands and also talukdari lands.

Shri Radhelal Vyas: Was it done by the State or the talukdars were empowered to make it?

Shri S. M. Dave: It was done by the State by their officers, and the expenses were also borne by the State.

Shri Radhelal Vyas: Are the records of rights kept annually in every village?

Shri S. M. Dave: The records of rights were only prepared in 1954-55 after the abolition of talukdaris. They are in the possession of Government officers. If there are any changes, they are recorded in those records of rights. There are no annual records. Only changes are recorded.

Shri Radhelal Vyas: Whose duty is it to maintain the records?

Shri S. M. Dave: It is the duty of the Government. The records are with the Government, and they are recorded by the Government.

Shri Radhelal Vyas: Is there any report submitted to the Government or any record which gives the figures of the talukdars, the number of their tenants, etc. You must have those records.

Shri S. M. Dave: Government has got all these records.

Shri Radhelal Vyas: Was it obligatory on the part of talukdars to let out land only on a lease deed?

Shri S. M. Dave: No; it was not obligatory; but just to maintain a record and just to show that a particular tenant held the land, they had got the lease deeds executed; otherwise it was not necessary. In many cases of small talukdars, they could not maintain these deeds.

Shri Radhelal Vyas: Not only in many cases but in the majority of cases there were no lease deeds. Is it correct?

Shri S. M. Dave: I do not think it is correct.

Shri Radhelal Vyas: What about the receipts? Was it obligatory under the law to pass a receipt for the rent received by the talukdars?

Shri S. M. Dave: I cannot say but I think receipts were passed for rents received.

Shri Joseph Mathen: We have heard the views of Mr. Chatterjee with regard to the legal aspect. Considering the responsibility of the legislators, has he given consideration to the moral aspects? Would he agree with regard to the moral aspect of the question considering the policy that we have accepted.

Chairman: He has come here as a lawyer.

Shri N. C. Chatterjee: As you know it is the question of power and not of anything else. I have dealt with that aspect. I am quite sure the legislature had taken into account the other aspects. Besides, the Supreme Court Bar Association and other Associations have taken into account the question of propriety as well. Will it be right for Parliament supposing that it has the power, to allow such confiscatory legislation to be validated in this fashion.

Shri Joseph Mathen: Considering all these aspects, if we take some measures in order to overcome the legal difficulties, will it be considered moral by the party concerned?

Shri N. C. Chatterjee: Will it still not be constitutionally improper? Lakhs of people have submitted to this. Why should they be penalised?

Shri L. D. Kotoki: There are 20,000 tenants who come under the purview of the 1958 Act. How many are permanent tenants and how many non-permanent tenants? Can you give us the break up of the length of the tenancy of non permanent and permanent tenants, if not now at least sometime later?

Shri S. M. Dave: It is not possible for me to give that information. The records of most of these things are with the Government and you can easily get these from them.

Shri Nafisul Hasan: Can a non-permanent tenant be ejected without intervention by any officer of the Government?

Shri S. M. Dave: The Bombay Tenancy Act of 1939 provided that no tenant could be evicted without some formalities; it also provided the rent payable. Persons who violated these would be penalised. The talukdar could not eject a tenant without giving the non-permanent tenant three months notice. If he wants possession on 31st March, he should give notice before 31st December. If the land is not handed over after that period, then he has to go to a court of law and initiate proceedings.

Shri Nafisul Hasan: That is to say, they were tenants at will and certain procedures had to be adopted for ejecting them. Is there any provision for payment of compensation in instalments in the Bombay Act?

Shri S. M. Dave: The Bombay Act only provided that on payment of six times the assessment as compensation, the permanent tenant became occupants: that was the position sought to be created by that enactment.

Shri Nafisul Hasan: The Bombay Act has been struck down for two defects: it contravenes Fundamental Rights and secondly the Bombay legislature is incompetent to pass that law because it dealt with relationship between debtor and creditor. That is the Judgement of the Supreme Court. If the proposal to include it in the Schedule is given effect to, only the first defect is cured and not the second.

Shri N. C. Chatterjee: Only one defect can be cured, not the other That is why I say that it is still vulnerable.

Shri Nafisul Hasan: If Parliament passes a law giving relief to these people because the relationship of debtor-creditor is determined by law passed by Parliament?

Shri N. C. Chatterjee: I have told you that it will be a different law; not this thing.

Shri Nafisul Hasan: If Parliament wants to give effect to the objects of that Act....

Shri N. C. Chatterjee: I have given my views to the effect that the residuary powers cannot mean validation of a void statute.

Shri Nafisul Hasan: A new Act will have to be passed.

Chairman: It is for Parliament to consider.

Shri N. C. Chatterjee: If you show me the Bill, I will give my honest advice.

Shr J. R. Mehta: We have been told that the scale of compensation payable to the so-called non-payment tenants varies between 20 and 200 times the assessment. May I know what is the minimum allowed in a particular case and what is the maximum allowed in the cases already decided?

Shri S. M. Dave: The minimum in the case of the ex-talukdar is has been 20 times the assessment, in two or three cases which they have recently decided. In the other cases, it is from 50 to 60 times.

Shri J. R. Mehta: Am I correct in saying that besides the talukdari tenure, there were other intermediaries and various sections in the States? What was the scale of compensation allowed to them?

Shri S. M. Dave: Under the Abolition Act which applied to the State of Bombay, the tenant's position was the same. The inamdari tenure had been abolished, and the inamdars became the occupants and they remained as tenants. In their case, up to 200 times' compensation has been awarded and they have not been included in the impugned Act.

Shri J. R. Mehta: You said that 13,000 cases of these non-permanent tenants have already been decided and that mostly compensation has been paid. What will be the position if

the Act is validated? How will they be affected?

Shri S. M. Dave: It is very difficult to say.

Shri J. R. Mehta: Shri Chatterjee may reply to it.

Shri N. C. Chatterjee: I think that if it is made retro-active, there will be great difficulty. They will have to be readjusted on that basis, and they will have to pay back.

श्री पंजहजारी : चटर्जी साहब जैसे जूरिस्ट क्या बतला सकेंगे कि अगर बाम्बे ऐक्ट में ९वें शेड्यूल को इन्क्लूड कर दिया जाये तो उसके बाद क्या सुप्रीम कोर्ट में उसे आप सक्सेसफुली चैलेन्ज कर सकेंगे ?

श्री चटर्जी : चैलेन्ज चलेगा ।

श्री पंजहजारी : किसी कंट्री में जहां रिटेन कांस्टिट्यूशन नहीं है क्या इस बिना पर कोई बिल रिजेक्ट कर दिया गया है कि वह कांस्टिट्यूशन के खिलाफ है ?

Shri N. C. Chatterjee: No. So far as my knowledge goes—I am speaking subject to correction—no Constituent Assembly or Parliament has ever tried to validate a colourable legislation which has been declared as such by the courts.

श्री पंजहजारी : क्या दवे साहब यह बतला सकेंगे कि सारन एस्टेट में कितने परमनेंट टेनेंट्स हैं और कितने नान-परमनेंट टेनेंट्स हैं ?

Shri S. M. Dave: I said I could supply it.

Sardar Raghbir Singh Panjhazari: The representatives of the landlords are sitting here. In only one State the land is there, and he can inquire from them and he can explain.

Shri S. M. Dave: He says his father is managing the estate and he can get the figures. He has not got the figures just now.

श्री पंजहजारी : क्या आप यह बतला सकेंगे कि सन् १९४९ के बाद कितने टेनेंट्स जमीन के मालिक बन चुके हैं ?

Shri S. M. Dave: All of them have become owners of land.

श्री पंजहजारी : उन्होंने कम्पेन्सेशन ले लिया ।

Shri S. M. Dave: They have not taken the compensation. The tenants have become the owners of the land.

श्री पंजहजारी : मैं चेयरमैन साहब से यह अर्ज करूंगा कि कल जो साहबान आये थे उन्होंने यह कहा था कि बहुत कम लोग लैंड ओनर्स हो सके हैं, बहुत से केसेज बाकी हैं । लेकिन यह साहबान कहते हैं कि सब के सब लैंड ओनर्स हो गये हैं । इसलिये मैं चाहता हूं कि गुजरात के रिप्रेजेन्टेटिव्ज को बुला लिया जाय ।

Shri N. C. Chatterjee: I pointed out that the Supreme Court has decided that they have all become owners. There is no interest left at all.

Shri P. R. Patel: Democratic countries have constitutions. I would like to know whether any Act later on passed and challenged and found to be against the Constitution has again been included in the statute.

Shri N. C. Chatterjee: Not as a colourable one.

Shri P. R. Patel: I mean any Act that has been challenged, any of the section found to be *ultra vires* of the Constitution.

Shri N. C. Chatterjee: For instance, I challenged the Assam Taxation Inquiry Act in the Supreme Court as being *ultra vires* and it was held to be void, because the President's sanction had not been taken.

Shri P. R. Patel: I want to know of instances if any from other democratic countries.

Shri N. C. Chatterjee: As I told you, nowhere has any statute which has been declared colourable, been included again.

Chairman: You cannot expect any other answer from him.

श्री रामसेवक यादव : आज दवे साहब ने बतलाया कि कोई ठाकुर साहब हैं जिनके पास केवल १८ एकड़ जमीन है। मैं जानना चाहता हूं कि उनके परिवार में कितने लोग हैं, और क्या उन के परिवार के लोगों के पास अलग अलग जमीनें हैं।

श्री विभूति मिश्र : बेनामी कितने हैं ?

Shri S. M. Dave: Only two brothers. To one of them he has given 65 acres of land and the other brother is holding 70 acres of land. He has got 80 acres.

श्री रामसेवक यादव : क्या उन के कुछ और नजदीक के रिश्तेदार हैं जिनको जमीनें दी गई हैं ?

Shri S. M. Dave: He has not given land to any of his nearer relations.

श्री पंजहजारी : सारन एस्टेट में कितने लोगों को बेदखल किया गया ?

Shri S. M. Dave: No tenant has been ejected—no non-permanent tenant—in the last sixty years.

Now, I want to bring to the notice of the Committee that so far as the validation of this Act is concerned, the Maharashtra Government has opposed it and said that it was the Bombay legislation, and the Maharashtra Government has stated that they would not like this Act to be validated since the Supreme Court has held it to be a piece of colourable legislation. Secondly, lakhs of tenants are affected in Maharashtra.

Then, the particular objection to this validation is that when seven lakhs of cases have been decided, following the definition of permanent tenant under section 83 of the Bombay Code, why a small class in whose case the number comes to only 20,000 should be discriminated against. If they had passed this legislation with the new definition affecting all the tenants, they could have understood the position, with the amendment of the definition as such of the permanent tenant, but only these people are being singled out for reasons which it is not possible to express. So, I request that this question may be considered; reprospectively these people should not be unnecessarily affected.

Shri Bibudhendra Misra: I think there is no talukdari land in Maharashtra.

Shri S. M. Dave: I do not know; perhaps not. But there are tenures.

Chairman: Thank you very much. We meet again at 3-30 p.m. today.

(The witnesses then withdrew)

(The Joint Committee then adjourned to meet again at 15.30 hours).

(The Joint Committee reassembled at 15.35 hours)

II. All-India Supari Federation, Koppa-Kadur (Mysore).

Spokesmen:

1. Shri Bhima Bhat.
2. Shri B. V. Hanumantha Rao.
3. Shri Bhoopolam R. Chandreshekharaiah.

(Witnesses were called in and they took their seats).

Chairman: Gentlemen, your memorandum has been distributed among the Members of the Committee. If there are any points which you want to emphasise or supplement, you may do so.

Shri A. Bhima Bhat: Mr. Chairman and hon. Members of the Committee, on behalf of the All India Supari Federation, I may be permited to place the following points before the Committee. In the statement of objects and reasons of the Constitution (Seventeenth Amendment) Bill, it is stated that the Kerala Agrarian Relations Act, 1961 was struck down by the Supreme Court in its application to ryotwari lands and therefore, it is proposed to amend the definition of the word 'estate' in article 31A of the Constitution by including therein all lands held under ryotwari settlement and also to amend the Ninth Schedule by including therein State enactments relating to land reform. The effect of these amendments will be that the agriculturists, including those who are to be conferred ownership of lands will be denied the guarantee of equality before law and no land Act, however oppressive it be, can be touched by a court of law nor injury caused thereby, however grave, ever be redressed.

One of the objects of land reform is to abolish intermediaries. Ryotwari-holders, unlike zamindaris, inamdaris or jagirs, are not intermediaries. To call ryotwari an estate is a contradiction in terms. When article 31A was inserted by the first amendment for the acqulsition of estates, Dr. Ambedkar, the then Law Minister, expressly gave an assurance that it was applicable only to zamindaris and other intermediary tenures where the landlord did not have the right to cultivate the land. He categorically stated that there was no intention on the part of the Government that the provisions of article 31A were to be employed for dispossessing ryotwari holders. Abolition of intermediaries has already been achieved by introducing article 31A.

Another object of land reforms is to secure social justice. To deprive one's land and giving it to another is not social justice. The objectives of land reforms, like any other objective must be achieved by fair and just means. The Supreme Court has nowhere laid down that imposition of land ceilings, and conferment of ownership rights on tenants cannot be done without violating the fundamental rights. By reason of the amended clause (2) of article 31, the question of compensation is also made non-justiciable. For example, nobody has challenged the Madras Act though it was enforced after the Supreme Court judgement. Social justice can be achieved without depriving the courts powers to review the legislations.

Another object is to give security of tenure so as to make the tiller the owner of the soil, so that he may have an incentive to produce more. The slogan of land to the tiller was intended to apply only to zamindaris and not to ryotwari lands. The object of the present amendment is to usher in the present land reform policy. Later on a Government even with a majority of one can enact any arbitrary measure without any fear of judicial review since that is barred by this amendment. So, there is no security for those who will now get ownership of lands and they will not think of making investments on agriculture. So, there will be no increased production. Production will go down due to fragmentation and uneconomic holdings. Production has gone down after the land reforms during the last 12 years. The review of the Third Five Year Plan by the Planning Commission shows that there has been no increase in agricultural production or improvement in economy because of lags in production.

None of the land reform legislations have made any provision to ensure efficient farming. Those to whom land

is distributed have no obligation to cultivate efficiently. Such gifts unencumbered by any duty will not advance the interest of the nation.

A perusal of chapter XIV of the third Five Year Plan will show that the ulterior object of these land reforms is to impose cooperative farming. I am quoting from there.

> "It was realised that with the existing pattern of distribution of agricultural holdings and the predominance of small farms, redistribution of land in excess of any given level of ceiling was not likely to make available any large results in the shape of surplus land for distribution. It was considered, however, that such a reduction in disparities was a necessary condition for building up a progressive cooperative rural economy."

The Planning Commission are aware that fragmentation of holdings will not help the development of agriculture or its production. They are also aware that much land will not be available for redistribution among the landless tillers. They want to confer ownership on as many people as possible to get an immediate support for the present step in land reform programmes. Once distribution of land takes place and the holdings are reduced to small holdings, it is not difficult later to introduce the so-called voluntary cooperative or collective farming. By force of circumstances, the petty peasant proprietors will have to join cooperative farming, which has been a failure in Russia, China and even India.

By depriving the courts of their power to scrutinise the validity of any law relating to land, the Government intends to have all powers —legislative, executive and judicial— which is precisely what a despotic Government is. This is not what we fought for.

The inclusion of so many Acts in the Ninth Schedule shows that the State Governments are conscious of their arbitrary legislations to give them a blanket cover for their arbitrary legislations. Some other Acts which have nothing to do with land reforms are also included here, as for example, the Mysore Village Offices Abolition Act, 1962.

Shri B. V. Hanumantha Rao: Hon'ble Chairman and Members of the Joint Committee on the Constitution (Seventeenth Amendment) Bill:

I fully endorse the opinion expressed by Shri A. Bhima Bhat, Vice-President of the All-India Supari Federation.

As a farmer cultivating land personally I beg to place these few points for the kind consideration of this Committee.

We, the farmers as also the tenants, are anxious that there must be some finality reached soon with respect to land reform Acts. Therefore, we are not opposed to progressive land reforms. All that we beg to represent is that the fundamental rights guaranteed under the Constitution be retained so that the directions of the Central Government and the Planning Commission may be followed by the States and there might be uniformity in the matter of legislation. To give an example, the Planning Commission had asked all the State Governments to treat areca and pepper gardens in the same category of plantation crops. Madras State has followed it but not in Kerala and Mysore. When the Kerala Land Reform Act came up before the Supreme Court they referred to the Planning Commission's Report and based on that report they have held areca and pepper gardens as plantations. This is a clear instance where the farmers could

approach the judiciary with a view to see that the directions of the Central Government are adhered to by the States in such important matters.

As regards other items in the land reform Act, we beg to state that there ought to be uniformity in the matter of ceiling, fair rent, resumptions etc., and this uniformity cannot be brought about unless the Central Government intervenes. That means the retention of the fundamental rights and retention of the right to move the judiciary for redress of grievances.

I shall now give the items. In Mysore the ceiling is 18 standard acres, in Madras it is 30 standard acres and in Andhra it is 30 standard acres. Standard acre is based on assessment in Madras State. But in Mysore in respect of irrigated or unirrigated first-class land, it is difficult to determine and it takes more time. Fair rent is 40 per cent in the case of wet lands, 35 per cent in the case of land assisted by lift irrigation and 33-1|3 per cent in the case of others. In Mysore it is one-fourth or one-fifth of the gross produce. In the case of areca gardens there is very heavy investment and fair rent in such cases must be at least 35 per cent. There should be provision for resuming land up to the ceiling limit and also to continue tenancy in such circumstances.

I beg to submit, Sir, these points for your consideration. Unless there is a judicial review justice may be denied. The Constitution (Seventeenth Amendment) Bill will deny such a judicial review to the peasant proprietors. Therefore, it must be withdrawn or suitably amended so as to allow the ryotwari holders the fundamental rights guaranteed under the Constitution.

Sir, we are grateful to the hon. Chairman and members of the Joint Committee for giving us this opportunity.

Shri Chandrasekharaiah: The abolition of Estates, *viz.*, zamindaris, jagirs, inam, maafi and such other category of alienated land was effected by the first and fourth amendments to the Constitution and all agricultural land holdings in all the States are now fully under ryotwari settlement. In land holdings under ryotwari settlement the owner of the land (called Pattadar or Khatadar) pays land revenue direct to Government without any concessions whatsoever and he is entitled to hold the land subject to his payment of the land revenue fixed on that land. In the case of the zamindari and jagiri estates the owners of the land holdings (khatedars or pattadars) were paying land revenue to the zamindars or jagirdars, who in turn were paying only a certain portion of the land revenue so collected, to Government. These estates have all been abolished, the zamindari settlement (estates) is at an end. The owner of the land holding is in direct relationship with Government. Hence it is submitted that all agricultural land is now under ryotwari settlement.

The Seventeenth Amendment seeks to abolish all fundamental rights with respect to all agricultural land holdings in India. In the Seventeenth Amendment Bill any land held under ryotwari settlement and any land held or let for purposes ancillary thereto have been included in the expression "estate" occurring in clause 2(a) of Article 31A of the Constitution. Hence such of the fundamental rights as were abrogated with respect to zamindari estates by virtue of article 31A and 31B will now stand abrogated with respect to lands held under ryotwari settlement which means all the agricultural holdings in all the States and centrally administered areas in India. The Seventeenth Amendment seeks to abolish all fundamental rights with respect to all agricultural land holdings in India for purposes of acquisition by the State.

Now, this is how article 31A will read after the seventeenth amendment:

"Notwithstanding anying contained in article 13, no law providing for the acquisition by the State of any land held under ryotwari settlement or any land held or let for purpose of agriculture or for purposes ancillary thereto (including sites of buildings and structures occupied by cultivators, agricultural labourers and artisans) shall be deemed to be void on the ground that it is inconsistent with, or takes away, or abridges any of the rights, conferred by article 14, article 19 and article 31."

Now, what is a State? The State includes local bodies and co-operatives. That is the interpretation. In Part III of the Constitution article 12 "The State" is defined to include Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Hence by suitable laws made by any State and assented to by the President (31A proviso) even local bodies such as village panchayats and taluk boards and co-operative farms can be empowered to acquire ryotwari lands, sites and structures and such acquisition cannot be questioned on the ground of it being violative of the fundamental rights guaranteed under the Constitution after the 17th Amendment is passed.

Even the rights of tenants can be extinguished in ryotwari lands by virtue of the seventeenth amendment. Since in article 31A(b) the expression rights in relation to an estate (ryotwari land as per 17th amendment) is defined, any rights vesting in a proprietor as also in a raiyat or under raiyat (a tenant) can be acquired, extinguished or modified by the State (which is defined to include local or other authorities) in ryotwari lands after the 17th amendment.

Now, I beg to place the farmers' apprehensions concerning the consequences of the 17th amendment. The first is that the guarantee of fundamental rights is taken away. Article 13 lays down that all laws, ordinances, orders, byelaws etc., that are inconsistent with or in derogation of the fundamental rights shall be void. This guarantee is now taken away.

Hereafter discrimination will be the rule and rural tranquillity may be disturbed. Article 14 guaranteed equality before the law and equal protection of the laws within the territory of India. After the 17th amendment, throughout the territory of India there will neither be equality before the law or equal protection of the laws with respect to ryotwari lands and farm houses. Discrimination will be the rule and can be practised even through the bye-laws of village panchayats and co-operative farms. Rural tranquillity may be disturbed, thanks to discriminating laws and bye-laws since it is likely that such discrimination will take a political turn.

And, there would be no freedom to own landed property. Article 19 guaranteed to all citizens the rights to acquire, hold and dispose of property subject to reasonable restrictions in the interests of general public. After the 17th amendment this right is taken away and even if unreasonable restrictions are imposed with respect to ownership, enjoyment and disposal of ryotwari lands or farm houses (labourers' quarters) and even if it be against public interests to do so such restrictions can no longer be questioned in any court of law.

Even if compulsory acquisition of ryotwari land takes place without compensation and without public purpose, that cannot be questioned. Article 31 guaranteed that no property shall be compulsorily acquired save for a public purpose and save by authority of a law which provides for compensation for the property so acquired. After the 17th amendment any ryotwari land and farm house or lab-

ourer's hut may be acquired by the State which includes panchayats and co-operatives, even without a public purpose and without payment of any compensation whatsoever. All that is required is that law concerned receives the assent of the President. This interpretation arises from the language used in article 31A.

It says:

> "No law providing for acquisition by the State of any ryotwari land or farm house (17th Amendment) shall be deemed to be void on the ground that it is inconsistent with article 31 provided that such law has received the President's assent."

It is most respectfully submitted that the 17th amendment is not in consonance with the preamble and article 32 of the Constitution. According to the preamble to the Constitution, the Constitution was enacted by a solemn resolution of the people of India in order to constitute India into a Sovereign Democratic Republic and to secure to all citizens of India, Justice, Social, Economic and Political and Equality of status and of opportunity and Liberty. The fundamental rights were enshrined in the Constitution with a view to secure Justice, Equality and Liberty to all citizens as proclaimed in the preamble. The right to move the Supreme Court and High Courts for the enforcement of Fundamental Rights enshrined in the Constitution is guaranteed by Article 32 of the Constitution. That is now being taken away. The powers of Parliament to amend the Constitution are circumscribed by the objects and the principles proclaimed in the preamble to the Constitution and the Fundamental Rights guaranteed under the Constitution. The Seventeenth Amendment is *ab initio* void. The Land Reform Acts struck down by the Supreme Court must be amended to be in conformity with Fundamental Rights and not saved by abrogation of Fundamental Rights through the seventeenth amendment. The results of enforcing ryotwari land reform Acts by abrogation of fundamental rights may be predicted as follows: (a) uprootment of tenants, (b) economic ruination of land holders, (c) fall in production, (d) widespread corruption, (e) wasteful administrative expenditure and (f) financial burdens on the State. Even if the objective of land reforms is to promote co-operative farms, let it be under the rule of law, based on fundamental rights. The opposite method may be termed as Stalinist method. Stalin destroyed 20 million peasants to enforce the co-operative farms in Russia.

Stalinism has been rejected in Russia under the great leader Khrushchev, but China still adheres to Stalinism. In the present emergency due to Chinese aggression and Pakistani support thereto, it is to be remembered that what is being defended against aggression is Indian democracy based on the rule of law, human freedom and fundamental rights—the same principles as in the American Constitution. Even if socialism be the objective of land reforms, it must be democratic socialism suitable to the genius of India and her culture and based on the above great principles, as an original contribution of India. The land reform Acts do not provide for the immediate and proper rehabilitation of the vast multitude of ryots that would be economically adversely affected by them. We have the example of the Zamindari Abolition (Estates) Act. Out of Rs. 700 crores payable as compensation to the Zamindars, hardly Rs. 70 crores seems so far to have been paid within the last twelve years. Against all this background and for the reasons given in this memorandum, it is most respectfully submitted that it is best to drop the Seventeeth Amendment Bill.

I beg to illustrate further what I have said so far from my experience of the Mysore Personal and

Miscellaneous Inams Abolition Act, 1964 and the Mysore Personal and Miscellaneous Inams Abolition Rules, 1966. Though nearly seven years have passed since this law came into force in Mysore, not a single pie has been paid as compensation to the poor inamdars who are owning 3, 5, or 8 acres of land, although so many deputy commissioners, special tehsildars and surveyors are appointed for this purpose. The same thing will be repeated in the case of the land reform measures also but for the fundamental rights guaranteed by the Constitution and the protection given by courts.

As my colleague has pointed out, some of the States do not care for the directions of the Centre at all. For example, the Central Government and the Planning Commission have given directions with respect to land reforms to exclude arecanut plantations from the purview of the land reforms and put them in the same category as other plantation crops. Both Kerala and Mysore ignored it and in fact the Supreme Court took note of the report of the Planning Commission itself and mentioned it as one of the grounds for rejecting the Kerala Act. Therefore, as a protection against the misuse of powers and disobedience of the Central directives by the States, the fundamental rights are necessary and the supreme authority of the courts should not be taken away.

I would also illustrate how discrimination can be practised under the land reform acts by importing considerations other than just considerations. Section 82 of the Mysore Land Reforms Act refers to the reporting of illegal transactions. If an illegal transaction, a transaction which contravenes any of the provisions of the Mysore Land Reforms Act takes place, even a patel can report it. Suppose he reports such a transaction. Section 83 says:

> "The prescribed authority shall, after a summary inquiry, determine whether the transaction reported to it under section 82 or coming to its notice in any other manner is in contravention of the provisions of this Act, and make a declaration accordingly. Any transaction so declared to be in contravention of any of the provisions of this Act shall be null and void."

By a mere declaration it can be done. There will be a summary inquiry on the basis of the report of a patel. The party may be asked to come before it or not. It becomes null and void. It does not stop there. Then there comes section 131, which says:

> "Notwithstanding anything contained in this Act or any law for the time being in force or any usage or custom or the terms of any contract or grant to the contrary, the tribunal may acquire subject to the payment of compensation any land in respect of which the prescribed authority has made a declaration under section 83, or in respect of which the tribunal is, after such enquiries as it may consider it necessary to hold, satisfied that a contravention of any of the provisions of this Act has been committed."

Suppose A sells his land to B, who is a clerk in Delhi. B goes back to his village to buy the land and become a cultivator. Here afterwards that will require the permission of the deputy commissioner or some other authority. Suppose he has not acquired that authority and he has purchased two acres of land. If the village officer reports to the authority that an illegal transaction has taken place, it will be declared null and void, the land will be acquired and compensation paid. Under the Mysore Land Reforms Act, an appeal against the quantum of compensation can be made only to one authority, the district court. Over and above that, it cannot be questioned in any other court of law, even if the order has been made on political grounds, merely because A or B happens to belong to a political party

which, for the time being, may be in the opposition.

Secondly, the district judge and the tribunal, although they happen to be judicial officers, are all under the control of Government. That is specifically provided for in section 134 of the Mysore Land Reforms Act, which says:

> "In all matters connected with the administration of this Act, the State Government shall have the same authority and control over the tribunal and the Deputy Commissioner and other authorities acting under this Act as it has and exercises over revenue officers in the general and revenue administration."

This happens not only in the case of land acquisition but even in the matter of giving compensation, where also he has to obtain the directions of Government. In Sherawati, with which I am a bit conversant, Government gave a direction "you shall not award more than Rs. 6,000". Accordingly, the Land Acquisition Officer gave Rs. 6,000 as his award. When the matter went to the courts, they gave Rs. 18,000 and the High Court has recently confirmed it. That kind of obtaining justice will hereafterwards be not there at all and injustice will be the rule if the jurisdiction of courts is taken away. The district judge is a judicial officer subordinate to the High Court but when he acts under the Land Reforms Act he comes under the executive. This kind of arrangement will never be tolerated if it comes to the notice of the Supreme Court.

I beg to submit that Members of Parliament and the Central Government cannot be expected to go into each and every provision or clause of these Acts and see whether their directions are being followed and the high principles which Parliament upholds are being adhered to at the State level or not. The greatest guarantee against such a position would be the fundamental rights and the independence of judiciary. The fundamental rights are there more to safeguard the rights of citizens against misuse of power by the State. Parliament alone can take an all-India view of things, which is far above the State level. That broader outlook or view will not be present at the State level. Hence, it is submitted that the fundamental rights should not be abridged or abrogated.

I further submit that I read certain reports of the Supreme Court of America where they have made a reference to the preamble to the American Constitution. The preamble lays down the principles and objects of the Constitution. Those principles in the case of our Constitution are enshrined in the chapters relating to fundamental rights and directive principles of State policy. Therefore, in my submission the rights of the citizens to approach the High Court or Supreme Court as given in the chapter on fundamental rights should not be taken away.

What is required at the State level is some painstaking on behalf of the Law Department. They can see that all these laws are in conformity with the fundamental rights and in consonance with the spirit of the Constitution, and not against it. They should not try to abrogate the fundamental rights. So far they have not taken the pains to do so. Now the States have approached the Parliament of India to save all their laws by means of the Seventeenth Amendment Bill.

As I have already stated, it will result in uprootment of tenants, economic ruination of landholders, fall in production, widespread corruption, wasteful administrative expenditure and financial burdens on the State. If I am permitted, I will substantiate what I have already stated. Because, the object of land reforms ought to be to give relief to tenants, ought to be social justice, ought to be increase in production and prevention of wasteful administrative expenditure. On the other hand, all these evils will be there and the great object with which

Parliament wanted land reforms laws to be enacted will not be there if fundamental rights are taken away.

As regards wasteful administrative expenditure in the present form, I will illustrate it this way. I have given the example of the Mysore Inam Abolition Act. In Mysore State, for example, there will be nearly three lakh landholders plus about seven lakh tenants, that is, there will be about ten lakh cases to be decided by the land reforms officers. At the present pace at which the tenancy courts are handling the cases it will require nearly forty years before these cases are disposed of and some Rs. 30 crores to Rs. 40 crores of expenditure. All this expenditure, if utilised for repairs of small tanks in Mysore, will get you double or treble the production than you can get by these land reforms. Therefore, I beg to submit most respectfully that the State should not be allowed such a free hand in the matter of land reforms. Both Parliamentary control and the overall control of the Supreme Court and the high principles contained in the fundamental rights should be retained.

It might be argued that all these makers have gone into when the First Amendment and the Fourth Amendment came and the zamindaries were abolished. But zamindaries were something like a government, within a government. Only the State can collect revenue, whereas the zamindars were collecting land revenue. So, if that system was abolished, that is all right. But so far as the ryots are concerned, they are not to be classed with the zamindars. This is a thing with which 44 crores of the citizens of India and 35 crores of acres of land are concerned. Hence it is most respectfully submitted that the Constitution (Seventeenth Amendment) Bill be withdrawn.

Shri P. Ramamurti: There are ryotwari landholders who own, say, 200, 400 or even 1,000 acres of land.

Shri Chandreshekharaiah: So far as Mysore is concerned, there were Inamdars who were holding 500, 600 or 1,000 acres of land.

Shri P. Ramamurti: There are ryotwari landholders who own more than 30 or 40 acres of land.

Shri Chandreshekharaiah: There may be.

Shri P. Ramamurti: These people who own large tracts of land give their lands on lease to tenants. They are not personally going to the field and cultivating them with their own labour or with the labour of their family members.

Shri Chandreshekharaiah: They are giving it on lease.

Shri P. Ramamurti: That means that between the cultivatiors and the State these people are there as intermediaries. When you talk of intermediaries what you mean is that for payment of rent to the State these people act as intermediaries. That is your understanding; but the point here is that between the tiller of the land and the Government there should be no intermediary. That is the purpose of land reforms.

Shri Chandreshekharaiah: I personally have no objection to that land reform provided that the ryot is paid just compensation.

Shri P. Ramamurti: You have no objection to a land reform which abolishes the intermediary between the actual tiller of the land and the Government. As to what should be the quantum of compensation, we shall come to it later on.

Shri Chandreshekharaiah: I would not straightway give the answer like that because in the Land Reforms Acts themselves there are exemptions given.

Shri P. Ramamurti: I will take it that you are opposed to exemptions.

Shri Chandreshekharaiah: In the case of widows, orphans and those who are serving in the military it should be permissible, that is, they can lease their lands. Small landholders can also lease their lands. Therefore, leasing of lands has not been totally done away with. Leasing of big holdings has been done away with and I agree that big holdings should not be leased out.

Shri P. Ramamurti: The quantum of ceiling may differ from State to State. For example, in Kerala it is 15 standard acres of double crop land; in Mysore it is a bit higher. But leaving alone the quantum, in both Kerala and Mysore what has been provided for under the Land Ceilings Acts is that a reasonable quantum of land which a person or a family can personally cultivate, not only with the labour of himself and his family but even with hired labour to a certain extent, has been allowed to be kept with him and it is only the excess land that has been sought to be taken away. Have you any objection to that?

Shri Chandreshekharaiah: I have no objection. Our point of view is that in the case of ryotwari lands the owner is not termed an intermediary.

Shri P. Ramamurti: That is legal fiction with which we are not concerned. Here, there is an intermediary between the actual tiller of the land and the Government and Parliament wants that there should be no intermediary between the actual tiller of the land and the Government. The legislation is intended to abolish or change concepts with regard to intermediaries.

Shri Chandreshekharaiah: As regards that, intermediaries as such have not been taken away absolutely. The institution of intermediaries in certain holdings is maintained.

Shri P. Ramamurti: Within the ceiling certain amount of intermediaries are allowed. Now, with regard to the Madras Land Ceilings Act, do you know whether it has been implemented and whether a notice has been issued on any individual landholder for the surrender of land in excess of the ceiling? Or, is it that you only know that the Bill has been passed and has received the assent of the President?

Shri Chandreshekharaiah: In Madras, at present there is no land above 30 acres, because all land has already been distributed upto 30 acres.

Shri P. Ramamurti: So, you do not know that actually notices have been issued on many landholders for the surrender of land in excess of the ceiling fixed.

Shri Chandreshekharaiah: So far I am not aware of that.

Shri P. Ramamurti: Therefore, you do not know whether the Act has been implemented there or not and you are just making a statement. Then, I will come to the question of arecanuts. The Planning Commission's policy was not a direction in the sense that it only stated that in respect of plantations, like tea, coffee and rubber, the breaking up of these large estates will lead to a fall in production. With regard to other plantations, like arecanut, coconut or things like that, they stipulated where it will lead to a fall in production. You are aware of that.

Shri Chandreshekharaiah: Yes, I am aware of it .

Shri A. Bhima Bhat: The Central Land Reforms Committee suggested:—

> "Existing arecanut, coconut and cardamom plantations under personal cultivation should also be exempted from the operation of ceiling but if there are any tenants in respect of lands on which areca, coconut and cardamom are grown, such tenants should get all the rights under the Act including the ownership of non-resumable extent."

Shri P. Ramamurti: I am not concerned with the suggestion. I would

like to know from you whether you would place arecanut plantations on the same footing as tea plantations; for example, from the point of view of the technique of production. Take, for example, 100 acres of a tea plantation. For that about 100 workers would be required—on the average one worker per acre—to plant the tea, to go on weeding from time to time and during the flush season to pluck the leaves. It is not as if each worker is distributed on each acre of land but when the flush season comes, as soon as the rains come, all these 100 workers will be asked to go and work at a particular point. Then the next day the same hundred workers will have to go and pluck the leaves from a different land. This is the way. That is not the case with regard to arecanut, because individual workers can go and pluck the arecanut from the trees, it does not require a hundred workers. The farming methods etc. are entirely different. In the case of tea and coffee it is collective labour that has to do the work, whereas in the case of arecanut or coconut or pepper it is not collective labour that is required: it is the individual that is required both to cultivate as well as to harvest.

Shri Chandreshekharaiah: I beg to differ from that point of view. The number that you put is one per acre. So far as arecanut is concerned, it is two per three acres.

Shri P. Ramamurti: Individual workers will have to go and do it and not collective labour.

Shri Chandreshekharaiah: If I leave it to individual workers all my areca crop will be gone. Suppose I own ten acres of arecanut crop. Whatever is ripe must be plucked within three days, otherwise it will become overripe and the price difference will be very much. Threfore, I must put a large body of workers to pluck it—not one or two, it has got to be a team of workers.

Shri P. Ramamurti: How many?

Shri Chandreshekharaiah: For about ten acres I require nearly thirty labourers at the time of harvesting; similarly for curing.

Shri P. Ramamurti: Therefore in the case of arecanut you don't keep a permanent team.

Shri Chandreshekharaiah: I do keep.

Shri P. Ramamurti: Of thirty workers?

Shri Chandreshekharaiah: The permanent team will be nearly fifty per cent of the total requirements. Sometimes, if I have thirty acres, I must always keep fifteen persons permanently on the land, occupied with one work or the other.

Shri P. Ramamurti: Just as, for example, in the case of paddy, although I keep only one permanent farm labourer, at the time of farming a team of labourers come from various adjoining parts and they come and harvest. At the time of harvesting more than one labourer will be necessary. That is not the case with tea, for instance. The whole labour is collective. It is not so here.

Shri Chandreshekharaiah: I beg to submit that the nature of the arecanut cultivation in our parts is that every day green leaf has to be brought from various parts, it has to be converted into compost. That is one item. Similarly there are other items of work connected with the garden: compost-making, earthing, repairs and fencing, all these come. And unless I have a team of workers I cannot do the work.

Shri P. Ramamurti: Whether a man owns one acre or fifty acres, nonetheless even a man owning one acre of arecanut can do that work with the help of hired labour. He could still do that.

Shri Chandreshekharaiah: In the case of small holders they collectively employ a team of workers.

Shri P. Ramamurti: They can also do that, unlike in tea plantation.

Shri Chandreshekharaiah: For tea and coffee in Coorg it is two persons for three acres. Same thing in arecanut also.

Shri P. Ramamurti: Therefore my point is, you cannot say that if the ceiling is kept at thirty acres, whatever it is, and the land of arecanut which is above that ceiling is removed and distributed then the production of arecanut is going to suffer.

Shri Chandreshekharaiah: It is bound to suffer.

Shri P. Ramamurti: How?

Shri Chandreshekharaiah: What happens is, in a particular plot there are fifteen, twelve or eighteen acres. It is one contiguous plot and one family holding it. If it is cut away and distributed to some other persons, not only the cultivation suffers; at the time of chemical spraying, for example, if it is neglected by any one person in that plot the fungus will attack the entire plot. Therefore even big holders see to it that the small holdings are also taken up, even on very high lease, so that they are attended to and the whole area treated as one plot for such purpose. Cutting it away imperils production.

Shri P. Ramamurti: The ceiling limit is allowed. What is the ceiling limit for arecanut?

Shri Chandreshekharaiah: I submit it must be classed as plantation.

Shri P. Ramamurti: What is the ceiling?

Shri Chandreshekhariah: The same as other land—18 acres and 27 acres.

Shri P. Ramamurti: Therefore, that piece of 27 acres.....

Chairman: 18 standard acres.

Shri P. Ramamurti: Well, 18 standard acres of arecanut. That is quite a sufficient thing which he can look after.

Chairman: Eighteen is for future requisition.

Shri Chandreshekhariah: For the present it is twenty-seven.

Shri P. Ramamurti: So, if a man has 27 acres, that is a sufficiently large tract of land on which he can cultivate arecanut very efficiently.

Shri Chandreshekharaiah: It is not the particular extent of land, but in the particular plot of which he is owner how much exists. In coffee there are about forty, fifty or hundred. It cannot be cut up. Like that for arecanut also.

Shri P. Ramamurti: The other thing can be given to somebody else. I am not able to see how production will suffer on that account. In tea, coffee and rubber plantations you require the application of certain industrial labour legislation, certain Plantation Acts and things like that. Has there been any application of any Plantation Act as far as arecanut is concerned?

Shri Chandreshekharaiah: Although there is no legislation, in actual practice we conform to whatever is prevailing in the coffee plantations. Because, the arecanut gardens are adjacent to the coffee plantations, and whatever prevails there we have to give the same thing. So even if a legislation comes we are not afraid of it.

Shri P. Ramamurti: You may pay the same wages. That is a different matter.

Shri A. Bhima Bhat: In this connection I submit that we are paying more. But there is no legislation.

Shri P. Ramamurti: With regard to coffee, tea and rubber plantations schools have to be provided at the

cost of the employer, maternity benefits have to be provided for, hospitals have to be provided, provident fund has to be provided for. All these things are there in Plantations Act. None of these things are there as far as you are concerned. Therefore you are not treated as a planter in respect of legislation.

Shri Chandreshekharaiah: That is a question of time and application.

Shri P. Ramamurti: That is the difference between you and the others. Yours is not treated as plantation.

Shri B. V. Hanumantha Rao: In applying the Agricultural Income-tax Government has treated the arecanut industry as a plantation.

Chairman: Are you agreeable to the Plantations Act being applied to you?

Shri P. Ramamurti: Sir, it cannot be applied.

Shri A. Bhima Bhat: Sir, in this connection I would like to read out to this Committee a portion of the Supreme Court Judgement on the Kerala Agrarian Relations Act, which is a summary:

> "The Kerala Act in making a discrimination between area and pepper plantations on the one hand and certain other plantations on the other is violative of article 14 of the Constitution. Considering the object and purpose of the Act and the basis on which exemption has been granted under Chapters II and III to plantations as defined in the Act, there is no reason for giving preference to plantations of tea, coffee and rubber over plantations of areca and pepper, for the conditions in the two sets of plantations, whether for the purpose of ceiling under Chapter III or for the purpose of acquisition of land owners' rights under Chapter II, are the same. The reasons, therefore, which call for exemption of tea, coffee and rubber plantations equally apply to areca and pepper plantations and there is no intelligible differentia related to the object and purpose of the Act which would justify any distinction in the case of tea, coffee and rubber plantations as against areca and pepper plantations."

Shri Kashi Ram Gupta: So far as I understand, you are not against ceiling; but at the same time you are against the intermediary. You want that the tillers must be protected and you are not satisfied with the definition of 'estate' as given in the present amendment. I want to know what will be your suggestion and remedy to change the wording so that the tillers may be safeguarded in a proper way and your apprehensions may be removed so far as this amendment is concerned.

Shri Chandreshekharaiah: So far as the objective of land reforms, that is, the imposition of ceiling and the conferring of ownership rights on the tillers of the soil, is concerned, that can be achieved without taking away the Fundamental Rights. The Fundamental Rights would be taken away if you fix a certain quantum of compensation and say that we have to be satisfied with that and no more. That is why we are opposed to the definition of the word 'estate' including the ryotwari settlement also. Why should the State fight shy of paying just and reasonable compensation? This question will arise in two cases. One is that the small holder can take over the cultivation rights of the tenant and become himself a self-cultivator: thereby the tenant will be disturbed, and there will be no compensation at all for him under the Land Reforms Act. If this amendment is not there, he can go to a court of law and say that he has been disturbed in his cultivation rights, and, therefore, he wants compensation, and the court will be bound to award compensation to him. Even that right of a tenant will be taken away by the seventeenth amendment which is now proposed to the Constitution.

Therefore, I would submit that you can keep the fundamental rights intact and legislate, and the affected parties can go to a court of law and get redress.

Shri A. P. Jain: If you read the amended article 31 (2), you will find that the fixation of the compensation is left to the discretion of the legislature.

Shri Chandreshekharaiah: I agree, but it is provided in article 31A that:

> "Notwithstanding anything contained in article 13,....".

Shri A. P. Jain: I am referring to article 31 (2).

Shri Chandreshekharaiah: That article reads thus:

> "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authorit of a law which provides for compensation for the property.....".

We are pleading for the retention of this provision.

Shri A. P. Jain: My point is that after the amendment the quantum of compensation was left to the discretion of the legislature.

Shri Chandreshekharaiah: According to the Supreme Court judgment compensation shall mean just compensation and nothing else.

Shri A. P. Jain: That was so only before that amendment.

Shri Kashi Ram Gupta: I take it that you want to protect the tiller of the soil?

Shri Chandreshekharaiah: Yes.

Shri Kashi Ram Gupta: And you want that the present definition of the term 'estate' should continue. If so, what is your remedy for protecting the rights of the tiller of the soil? Who is a tiller? Is he one who has got land below the ceiling? According to you, the definition of the word 'estate' as contained in this Bill takes away that safeguard which was there for the tiller of the soil. How do you want to amend this definition?

Shri Chandreshekharaiah: The Seventeenth Amendment cannot be further amended, because the whole amendment itself is wrong. There is no remedy therefore possible in the present amendment.

Shri P. Ramamurti: You can suggest a new amendment.

Shri Kashi Ram Gupta: You can suggest your own remedy. What will be the suitable amendment according to you?

Shri A. Bhima Bhat: The suitable amendment will be fixation of fair rent and giving permanency of tenure, and the landholder need not be disposed of his rights.

Shri P. Ramamurti: We are talking of the legislation now. The question is how to amend the present Constitution.

Shri Chandreshekharaiah: The Constitution need not be amended for that purpose. That is our submission.

Shri Kashi Ram Gupta: In other words, you want to remove the whole amendment itself?

Shri Chandreshekharaiah: For this reason that the Supreme Court judgment has not at all questioned the imposition of ceilings or the giving of the land to the tiller of the soil. They have not questioned that at all. What they have questioned is the quantum of compensation and the discrimination practised in the matter of arecanut, as regards the question whether it is a plantation or not. Those are the two grounds on which the Supreme Court has struck down the Kerala Agrarian Relations Act.

Shri A. P. Jain: May I draw your attention to the latter part of article

31 (2) which says:

> "..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.".

So, how do you say that fair and just compensation has been compulsorily prescribed?

Shri Chandreshekharaiah: That must be read along with clause (4) and clause (3). Clause (3) reads:

> "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, has received his assent.".

So, there will be an examination at the parliamentary level also.

Shri A. P. Jain: That is a different thing altogether. You were talking of the compensation being questioned in a court of law. The adequacy or the inadequacy of the compensation is not justiciable now.

Shri Chandreshekharaiah: Provided there is a law to that effect.

Shri P. Ramamurti: The Kerala Act was scrutinised by the President, and it was sent back to the legislature for certain amendments. So, that safeguard is already there. The scrutiny by the President and the Parliament is there.

Shri Chandreshekharaiah: Article 31A (2) provides....

Shri A. P. Jain: We are not talking of article 31A, but we are talking of article 31, according to which the adequacy or the inadequacy of compensation is not justiciable.

Shri Kashi Ram Gupta: So long as article 31 (2) is there, you cannot question the adequacy or the inadequacy of the compensation.

Shri Chandreshekharaiah: What I beg to submit with respect to that point is that no discrimination can be practised under article 31(2).

Shri A. P. Jain: We are not talking of discrimination. You said that the question of the adequacy or the inadequacy of the compensation can be taken to a court of law. I have pointed out that it is not justiciable.

Shri Chandreshekharaiah: It can be taken to a court of law on the ground that there is discrimination.

Shri Kashi Ram Gupta: You have said clearly that you are opposed to the present amendment, because it takes away the security and the right of the tiller of the land, and you want a suitable amendment for the purpose. What is the amendment that you suggest? Or, are you totally opposed to any amendment whatsoever?

Shri Chandreshekharaiah: If I may submit, I am a layman in this matter. Notwithstanding anything contained in this Seventeenth Amendment, the fundamental rights with respect to the ownership and enjoyment and cultivation rights of lands should remain.

Shri A. P. Jain: You are referring to article 19.

Shri Chandreshekharaiah: I want that those rights should not be affected so far as the tiller of the soil is concerned, and so far as compensation according to article 31 (2) is concerned.

Shri Kashi Ram Gupta: How do you define the term 'tiller of the soil'? Do you mean to say that a man who has got land below the ceiling is a tiller of the soil?

Shri Chandreshekharaiah: That is left to the legislators. The tiller of the soil is one who cultivates personally either by himself or by hired labour, within the ceiling. When you impose a ceiling, then naturaly the extent of land that he possesses should be within the ceiling.

Shri A. V. Raghavan: You were referring to the jurisdiction of the judicial authority. You were saying that the district judge was under the executive?

Shri Chandreshekharaiah: Yes.

Shri A. V. Raghavan: Is he under the executive in regard to administrative matters only or even in administering justice?

Shri Chandreshekharaiah: So far as the Mysore Land Reforms Act is concerned, the appellate authority over the land tribunal officer shall be the district judge, but section 134 provides that in all matters connected with the administration of this Act, the State Government shall have the same authority and control over the tribunal and the Deputy Commissioner and other authorities acting under this Act (other authority includes the appellate authority also), as it exercises over revenue officers in the general revenue administration. So, the district judge is treated as if he were a revenue officer, so far as the land reform Act is concerned.

Shri P. Ramamurti: I think that is only for the purpose of transfers.

Shri A. V. Raghavan: Could you read out the provision for appeal in that Act?

Shri P. Ramamurti: Do you have a revenue code in your State?

Shri Chandreshekharaiah: Yes, Sir. Section 117. The State Government shall by notification constitute an appellate authority for such district or group of districts as may be specified in the notification, consisting of an officer who is a district judge. So the appellate authority is a district judge and he is under the control of the Government.

Shri A. V. Raghavan: Is that all?

Shri Chandreshekhararlah: Against any order or decision passed by the tribunal, an appeal shall lie to the appellate authority and the orders of such appellate authority shall be final.

Shri A. V. Raghavan: That means as far as appeals are concerned, he will deal with them in a judicial manner, not under the control of the executive.

Shri Chandreshekharaiah: No, no. You can go in appeal up to the district judge only. The district judge is completely under the control of the Government, not the High Court. That is where separation of judiciary from the executive comes.

Shri A. V. Raghavan: In spite of that, they continue to be under the High Court. Your interpretation is not correct.

Shri Chandreshekharaiah: Then this section must be taken away.

Shri A. V. Raghavan: No, that is only a matter of administration.

Shri Chandreshekharaiah: For example, so far as compensation is concerned, the officer concerned cannot act except under directions given by the Government of Mysore. That will apply to this also.

Chairman: Do you mean to say that the Government will interfere with the discretion of the district judge under that section?

Shri Chandreshekharaiah: They may not interfere, but so far as the quantum of compensation is concerned, they may say, 'Do not allow more than this much'.

Shri A. V. Raghavan: I do not think your interpretation is correct. This is only a matter of administration. There are two aspects—administrative as well as judicial. In the matter of administration, the Government has got the right to issue circulars, but in the matter of decision on cases the Government is nowhere in the picture.

Shri Chandreshekharaiah: Then why take away the jurisdiction of the High Court?

Shri P. Ramamurti: For the reason that the implementation of land reforms is the specific responsibility of the State Government. The High Court is not concerned with that. Therefore, the number of district judges who have got to be appointed as the appellate authority, where they have got to be posted, where there are excess lands—these are questions for the State Government to decide, and the High Court cannot be burdened with this task. This administrative responsibility does not mean any interference with judicial decisions about implementation of the Act.

Shri Chandreshekharaiah: When that is the intention, what is the objection to allow appeals to the High Court in particular cases where any party concerned thinks that he is wronged and discriminated against, say, as regards the quantum of compensation?

Shri A. V. Raghavan: The High Court can be moved on the point of view.

Shri Chandreshekharaiah: That is barred.

Shri A. V. Raghavan: That is only on facts. That is quite different.

Shri Chandreshekharaiah: That is also taken away under article 31B. So when this comes in the 9th Schedule, you cannot take it to the High Court.

Shri P. Ramamurti: That is with regard to questioning the validity of the law. But here if a district judge exercises his discretion in a colourable way, certainly the High Court will be entitled to intervene, through a writ petition.

Shri A. P. Jain: I may further explain that. Please refer to section 118(3) and (4). Where in any appeal under sub-sections 1 and 2, there arises any question on which the appellate authority or the Mysore Revenue Appellate Tribunal, whether upon its own motion or upon the application of the party interested, desires to have the decision of the High Court, the Appellate authority or the Revenue Appellate Tribunal may cause a statement of the question to be prepared and refer such question for the decision of the High Court. The High Court when it has heard and considered the case shall send a copy of its decision with the reasons thereof to the appellate authority or the Revenue Appellate Tribunal by which reference was made, and the case shall be disposed of in conformity with this decision.

So there is a provision for limited interference by the High Court.

Shri Chandreshekharaiah: If instead of 'may', there is 'shall', we have no quarrel. If a person applies to the district judge and that district judge does not send it to the High Court, what happens?

Shri P. Ramamurti: There must be substantive grounds.

Shri A. V. Raghavan: A ceiling has been made with regard to litigation. The weaker section of society has got to be protected. They cannot go from court to court; they do not have the means for that.

Shri Chandreshekharaiah: That has been otherwise provided by Government themselves giving legal assistance.

Shri A. V. Raghavan: To all citizens?

Shri Chandreshekhariah: To all tenants if they are poor and if they apply.

Shri P. Ramamurti: Even if assistance is given and there are thousands of cases, when is the High Court going to decide about them? There must be a finality to these things. They may take 40—50 years.

Shri Chandreshekharaiah: Even if 44 crores of cases come to the Supreme Court against the infringement of a right guaranteed under the Constitution, that cannot be prevented and that right shall never be taken away.

Shri Kashi Ram Gupta: Your contention is that except for the 17th amendment you are fully agreeable to all the land reforms effected till now?

Shri Chandreshekharaiah: Yes, because the persons adversely affected can go to a court of law and get redress.

Shri Kashi Ram Gupta: That is a different thing. But otherwise, you are fully agreeable to all the land reforms so far effected.

Shri Chandreshekharaiah: We would propose some amendments; first, give some exemption in respect of some plantations; then leasing out of land as in Madras up to the ceiling limit should be allowed; then in the case of compensation, there should be no discrimination and there must be just compensation.

Shri Kashi Ram Gupta: As Shri Jain has explained to you, for inadequacy of compensation, you cannot go to a court of law. Are you saying that article 31 (2) must not be there?

Shri Chandreshekharaiah: It must be there.

Shri Kashi Ram Gupta: Then the question of compensation is not justiciable.

Shri Chandreshekharaiah: Let there be no discrimination.

Shri Kashi Ram Gupta: 'Discrimination' cannot be defined in a court of law.

Shri A. Bhima Bhat: We may be given adequate compensation.

Shri Kashi Ram Gupta: That has to be decided by Government, not by the Constitution.

Shri P. Ramamurti: I own about 1028 acres of very good double crop land. Another man owns about 30 acres of double crop land. The excess over the ceiling with regard to that man is just 2 acres whereas in my case it is about 1000 acres. Do you consider it equitable? The man with 2 acres excess will get Rs. 1000 at the rate of Rs. 500 per acre and I will get for my excess land about Rs. 10 lakhs. Is that absolutely essential? Dou you think that is equitable? He can live on that without doing any work, without doing anything for society. Is that the society you want?

Shri Chandreshekharaiah: If his compensation is Rs. 10 lakhs, give him Rs. 9 lakhs, or even Rs. 9,99,000 in the form of defence bonds.

Shri P. Ramamurti: Even then he gets unearned income.

Shri Chandreshekharaiah: He pays income-tax on that.

Shri Kashi Ram Gupta: You were saying he might be paid in defence bonds. This is not an emergency question. Laws are not meant for emergency, but for all time. Your fear is that by this definition of "estate", the tiller of the soil will not be safeguarded. What substitute definition do you want for achieving that object?

Shri Chandreshekharaiah: The present land reform acts have not been questioned in court so far as putting a ceiling or giving the land to the tiller is concerned.

Shri Kashi Ram Gupta: It may not be in your State, but it has been questioned in many other States. What is your alternative suggestion for the definition of "estate" so that your fear regarding the interests of the tiller of the soil may be removed?

Shri Chandreshekharaiah: The present Bill does not lend itself to further amendment. Anyhow, an amendment of this type may be sufficient, namely "notwithstanding anything contained in this Bill, any person who is economically adversely affected as a result of the land reforms mentioned in this Bill, shall have the right of appeal to a court of law."

Shri Raghunath Singh: Everybody will be economically affected.....

Shri Hem Raj: You want arecanut should be treated as part of plantation industry. For an estate of 18 standard acres, how many labourers would you employ?

Shri Chandreshekharaiah: Twelve to eighteen.

Shri Hem Raj: What is the minimum required for treating a plantation as an industrial estate?

Shri Chandreshekharaiah: Formerly it was 50, now it has been reduced to 25.

Shri Hem Raj: So your number of 12 to 18 would be less than the minimum required.

Shri S. D. Patil: Even in the ryotwari tenure system, the lands have passed into the hands of non-agriculturists because of money-lending etc. Do you agree?

Shri Chandreshekharaiah: Yes.

Shri S. D. Patil: Since moneylenders, who have no love for the land, have got excessive lands through moneylending, do you not agree that if some of that land is taken away, though they are not actual intermediaries, there should be no objection?

Shri Chandreshekharaiah: On that matter I am a radical. Take away all the lands from them, and give them to the tillers of the soil, but compensate them properly.

Shri P. Ramamurti: Even if they got it by lending money at the usurious rate of 100 per cent interest?

Shri Chandreshekharaiah: Alternatively, give such tenants permanent tenancy rights. Then the compensation payable will be 50 per cent.

Shri S. D. Patil: When we are adopting a land policy which will lead to certain social objectives, do you not agree that even in the ryotwari system where there is excess land, it should be taken away for some fair price?

Shri Chandreshekhariah: The whole argument is based on this, that at present the great Congress Party is at the helm of affairs, and that if there is any injustice, we can get it redressed, but tomorrow there may be a change of government. In Kerala land legislation has already undergone two changes, under the Communists and the Congress. Pray, do not leave these things to be done according to the interpretation of the party in power in the States. Do not take away the fundamental rights, because, though we wish Congress Party may be in power for a hundred years at the Centre, it will be a different story in the States where Election results are not so very certain.

Shri S. D. Patil: If in the definition of "estate", lands in the hands of actual tillers of the soil under the ryotwari system are excluded, have you got any objection?

Shri Chandreshekharaiah: I will illustrate it by a practical example. Here is a school master owning four acres of land and getting a small salary of Rs. 60 or Rs. 70 per month, and is supplementing his income from the land. Even there you call it an estate and classify him as a big zamindar. He may not be able to supervise it, because he may be in one place and the land in another place.

Shri S. D. Patil: You cannot have two provisions at the same time.

Have you got any objection to classifying land in the hands of the absentee landlord even under the ryotwari system as estate?

Shri Chandreshekharaiah: But how will it work out in practice, and what class of persons will it hit?

With the permission of the Chair, I would revert to the question of a man holding a hundred or a thousand acres, to which the hon. Member there referred. All that is now going away because of double and treble taxation. In Mysore, already the double land revenue has begun to hit. In the case of the bigger holders, why not levy agricultural income-tax?

Shri A. P. Jain: Mysore is a composite State. Part of its area is the former Mysore State, part is former Bombay, part is Hyderabad, part is Madras and part is Coorg. In all areas except the Madras area, the word "estate" has been defined. So far as the Madras area is concerned, "estate" has been defined to exclude the ryotwari area. In this composite State ceiling is applicable in all the areas except the Madras Ryotwari area. What is the reason you want Madras area to be treated differently?

Chairman: Mr. Jain's point is this. In the present Mysore State, certain parts have come from Hyderabad, certain parts from Madras, certain parts from Bombay, etc. The word 'Estate' has been defined in one way in Mysore area.

Shri A. P. Jain: My point is that the word 'estate' excludes the ryotwari area coming from Madras State, so that article 31(a) applies to the whole of Mysore State except the small ryotwari area which has come from Madras. Why do you want that to be excluded?

Shri Chndreshekharaiah: May I in this connection refer to article 31A(2) which reads as follows:

> "the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any janmam right."

According to this definition and the Supreme Court judgment, 'estate' excludes ryotwari settlement.

Shri P. Ramamurti: In Bombay, Mysore, Coorg and Hyderabad, 'estate' has been defined as any landed interest whereas in Madras it was defined as under the 1908 Act. So, in Madras ryotwari areas were excluded. Now, in Mysore State, in all the other areas, that is, which were originally areas in Bombay, Hyderabad, Coorg, etc. the term 'estate' includes ryotwari areas also while in the district of South Canara, because it has come to Mysore from Madras State, the ryotwari areas are excluded. Now, Mr. Jain's question, as well as my question, is this. Why should there be any discrimination within the same State in relation to land between South Canara district and the other districts of the same State?

Shri Chandreshekharaiah: My submission is it is the meaning of the word 'estate' which is important and not the word 'estate' itself. We have found from the Supreme Court judgment that the word estate excludes the ryotwari settlement.

Shri A. P. Jain: I live in Tumkur and I cannot go to law court because 'estate' is defined there. You live, let us suppose, in South Canara and as that area comes to Mysore from Madras State and as 'ryotwari' is excluded from the definition of the word 'estate', you can question it in a court of law. My point is this. Why should you get one treatment and I, another, though both of us are living in the same State?

Shri Chandreshekharaiah: The best thing would be to seek the Supreme Court's decision on this matter.

Chairman: Let us leave it at that and proceed further.

Shri P. R. Patel The Preamble to our Constitution refers to justice—social, economic and political. Then, there are the Fundamental Rights under the Constitution. Is it not doing injustice if Fundamental Rights are taken away from the Constitution?

Shri Chandreshekharaiah: Fundamental Rights should not be taken away.

Shri P. R. Patel: Do you not think that article 31(A) as it stands today takes away the Fundamental Right of all the agriculturists of any tenure, ryotwari or other tenure, except those lands that remain under ryotwari system belonging to the old Madras State but which form now part of Mysore State? We are now seized of this clause and this Committee can amend article 31. So, do you not think that this clause could so be amended as to give the guarantee of fundamental rights to ryotwari landowners to a certain extent, that is, within a ceiling area?

Shri A. Bhima Bhat: That is not the object of this Bill, this amendment.

Shri P. R. Patel: Leave aside this amendment which is before us. Articles 31A and 31B, as they stand today, take away the fundamental rights of agriculturists and allow other citizens to enjoy the fundamental rights. That is a discrimination. Do you propose any amendment to the present articles as they stand today? Leave aside the 17th amendment to the Constitution.

Chairman: They are satisfied if you drop the proposed amendment to the Constitution.

Shri P. R. Patel: We are seized of this amendment and we can amend it in other ways also.

Chairman: Why do you ask for further amendments?

Shri A. Bhima Bhat: We only ask you to drop the proposed amendment.

Shri P. R. Patel: But that would not be sufficient. That will only create discrimination between certain farmers who have got ryotwari lands in Madras. That is a discrimination against other farmers in the whole country.

Shri Chandreshekharaiah: So far as articles 31A (2) (a) and (b) are concerned, they relate only to the zamindari estates.

Shri P. R. Patel: They apply even to ryotwari lands. 31A as it stands today covers even ryotwari lands.

Shri Chandreshekharaiah: 31 and not 31A.

Shri P. R. Patel: Articles 31, 31A and 31B cover ryotwari lands and that is no guarantee to landowners of ryotwari lands.

Shri Chandreshekharaiah: We have not approached it from that point of view because the Supreme Court's judgment applies only to . . .

Shri P. R. Patel: I think you forget the Supreme Court judgment because it applies only to certain types of land that have come from Madras to Mysore State. It does not cover all ryotwari lands because the definition of the word 'estate', according to the Bombay Code and other Codes, includes ryotwari lands too:

Shri Chandreshekharaiah: We want to stop the 17th amendment.

Shri P. R. Patel: I want to know your objection. If all the agriculturists of the country—the ryotwari landowners,—are covered by the present article of the Constitution—31A and

B—so as to include the ryotwari land-owners from Madras and Mysore—a very small number—what objection have you got?

Shri Chandreshekharaiah: The contention is that it is not a small number. 260 lakhs acres of land are under ryotwari tenure in Mysore. Take the Mysore Land Revenue Manual, first page which says that the land is under ryotwari settlement . . .

Shri Bibhuti Mishra: What is the yield per acre and what is the net income out of one acre of supari land?

Shri A. Bhima Bhat: The net income will be about Rs. 500 to Rs. 1,500.

Shri P. Ramamurti: We get Rs. 4,000 in Madras; the Mettupalayam area, for instance.

Shri Bibhuti Mishra: For tea and coffee?

Shri A. Bhima Bhat: No idea.

Shri Bibhuti Mishra: You are referring only to the land which belonged to zamindars?

Shri Chandreshekharaiah: You can impose the ceiling, but give the land to the tiller and compensate the persons affected.

Shri Bibhuti Mishra: What is the idea of compensation?

Shri Chandreshekharaiah: The idea of compensation is this: the State has not taken the responsibility for giving employment and giving food to everyone. When that has been the case, how is it that it does not take the responsibility for compensating the landowner so that he may stick to his own way of life?

Shri Bibhuti Mishra: In the same way, there are large numbers of people who are unemployed and who have not got anything.

Shri Chandreshekharaiah: The duty of the State is to give them employment. At least in Russia, the responsibility of the State is to give them employment, to give employment to everyone. It is not so here and only the other safeguard is given, namely, to pay him compensation for acquisition so that he might employ himself.

Shri Bibhuti Mishra: Are you in favour of including tea, coffee, rubber and pepper in that category? Pepper is a one-year crop while sugarcane is a two-year or three-year crop.

Shri Chandreshekharaiah: Black pepper and not red pepper.

Chairman: All right. Thank you.

Shri Chandreshekharaiah: We are highly grateful to you.

(*The witnesses then withdrew*)

(*The Committee then adjourned.*)

JOINT COMMITTEE ON THE CONSTITUTION (SEVENTEENTH AMENDMENT) BILL, 1963

Minutes of Evidence given before the Joint Committee on the Constitution (Seventeenth Amendment) Bill, 1963

Tuesday, the 12th November, 1963 at 10.05 hrs.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bibhuti Mishra
3. Shri Surendranath Dwivedy
4. Shri Kashi Ram Gupta
5. Shri Harish Chandra Heda
6. Shri Hem Raj
7. Shri Ajit Prasad Jain
8. Shri S. Kandappan
9. Shri Cherian J. Kappen
10. Shri L. D. Kotoki
11. Shri Harekrushna Mahatab
12. Shri Jaswantraj Mehta
13. Shri Bibudhendra Misra
14. Shri Purushottamdas R. Patel
15. Shri T. A. Patil
16. Shri A. V. Raghavan
17. Shri Raghunath Singh
18. Chowdhry Ram Sewak
19. Shri Bhola Raut
20. Shri M. P. Swamy
21. Shri Radhelal Vyas
22. Shri Balkrishna Wasnik
23. Shri Ram Sewak Yadav

Rajya Sabha

24. Shri Tarit Mohan Das Gupta
25. Shri Rohit Manushankar Dave
26. Shri Khandubhai K. Desai
27. Shri Nemi Chandra Kasliwal
28. Shri Dhirendra Chandra Mallik
29. Shri Joseph Mathen
30. Shri Nafisul Hasan
31. Shri P. Ramamurti

32. Sardar Raghbir Singh Panjhazari
33. Shri S. D. Patil
34. Shri Kota Punnaiah
35. Shri G. Rajagopalan
36. Shri J. Venkatappa.

DRAFTSMAN

Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE PLANNING COMMISSION

1. Shri Ameer Raza, *Joint Secretary, Planning Commission.*
2. Shri A. N Seth, *Assistant Chief, Planning Commission.*

SECRETARIAT

Shri G. V. Mirchandani—*Under Secretary.*

WITNESSES EXAMINED

I. All Kerala Landowners' Association, Chittur.
Shri C. S. Subramania Ayyar.
II. All India Agriculturists Federation, Mangalore.
Shri K. B. Jinaraja Hegde.

I. All Kerala Landowners' Association, Chittur

Spokesman:

Shri C. S. Subramania Ayyar.

(Witness was called in and he took his seat)

Chairman: The evidence that you give will be treated as public and will be distributed to all members. Even if you want any particular portion to be treated as confidential, it is liable to be distributed to all the members. We have received your memorandum and it has been circulated to all members. If you want to stress any particular point, or add some new points, you may please do so now.

Shri Ayyar: I have written a book "Welfare State" and I have had a copy of it sent to you.

Chairman: We have received a copy of it.

Shri Ayyar: Since it is difficult to supply sixty copies of that book immediately for the benefit of hon. Members of Parliament, I was told by the Secretariat that it would be better if I supply a more detailed memorandum. I have prepared it and it has been printed. It will be presented to the Committee soon on behalf of the Madras State Ryotwari Pattathars' Association, Tiruchirapalli very soon. With your permission, I will take up some of the most important points from that memorandum.

Chairman: Your memorandum as well as the legal opinion have been circulated to all members. So, it is not necessary for you to read them once again. If you have any new points to cover, or emphasize some points you may do so.

Shri Ayyar: The Government have given us *pattas* in recognition of our title to ownership and possession of our lands and we have been paying land revenue and water cess to the Government directly, that is, without any intermediary between us and the Government. The ryotwari system in

this district was introduced in the early part of the nineteenth century; it proceeds on the footing of the ryotwari pattathar being himself an occupancy tenant of Government, and the Government of the day entered into relationship with the actual tiller and Government gave him a patta *vide* 43 Madras 567 and Fifth Report on the Affairs of the East India Company.

As our relationship with the Government is direct, our holdings have been treated all along in Government revenue records as belonging to the ryotwari system, and so we have not been hitherto classified as estate owners like the zamindar.

As most of us are Hindus, we have been inheriting the lands by birth, and we have been partitioning these lands with the result that we have not been accumulating or concentrating any form of wealth. Most of us are medium and small holders of agricultural lands and we feel that any further socialisation of our lands will be disastrous as it will completely ruin production of food crops in the country.

The genuis and aspiration of our cultivators and peasants is in the development of private initiative and enterprise, and that alone will give the proper incentive to food production in the country and no form of co-operative farming will thrive in this part of the country.

Further splitting up of these already fragmented lands will not be advisable, as they cannot form proper economic units for mechanical farming, and further creation of more bunds by partition will hamper tractor and other mechanical and scientific mode of cultivation like aerial spraying etc., and the proper distribution of water from common Water sources and the proper mode of manuring and plucking of weeds etc., in actual cultivation. Further, it is difficult to allot separate grazing grounds for cattle, pannaiyals, cattle sheds and farm houses and store houses of paddy etc. for each unit.

The fertility of land will vary from field to field, as also the necessity for water supply, so much so, that the agriculturists by distribution cannot have equal quality of fertility and facility for water supply etc. throughout. This will result in inequality of production, varying from unit to unit and thus most of those who now cry for social justice by distribution will fail to achieve the object of obtaining adequate means of livelihood, and they will themselves leave their lands, as they cannot cultivate them properly. Further, small holders cannot find the necessary capital to withstand the onslaught of floods, famine and draught in successive years and find also resources for improving production.

Lands are of various description, top lands, hollows, marshy, wet, dry etc., and it is impossible to achieve equality of distribution assuring equality of fair income from them. Vagaries of nature and monsoon resulting in injury to crops by pests etc. will affect production in different ways, and it is difficult to estimate the yield from all types of lands on uniform basis. Distance from markets and absence of transport facilities like roads may also make distribution impossible on an equal and fair basis. Thus, as practical peasant proprietors we have toiled for years for producing food for the country and, in fact, have, as the present statistics will show, competed succesfully in producing the record output of paddy in the package scheme under the Five Year Plans, we feel that further socialisation will retard food production and that good and well-managed farms should not be broken up on the ground of ceiling as it will affect production:

Then, another point is that this proposed amendment vests more powers in the State than is necessary for the purpose. If, as Government has been announcing, the basic purpose of the present amendment is intended to enable tenants and landless labourers to

purchase lands in excess of the ceiling and thereby introducing peasant proprietorship throughout India, it should be specifically mentioned in the amendment itself that the fundamental rights temporarily withdrawn for doing social justice as mentioned above will revive as soon as the object of the amendment is achieved, that is, after people have become peasant proprietors in India. So, my request is that as sincere legislators, we should see that the object is placed in the amendment itself.

Chairman: As soon as the emergency is over, naturally all the fundamental rights will be restored.

Shri Ayyar: It looks as though the entire fundamental rights are taken away.

Chairman: I do not think your interpretation is correct.

Shri Ayyar: But that is how many lawyers, politicians and poor peasant proprietors feel.

Chairman: I do not think there is any justification.

Shri Ayyar: Anyhow, there may be a Government statement on that.

Chairman: The emergency is only for the purpose of the Chinese aggression. It is not going to be a permanent feature.

Shri Ayyar: Then, with regard to the reference to the Supreme Court under article 143 of the Constitution on the legal and constitutional points that I have mentioned above, I request that it should be made because this is an omnibus clause which covers various items. For example, it is likely to cover trust and endowment properties and we do not know what the Government has in mind by bringing forward this amendment. Ours is a secular State and we should not, as far as possible, trample on rights which are religious and considered sacred by the Hindus.

Therefore, considering the various aspects of the question, I should earnestly request that Parliament in its infinite mercy specially upon poor cultivators and small landlords who will be very much unjustly hit . . . .

Chairman: Poor cultivators are not going to be touched at all. It is only those who hold above the ceiling limit who will be touched.

Shri Ayyar: But that is not put in the amendment itself specifically.

Chairman: That is the very purpose of the amendment. This will not affect any person who holds land as defined in this section which is less than the ceiling limit.

Shri P. R. Patel: It is not said so in the Bill.

Chairman: You want that to be mentioned in the Bill?

Shri Ayyar: It should be mentioned there. As far as we know, the Nehru Government is very just. I also know that the Prime Minister really wants to do justice to all sorts of people. He will certainly have no objection. I can speak for him because I know his heart. This is all I can say specially when you have pointed out to me that the other aspects you have considered and there need not be any argument over them.

Shri P. R. Patel: Will you please tell us whether ryotwari lands are leased to tenants and the landlord or the owner of the land becomes the middleman? In the case of ryotwari lands, are there cases where the lands are tilled by tenants and the landowners get a share or some money from the tenant? I think, there are such cases.

Shri Ayyar: Yes.

Shri P. R. Patel: So, do you not think that the intermediaries, that is, those between the tenant or the actual tiller of the land and the Government, should be removed?

Shri Ayyar: What you mean by 'tiller' is the person who is really the occupant of the land. In the ryotwari system the principle is that the occupant is really the tiller and the ryotwari pattadar.

Chairman: Suppose, under the ryotwari system a man owns 3,000 acres of land; he cannot cultivate all the 3,000 acres. That is physically impossible. So, he has perhaps half a dozen or a dozen tenants. What Shri Patel wants to know is whether such intermediaries should be removed or not.

Shri Ayyar: In my book I have voted for a ceiling. I have said that there must be a ceiling and it must be a liberal one. It will do good both to the citizen and to the State.

Chairman: That is for the legislature to fix.

Shri Ayyar: That is true.

Chairman: I think, you agree that they have been very reasonable.

Shri Ayyar: Yes; Parliament has been very reasonable. But I would also say that there must be some central direction so that the ceiling fixed in different States may not vary.

Chairman: It has to vary from State to State according to the nature of the soil, irrigation facilities etc.

Shri Ayyar: That is true, but just as a man has to have fidelity to his wife, the ryot must also stick to his land. If he should stick to his land and should not go to subsidiary occupations to supplement his income, he must get sufficient income from his land so as to enable him to concentrate on the land. There has been a great charge levelled against the Planning Commission that there has not been sufficient production in the country; though there has been land reform nothing has turned out. It is partly true, though partly untrue. It is partly true in the sense that there has not been a central direction from the Planning Commission that the ceiling should be so liberal as to make the ryot feel devoted to his land.

Chairman: So, You agree to Shri Patel's observation provided sufficient land is left to the tiller?

Shri Ayyar: Yes; I have said that in my book. I will request all the hon. Members to read my book.

Shri P. R. Patel: But you have not circulated the book. How are we to read it and know your views?

Shri Ayyar: I have sent a copy of it to the Committee.

Shri P. R. Patel: You should also send copies to all the Members so that we may be able to go through the book.

Shri Ayyar: It is a 1954 publication and all the copies have been sold out as there is a great demand of the book in the various parts of the country. Some people even suggested the bringing out of a second edition. I also suggested to the Planning Commission if they were prepared to bring out a second edition.

Shri P. R. Patel: You say that the ceiling should be uniform throughout the country.

Shri Ayyar: Yes, varying of course in certain places according to local conditions and the fertility of the soil.

Shri P. R. Patel: Do you not think that within a State the fertility of the soil would differ from place to place? In that case, even within a State the standard or ceiling may be different and it would be different in the whole country all the more.

Shri Ayyar: Yes, it will differ. But there should not be wide disparity. Even according to the Constitution we want equality of status and opportunity.

Chairman: Is it your case that in the ceilings as now fixed there is such

a disparity? Can you point out an instance?

Shri Ayyar: For instance, in Madras we have got 30 acres as the ceiling and in Kerala it is only 12 acres.

Shri A. V. Raghavan: It is 15 acres.

Shri Ayyar: It was 15 acres in the former legislation; in the present legislation it is 12 acres There is very wide disparity. Of course, in spite of that most of us in Kerala who are owner-cultiviators and who have also got plenty of cattle and capital are producing very much. It is a record output.

Chairman: In Kerala land is scarce and the population is great.

Shri Ayyar: But still we are cultivating the best. Also, cultivators in the Trichinopoly District told me that they are doing their very best.

Shri A. P. Jain: Do you take into account only the area of the land or the intensity of population as the Chairman has said?

Shri Ayyar: It is not exactly the question of population. Dividing the extent of land by the number of people will not produce anything because *per capita* land distribution is not possible in India.

Chairman: It is not *per capita* land distribution; industrialists, labourers, etc. do not come into the picture.

Shri A. P. Jain: What the Chairman and what I said was: Will you take only one factor into account, that is, the area should be the same for all the States, or will you also take other factors like the intensity of population and other things into account?

Shri Ayyar: What I say is, there may be a large surplus of land in one district and there may be scarcity of land in another State and there may be a huge population in one State and in another State it may not be so much—there may be disparity—but what essentially we can do is to have equality of status by distribution. And it is not possible in India. If you are going to socialise on the basis of doing social justice by land distribution, it is impossible to do. You will come to a level where the land will get fragmented and nobody will attend to the land. There should be some minimum income: What should it be? It need not be a big income where the man can go in a car or fly in an aeroplane or have cosmetics. An average living standard must be given. The family must be above want. They should be able to have clothes; their children must be schooled and they should be able to pay the medical bill and all that.

Shri Khandubhai K. Desai: You mean the gross income or the net income?

Shri Ayyar: The net income.

Now, the high prices are ruling. But we know during the economic depression, nobody used to cultivate the land; everybody threw away the land; the people sold their lands and all that. Now there are high prices. But the swing may go the other way. Suppose there is economic depression. Then the land will be worth Rs. 2 an acre. There will not be anyone to cultivate the land. Even now there are signs of economic depression. You should not take it that the high prices will rule the country for all time to come. You must give scope for the possibility of depression coming in.

Chairman: Government has fixed floor prices.

Shri P. R. Patel: It is not so. It is the support price, not the minimum remunerative price as promised in the Third Plan.

Chairman: If the price comes below a certain level, the Government fixes floor prices.

Shri P. R. Patel: That is a different thing. That is the support price, not the minimum remunerative price.

Shri Khandubhai K. Desai: Anyhow, that is not before us.

Shri P. R. Patel: As the Chairman remarked that the intention of this Bill is to take away lands above a ceiling, so if the lands below that ceiling are excluded from the purview of this Bill, from the purview of article 31, would you be happy?

Shri Ayyar: That is a very good method of doing it. Certainly, I would be happy, because the small land-holders must be excluded.

Chairman: The small land-holders will not be touched at all.

Shri Hem Raj: That is not clear.

Chairman: We will see that.

Shri P. R. Patel: My last question is this: Do you think that there is a fear in the minds of the agriculturists, the present proprietors actually tilling the land, that some day some Government may pass a legislation in the name of land reforms to have collective farms or cooperative farms and take away the lands by paying compensation at only Re. 1 per acre and all that?

Shri Ayyar: That is so. You must remove that fear.

Shri A. V. Raghavan: You represent All Kerala Landowners' Association, Chittur. Can you please tell us how many of the land-owners in Chittur are actually tilling the land?

Shri Ayyar: There are a number of people. Some of them are working in firms and some of them are Government employees who are in Bombay or Calcutta. Some of them have not actually taken to actual cultivation. Now, for example, for the last half a dozen of years there have been talks of land reforms and all that. Some of them have actually taken to cultivation. They have asked their agents to do things on their behalf—it may be their friend or relation or father or mother.

Shri A. V. Raghavan: I want to know whether there are certain land-owners in Chittur who are owning more than 10,000 acres of land.

Shri Ayyar: Very rare.

Shri P. Ramamurti: How many acres of land are owned by Justice Mr. Vaithilingam?

Shri Ayyar: He has practically sold away the lands. He has got only about 60 or 70 acres: That is what I am told.

Shri P. Ramamurti: What about their family?

Shri Ayyar: The family has been partitioned.

Shri A. V. Raghavan: What we want to know is whether you want the right to resume land cultivation to be given to the land-holders?

Shri Ayyar: Yes, certainly.

Shri A. V. Raghavan: To what extent?

Shri Ayyar: Upto a ceiling.

Shri A. V. Raghavan: What is the minimum ceiling?

Shri Ayyar: I have mentioned it in my book. The net income should be Rs. 200 per month.

Shri Kappen: What is the net income expected from one standard acre?

Shri Ayyar: In Kerala it is Rs. 400. All land will not fetch Rs 400.

Chairman: The ceiling also differs according to the nature of the land. They have not fixed for all the land the same ceiling. If it is irrigated, it is less; if it is dependent on rainfall, it is more and all that. They have made a provision for all these things.

Shri Ayyar: Yes.

Chairman: But there cannot be uniformity in a matter like this.

Shri Ayyar: That is true.

Here, I would like to mention one special point so far as the lands in former Cochin State are concerned. As you know, the Kerala State consists of three portions, the former Cochin State, the Travancore State and the area called Malabar; it was by combining all these three areas that the Kerala State was formed.

In the original Cochin State, all the lands were really ryotwari, and there are lands in respect of which *pattas* have been given, and in respect of which relinquishments have been sanctioned by the Dewan's Proclamation or by the Dewan's orders; in fact, under the revenue Manual itself, there is scope for such relinquishment. Unfortunately, when the Kerala case came up, the lawyers who were instructed by the parties were not instructed properly, and the Supreme Court came to the conclusion that there was no right at all for relinquishment, and that was one of the reasons why they were holding that it was an estate. So, that is a matter for subsequent argument, and the possibility of the reversal of the Supreme Court judgment is also there; of course, they may revise their judgment also.

Chairman: Simply because it is ryotwari land, should a man be allowed to own three thousand or four thousand acres?

Shri Ayyar: No, he should not.

Chairman: We should not be guided by legal quibblings, because after all, it is a piece of social legislation.

Shri Ayyar: I do agree that we must have social legislation, but I am for doing it in a way that there may be a compromise between pure capitalism and the extreme form of economics.

Chairman: After all, this is not in the nature of zamindaris as exist in northern India. But do you agree that even in regard to the ryotwari lands, or lands under tenures, there should be a ceiling, and the land reform law should apply in respect of lands above the ceiling?

Shri Ayyar: Certainly, I do agree that we must have some ceiling, and we must move along with the times.

Shri Kappen: You said that there should be an income of about Rs. 200 from an acre. Is that correct?

Shri Ayyar: I said that there should be an income of about Rs. 200 for an individual. That is the minimum income which should be there for an individual per month.

Shri Kappen: So, that Rs. 200 is not for an acre, but for an individual?

Shri Ayyar: That is correct.

Shri Kappen: What is the income that you expect from an acre of land?

Shri Ayyar: It will vary from area to area. In the case of a bad type of land, it may be only Rs. 200.

Shri Kappen: Under the Kerala land legislation, one standard acre has been fixed as that area of land from which there would be an income of Rs. 400. So, about 12 standard acres would fetch about Rs. 5000. Do you not think that it is very reasonable?

Shri Ayyar: I do say that it is reasonable, and they have really come up to the mark. It is a reasonable ceiling so that a ryot can really devote his attention to the land. So far as the ceiling limit is concerned, I do not have any quarrel with it.

Shri A. V. Raghavan: You have said in your memorandum that about 90 per cent of the population in Kerala only owns about five acres of land. That being so, why do you say that it should be increased in the case of ten per cent of the population?

Shri Ayyar: I am not saying that you should increase it. If a man who owns five acres wants to purchase

more land, he should be able to purchase, say, up to 15 acres in all, so that he may be able to cultivate more. As it is, a man who owns only five acres will not be able to devote all his attention to that land and produce as much as the nation wants. If he has surplus capital, he should be permitted to purchase more land, so that he can have about 15 acres, and he can devote all his attention to that land.

For example, I am a lawyer, and suppose I have got some cash, and I retire from my profession, and I have got only five acres of land, and suppose I take it that it is better that I devote my attention to public service, the public service being one of producing more wealth for the country by producing more food; and suppose I want to purchase ten acres more, then I must be able to purchase those ten acres more, so that I may have fifteen acres in all, and I can devote all my attention to it and produce more; in that way, I shall be doing more justice to the country and more service to the country rather than by just having five acres and having constant quarrels with the tenants and thereby making my life insecure.

Shri A. V. Raghavan: By your purchase, you will be making the holdings of others less than five acres.

Shri Ayyar: That is not my point. The point is that we must so do it that we justify it for ourselves and also for the country, by producing more.

Shri A. V. Raghavan: May I know whether any new area is available for purchase, or are you going to purchase land which is already being cultivated?

Shri Ayyar: I can purchase new areas also.

Shri A. V. Raghavan: You can purchase only existing lands, and not any new areas?

Shri Ayyar: I can cultivate virgin areas also, and I can purchase virgin areas also.

Shri A. V. Raghavan: Are such virgin areas available in Kerala?

Shri Ayyar: I am told that virgin lands are only more or less near forests. Practically, all the lands which were virgin have already been brought under the plough. I may tell you one instance in this connection. You will be surprised to know that it was my grandfather, Thottu Pichu Ayyer as he was called, who 110 years ago in Kerala was the originator of the first dam in the Cochin State. Even today, that canal is known as the Thottu Pichu Ayyer canal. Long before all these Five Year Plans were thought of, my grandfather was the man who dammed the Aliyar river which is now part of the Parambikulam project; a tributary from the Lower Aliyar river goes to Chittur, and there is a huge dam there . . .

Shri A. V. Raghavan: Was he collecting any water tax?

Shri Ayyar: We collected water tax, and we were allowed by the Cochin Government to collect it.

Shri A. V. Raghavan: Even now, you are collecting it?

Shri Ayyar: We are not. For fifty years, we collected water tax, and two or three irrigation systems were constructed. Subsequently, in the Settlement Reports themselves, they say that Shri Subbarama Iyer's family has done very great justice to the people, and therefore, their case should be considered liberally and so on. Subsequently, the Maharajah of Cochin wanted to acquire the property, and now, they are giving us a permanent annuity. So, as one coming from a family which has done real service to the people of the State, I can really speak for the ordinary citizens there; there are certain types of lands there still which can be cultivated properly, provided the area is increased.

Shri A. V. Raghavan: What is your attitude towards the abolition of intermediaries in land tenure?

Shri Ayyar: The intermediaries as far as possible should be abolished. But in the case of ryotwari, the principle is that the occupant is the person who has a real and direct relationship with Government, and he has to pay the revenue to Government. It is not just like the case of a zamindari. The ryotwari tenure is entirely different; here, the principle is that the occupant has got the direct relationship with Government.

Shri Kappen: What about those ryotwari-holders who have got a large extent of lands, which they let out to other tenants? Are they not intermediaries?

Shri Ayyar: I do say that. I have already said that intermediaries as far as possible should be abolished, and the benefit of the real cultivation can accrue only if the owner himself cultivates the land . . .

Chairman: Or in other words, if the tiller himself becomes the owner.

Shri Ayyar: Or, to put it the other way, if the owner himself tills the land. There has to be equality of status here also. For instance, there may be a family consisting of four or five members, and if one member of the family takes interest in the cultivation then it is personal cultition . . .

Chairman: Even the term 'personal cultivation' has been defined in some of the land tenure reform Acts in such a way that cultivation through a servant, supervised by a member of the family of the person or the person himself is treated as personal cultivation. So, there should not be any objection to acquisition of land for the purpose of land reforms, beyond the ceiling. I suppose you agree to this?

Shri Ayyar: Yes. There must be personal cultivation.

Shri A. V. Raghavan: As regards the compensation, the Kerala Agrarian Relations Act has provided for 12 times the rent. Is that not fair?

Shri Ayyar: That is not bad. If you calculate it at the existing rate of paddy, supposing an acre gives Rs. 450 as income, then 12 times that would come to about Rs. 5400. That will not be bad, if you calculate it on the basis of net income.

Shri Kappen: Is there anyone who can purchase one acre of land at Rs. 5000?

Shri Ayyar: Yes, there are people who can purchase it at even Rs. 7000 or Rs. 8000.

Shri Kappen: Paddy fields?

Shri Ayyar: Yes, paddy fields where three crops are raised.

Shri Kappen: In Chittur?

Shri Ayyar: Yes, I can tell you that most of the tenants have got surplus cash. After the last war broke out, they began to have surplus cash, and those tenants themselves are now coming forward to purchase the land at market rates.

Shri Kappen: How much paddy can you get from one acre of land?

Shri Ayyar: That will very according to the quality.

Shri Kappen: Taking the best land which can fetch Rs. 6000, supposing a person is prepared to purchase it at that price, what will be the amount of paddy that he will get out of it?

Shri Ayyar: According to the calculation fixed by Government, an income of Rs. 450 would mean two bandies of paddy, in the case of a good type of land.

Shri Kappen: Even in the best type, how many *paras* of paddy would be available?

Shri Ayyar: About 140 *paras* of paddy; it may go up to even 200 *paras* of paddy.

Shri Kappen: What is the price of paddy now?

Shri Ayyar: It is about Rs. 2½ per *para*, which means an income of about Rs. 400 or 500.

Shri Kappen: Do you mean to say that such land is going to be purchased at the rate of Rs. 8000 per acre?

Shri Ayyar: They do purchase, because they can raise three crops there, if they are quality lands; with good irrigation facilities, tanks etc., they can raise three crops there.

Shri A. V. Raghavan: There are certain State Acts which give 12-15 times land revenue as compensation. In Kerala, you have 12 times. Do you not think it is very reasonable?

Shri Ayyar: What they want is 16 or 17 times the rent that is what some of the ryotwari holders were saying.

Shri A. V. Raghavan: If it is 16, you are satisfied?

Shri Ayyar: On the basis of the Rs. 450 income.

Shri Ram Sewak Yadav: What is the maximum size of land held by a cultivator under ryotwari?

Shri Ayyar: I am not in possession of such statistics. But I know that there are some people who possess a big area, *e.g.* the Badapathi Mangalam estate where the ryotwari land is 10,000 or 7,000 acres. I think most of his land is sold to a sugar factory.

Shri Ram Sewak Yadav: What is the number of ryots under this system with more than 1,000 acres?

Shri Ayyar: There are some.

Shri Ram Sewak Yadav: That land is under their personal cultivation?

Shri Ayyar: Some of them have brought land under personal cultivation, I am told. But personal cultivation is more by agents and all that. That is stretching the extent of personal cultivation. Real personal cultivation can be done by a family of three or four only on 100 or 150 acres—intensive cultivation. The rest is cultivation by agents—agent-ridden cultivation.

Shri Ram Sewak Yadav: Is there any number of landholders under the ryotwari system who get rent from those actually cultivating?

Shri Ayyar: Yes, rent also they are getting. They have got a number of tenants.

Shri Ram Sewak Yadav: What is the percentage?

Shri Ayyar: After this talk of land reform and all that, many of the people have reduced their holdings.

Chairman: Most of them have either sold away or partitioned?

Shri Ayyar: Yes.

Shri P. Ramamurti: You have been living in Mylapore for the last 15 years. You are not personally acquainted with conditions in Kerala now except by way of information supplied to you by various persons.

Shri Ayyar: I have reduced my holdings there. My wife is actually settled there and attending to cultivation of about 24 acres some of which are triple crop land. She takes pleasure in cultivation. She told me—there was an idea of having her also here to tender evidence—that the State must compel the owner to cultivate and then alone there will be real increase in production and so on.

Shri J. R. Mehta: You have no objection to this amendment provided it is made clear that it will not adversely affect land below the ceiling.

Shri Ayyar: No.

Shri Kashi Ram Gupta: Are you aware of a directive of the Planning Commission that while fixing ceiling, the States should take into account the income and the average income

should be Rs. 3,600 annually. Do you agree with that?

Shri Ayyar: Yes. The income of Rs. 3,600 is for a family. If it is net income, there is nothing wrong.

Shri Kashi Ram Gupta: The wording of the present includes dwelling house etc. Are you opposed to that?

Shri Ayyar: Yes. Dwelling houses must be exempted.

Shri Kashi Ram Gupta: In your view, the amendment should be so worded as to exclude these things and include ceiling.

Shri Ayyar: Yes, so that the fundamental rights chapter may exist.

Shri Kashi Ram Gupta: What about the 9th Schedule?

Shri Ayyar: I am against it. I am not for barring the jurisdiction of courts. The courts should come in. Then only the amendment will be valid. It may be by revision or giving some kind of opinion. In the ultimate analysis, the ryot who has got a grievance must have access to the courts to have it redressed.

Shri Kashi Ram Gupta: In your previous statement, you have said that if there is fragmentation, it will affect production.....

Shri Ayyar: He must have the liberty to purchase the excess portion just to consolidate.

Shri Kashi Ram Gupta: Are you against joint farming?

Shri Ayyar: Yes.

Shri Kashi Ram Gupta: If there is fragmentation, how will you be able to increase output without joint farming?

Shri Ayyar: By purchasing the extra land.

Shri Kashi Ram Gupta: Ceiling is already there.

Shri Ayyar: That is why I am against a low ceiling. There must be a larger ceiling so that the smaller man may get the benefit of purchasing it and making it a self-sufficient unit.

Shri Kashi Ram Gupta: Conditions are different in different States. In a State there may be no possibility of purchase at all. We cannot assume that there are people who purchase. We want to safeguard the tiller of the soil.

Shri Ayyar: He can save. I have said in my book that a proportion of the produce must naturally go to a provident fund which will be utilised for this purpose.

Chairman: We are not concerned with joint farming. We need not argue that.

Shri Kashi Ram Gupta: On what basis do you define the net income of the agriculturist? Do you take into account his own labour also?

Shri Ayyar: Of course, certainly, his own labour should be included. Then, there is the cultivation expenses, expenses on *karyastha* or servants etc.

Shri Hem Raj: Within the ceiling area, if a ryotwari tenant puts a new tenant under him, do you consider him as a landlord or an intermediary?

Shri Ayyar: The term "absentee landlord", as the Planning Commission has itself stated, should not be applied to small holders of lands.

Shri Hem Raj: There are so many people working in offices, owning small pieces of land which they cannot cultivate by themselves.

Shri Ayyar: They cannot be called landlords.

Shri A. P. Jain: Suppose I have 15 acres of land and I let out 10 acres to another person. With regard to those 10 acres, shall I be treated as a cultivator or as an intermediary?

Shri Ayyar: You should be treated as a cultivator. We should not take away the lease system completely.

Shri Hem Raj: You were yourself saying that unless a person cultivates his land himself, the production will not be much. In that case, if he leases out a portion of his land, the production on that land will not be as much as it would be if he cultivates that land himself.

Shri Ayyar: That is true. But it may well happen that the season or climate of a particular place may not agree to a cultivator. Or, he might have got an attack of typhoid or malaria.

Shri Hem Raj: That is a temporary phase. I am asking about it as a permanent arrangement.

Shri Ayyar: Perhaps, the conditions on which a land can be leased can be defined. For example, widows, orphans, court guardians etc. should be permitted to lease their lands.

Shri Hem Raj: Coming to ceiling, if a cultivator owning five acres of land is permitted to acquire more land, will he not be purchasing it from other people who are already cultivating it? In that case, will it not result in unemployment to those cultivators if we put no ceiling?

Shri Ayyar: We are now discussing, not the question of unemployment but the question of giving proper employment to the existing cultivators. In my view, everybody should cultivate his own land. If one does not cultivate his land, he should be forced to do so. For example, if you look at the English Agricultural Act, it empowers the Government to force the agriculturists to cultivate their lands. If they do not do so, some receivers or managers are appointed to cultivate those lands.

Shri Hem Raj: You have stated in your memorandum that most of the cultivators own less than five acres of land. If that is so and they do not have enough resources for better cultivation, do you not think it better that they should do it in a co-operative way so that it will result in increased production?

Shri Ayyar: That is all in theory and paper. In practice it never turns out so well. What is the use of our going on talking about co-operative farming? In my own book, I have suggested co-operative farming. It can be considered in certain cases.

Chairman: So, you agree that it is the only solution for small farmers.

Shri Ayyar: Yes, as an optional and permissive thing; not compulsory

Shri Hem Raj: So far as small farmers are concerned, what is the method that you suggest for the purpose of increased production from their lands, when they have not got enough resources of their own?

Chairman: That question is beside the point.

Shri Ayyar: You can have service co-operatives. Also the cultivators can be provided with improved fertilisers, better seeds, financial assistance in times of need etc.

Shri S. D. Patil: You have stated in your memorandum that the inclusion of ryotwari tenure under the definition of "estate" will amount to a fraud on the Constitution. Why do you say so?

Shri Ayyar: If I am to give all the reasons, I have to read the relevant portion of the memorandum. Ryotwari tenure is more or less an agreement between the occupier and the Government. Do not think that *patta* is a mere piece of paper. It is practically an agreement between the Government and the tiller that the occupancy rights of the tiller will be protected. So, if his rights are now sought to be curtailed or abridged, it is a breach of faith on the part of the Government. In my opinion, so long as he produces properly, his

rights should be protected. Then, in the case of zamindari lands, the Abolition Acts have come in and ryotwari systems have been introduced. *Pattas* have been given to those farmers. They have parted with that land. Now to re-classify that land is not proper.

Chairman: In the case of ryotwari tenure, if there is land in excess of the ceiling, could it be acquired?

Shri Ayyar: Yes, of course.

Shri S. D. Patil: As a lawyer you must be aware that in a number of States where ryotwari tenure is in existence, "estate" includes ryotwari tenure also.

Shri Ayyar: The word "ryotwari" is used in a loose way. The word "estate" is used here to signify a certain kind of land. For instance, there are coffee estates and tea estates. In that sense, any piece of land is called an "estate". But I am using that term in the specific sense in which the Constitution has used it. The Constitution has used it in the case of certain types of land where because of the peculiarity of the tenure the property devolves only in certain specifics of land and you can tie up the property for generations together, as in Ireland. The constitution-makers had that type of property in mind when they used this term.

Chairman: But that stage is over. We want to improve upon it. We now want forest land, waste land and ryotwari land above the ceiling to be taken over by Government for better cultivation.

Shri Ayyar: Yes, as nationalists we have certainly to be progressive. I do not want to stand in the way of progress. But whatever has been given by Government and has been permitted by Government to be enjoyed by these people should not be interfered with.

Chairman: We agree with you there. That is the intention of Government.

Shri Ayyar: But it should be put in black and white.

Shri S. D. Patil: Which part of the definition of the term "estate" in the amending Bill do you oppose, or do you oppose the whole definition?

Shri Ayyar: I oppose the whole definition.

Shri S. D. Patil: You have said that there should be a liberal ceiling. What do you mean by 'liberal ceiling'?

Shri Ayyar: That is, a man should get attached to his property as he is attached to his wife.

Shri S. D. Patil: While fixing the ceiling what important factors would you like to take into consideration, namely, area, income, land revenue or the money value of the land? In what respect do you expect uniformity?

Shri Ayyar: Uniformity means uniformity in the income that is derived. It is not uniformity in respect of the area. 100 acres in the Sahara Desert will not fetch anything.

Shri S. D. Patil: What about land revenue?

Shri Ayyar: You deduct from the total income the land revenue as also the cost of cultivation. You should take only the net income.

Shri S. D. Patil: As a lawyer do you not think that these land reforms are always subject to dispute and litigation? Do you not want that the benefits which are intended to be given under land reforms are passed on to those who need them the most? Once you put them in the Ninth Schedule that difficulty of litigation is overcome.

Shri Ayyar: The conception of the Ninth Schedule was really limited to such of those estates which were there at the time the Constitution was enforced. They really had no idea of extending the scope of the Ninth Schedule.

Shri S. D. Patil: As regards the 20 Acts which were put in the Ninth Schedule before this amendment came in, there was no reaction. What was the special reason for that?

Shri Ayyar: First of all, I question the validity and the soundness because even the Supreme Court in its latest decision—I think, I have given that decision here—has said that you cannot revive void pieces of legislation.

Shri S. D. Patil: Then how will you protect land legislation?

Shri Ayyar: The thing is that most of the States do not have proper legal advisers for drafting. They may have advisers for argument; they may have good lawyers for argument but very bad material is being chosen for drafting. I suggested to the Planning Commission and to the Prime Minister when I had an interview with him for 40 minutes that the Planning Commission must have a legal adjunct to it which would scrutinise legislation coming from the States as well as legislation which is being enacted or suggested so that in the initial stages itself if there is anything *ultra vires* or if there is anything which is wrong, it might be remedied. Now, they have not got such an adjunct. The economists suggest certain reforms and they are being sent direct or through the Law Secretary. The States write something and it takes ten years to go before the Supreme Court.

Shri A. P. Jain: You have said that there is a contract between the Government and the ryot under the ryotwari system. On what legal basis do you support your contention that it is a contract because all the rights are conferred by law? You would be remembering that there was an argument before the Federal Court in the days of the British about what was known as the Talukdari Act of 1864 in which it was argued by the Talukdars that it was a contract between the Government and the Talukdars and that no modification of the rights of the Talukdars could be effected without their consent. That is, they convicted the law to a contract. That contention was repelled by the Federal Court on the ground that between the State and the subject there could be no contract when legislation is passed. On what legal or juristic ground do you support the contention that there is an unalterable contract between the Government and the ryot and that if it is altered, it will be a breach of faith?

Shri Ayyar: Courts of law put it on two grounds, that is, on the ground of equitable estoppel and on the ground of a contract. These are the two methods. On the basis of equitable estoppel there have been two or three decisions. In the 28 Calcutta in the case, called the Hijwah Canal Case, the Privy Council has held that where Government has encouraged an individual in spending money on Government granted or recognised lands and allowed him to enjoy the fruits of his labours there is an estoppel raised in favour of the individual in equity and he is entitled to full compensation for the property on the basis of full ownership.

Shri A. P. Jain: There cannot be any estoppel against law. So please do not talk of estoppel. You said that there is a contract between the Government and the ryot and that if this is altered, it will be a breach of faith. On what ground do you say that there is a contract between the Government and the ryot? That is my straight question.

Shri Ayyar: If an attempt is made by the legislature to reclassify the lands once settled as Ryotwari as an estate, the attempt will be a fraud on the Constitution. The Supreme Court of America in the famous case of Fletcher Vs. Peck VI Cranch page 67, 123 US Supreme Court judgment of Marshall, Judge, held that such settlements are reactionary and should

be condemned. His Lordship said: "Every grant is attended by an implied contract on the part of grantor not to claim again the thing granted."

Shri A. P. Jain: I am not talking of a grant.

Shri Ayyar: Grants themselves are brought under the category of contracts which under the Constitution are covered by article 19 having continuing obligations and so within article 1, sub-section 10 of the American Constitution.

Shri A. P. Jain: We are not talking of grants. We are talking of law.

Shri Ayyar: You have granted me the right to cultivate the land undisturbed of possession and undisturbed by title. Now you are revoking that grant.

Shri A. P. Jain: I think you believe in the law of the Persians and Medes which can never by altered. Anyway, let us leave that. We can never agree on that. Now, we have a certain social objective which was very eloquently explained by the Prime Minister when he introduced the amendment by which articles 31A and 31B were incorporated. He said that we want to have land reforms as a social measure, that the existing Constitution had been coming in the way and therefore we were bringing forward articles 31A and 31B so that our social objective might not be defeated. Although those amendments came in the year 1954, our land reforms have been held up on account of very able lawyers like you.

Shri Ayyar: No. The whole point is this that the legislation is at sea with the interests concerned. All these things, *ultra vires* or *intra vires* would not have occurred.

Shri A. P. Jain: You are a lawyer and I am also a lawyer. Now the point is this. We want to effect these land reforms effectively and quickly Any delay in the implementation of the land reforms, as you said very correctly, is having a bad effect on agricultural production on account of uncertainties. As an eminent lawyer and one who is very much conversant with the land problems, being a cultivator for generations, you please tell us some way, apart from what we are trying to do, by which we can reduce this uncertainly and effectively implement the land reforms. You are opposed to articles 31A and 31B. So, you please tell us something as to how we can implement these land reforms quickly and effectively.

Shri Ayyar: In my book I have given suggestions. I will read them out.

Shri A. P. Jain: You need not read them out. You give an answer in a few words. We all agree with the objective that agricultural production must increase and the non-implementation of the land reforms are retarding agricultural production. You please tell us some other way as to how quickly and effectively we can implement the land reforms and boost up the agricultural production.

Shri Ayyar: The first suggestion is the appointment of Land Commission on all-India basis.

Shri A. P. Jain: Appoint a committee and do nothing. That is one solution.

Shri Ayyar: Then, preliminary fixing of ceiling on future holdings. Thirdly, allowing the owner to cultivate a minimum fair holding on the basis of middle-class family income and expenses now and in future on the basis of a possible depression and an expanding family. The right of the owner to cultivate a reasonable extent has been recognised by the Commission and it must be enforced also in States where such right has been denied by arbitrary enactments.

Fourthly, payment of retirement bonus to tenant. What I say is, you define the rights between the tenant and the landlord, whether it is four annas in the rupee or five annas in the rupee. You should define it in

order to see that the peace is established between the tenant and the landlord: either the tenant can purchase the land by paying the balance to the landlord or the landlord can pay the tenant so that there may not be any clash of interests.

Chairman: The Land Commission will not solve the problem.

Shri A. P. Jain: I want to point out to you the lapse you have committed. When article 31B was initially enacted, there was no idea of extending it—perhaps you have examihed it—because articles 31A and 31B were not incorporated in the original Constitution. It came in the year 1954 because certain difficulties arose and because further difficulties are arising, it makes a good case for its retention. If these difficulties had not arisen, articles 31A and 31B would have never come. Because further difficulties have come in, we are doing what we did in the year 1954.

Shri Ayyar: I quite agree. What I say is, you do it within the limits of the law.

Shri A. P. Jain: Thank you.

Shri Ayyar: The Supreme Court must exist; our High Courts must exist. There must be faith in our Constitution and that ultimately the Supreme Court is the guardian of our Constitution.

Shri Kasliwal: In reply to a question put by Mr. P. R. Patel, you had said that there was a fear in the mind of the peasantry that Government would take away the land and have collective farms or cooperative farms. You have already said that no land below a certain ceiling should be taken away. Do you agree that if there is any fear, that is being created by the intermediaries alone?

Shri Ayyar: The fear is not exactly created by the intermediaries. All this is really created by the politicians. The politicians are responsible for creating so much fear.

Chairman: The politicians are opposed to land reforms.

Shri Ayyar: I have not lost faith in the Government.

Shri Nafisul Hasan: You have just now said that you are not opposed to ceiling, but you want a liberal ceiling being fixed. If I understand aright, you are also satisfied with the ceiling fixed in your State, that is, Kerala. Am I right?

Shri Ayyar: Yes.

Shri Nafisul Hasan: Will you point out to me any State where the ceiling fixed is not liberal?

Shri Ayyar: For example, in the case of the old State of Hyderabad....

Chairman: Leave out the practice obtaining in the old State.

Shri Nafisul Hasan: Some ceilings have been fixed by the States. Can you point out any State where the ceiling has not been liberally fixed?

Shri Ayyar: I must study the question put by the hon. Member.

Chairman: In Andhra, it is 27 standard acres. It is quite liberal. Don't you agree?

Shri Ayyar: Yes.

Shri Nafisul Hasan: I wanted to know if in his opinion there was any State in which the ceiling fixed was not liberal.

Shri Ayyar: I will have to make a study.

Chairman: So that is all. Thank you very much.

Shri Ayyar: Before I take leave of you, I would like to say a word about the family settlement to which an hon. Member had made a reference.

Chairman: It is not necessary to go into that. We are not concerned with individual families here.

Shri Ayyar: I am referring to it only to point out the way in which the revenue settlement was made at that time.

Shri A. V. Raghavan: You can donate that book to the Parliament Library, if you want.

Chairman: We cannot go into those things now. In those days, the settlements were made for various reasons. Now, we are trying to bring about uniformity. So, those terms and those settlements cannot hold good now. The world is changing now.

Shri A. V. Raghavan: Those ideas are now outdated and outmoded.

Shri Ayyar: I do appreciate that the world is changing. I have considered all these aspects.

I am much obliged to the hon. Members for the patient hearing they have given to me.

(The witness then withdrew)

II, All India Agriculturists Federation, Mangalore:

Spokesman:

Shri K. B. Jinaraja Hegde

(Witness was called in and he took his seat)

Chairman: We have received your memorandum, and it has been circulated to all Members. If there are any points which you might like to stress, you may do so.

Shri Hegde: I shall only stress particular points.

In addition to the two representations made earlier, the Federation beg to submit the following:

(1) Life, liberty and property are the basic rights of man; these were enshrined in our Constitution in the year 1950 after full deliberations extending over several years. We have established thereby a democratic Republic in this country.

(2) In our Constitution there are three arms of the State, the Legislature, the Executive and the Judiciary, and we have further provided under article 32 a right to the aggrieved party to move the Supreme Court of India to protect him against the legislative and executive excesses in violation of Fundamental Rights.

(3) The life and liberty ensured under article 21 is already reduced to the vanishing point by the contention of the State in Gopalan's case. It was held that this article did not impose any limitations upon the legislative powers but served only as a check on the exercise of executive authority, so that today the Fundamental basic rights of life and liberty are at the mercy of the legislature and it is outside the protective umbrella of the Constitution. In effect, the Chinese and Russian methods of annihilation of owners of land by mass murders could be achieved in this country constitutionally by starving them to death without any constitutional safeguards.

(4) Coming to the right to own property and possess and to derive benefit therefrom, in the year 1950 these were guaranteed under article 31. This was not a new achievement; even before that, the citizens enjoyed that right under the Government of India Act of 1935.

(5) In 1951, the first amendment to the Constitution was carried out to enable the States to abolish zamindars, inamdars, etc., who had a right only to collect land tax due to the Government. Their holdings were popularly known as Estates. The intention of the executive was suspected and questioned at that time as to whether the First Amendment would not affect the ryotwari holdings, the owners of which had a right to cultivate the lands held by them. Late Dr. Ambedkar categorically stated on the floor of the Parliament

that the Government had no intention and the provisions under article 31A were not to be applied for the purpose of dispossession of ryotwari holders. The Prime Minister also said that it would not apply to ryotwari tenures. Therefore, there is nothing surprising in the decision of the Supreme Court that the term 'estate' did not include the ryotwari holdings. The reasons advanced for the Seventeenth Amendment Bill are not correct. The real reason behind this amendment is the decision of the executive to introduce co-operative joint farming, the initial step towards communes as in China and Russia.

(6) Article 31A(1)(b) and article 31(2)(a) read with the projected amendment give complete authority to take possession of all lands, destroy all rights in land, urban or rural, and establish co-operative farms and thereby force 80 per cent of the population of this country to serve as serfs on lands under the thumb of the bureaucracy.

(7) The authorisation of the executive to bring about such a change, if need be, by the State legislature, without any obligation on their part to pay any more compensation than what they may be pleased to fix, is, to say the least, scrapping all Fundamental Rights and denying the protection of judiciary. This is really conversion of the democratic Republic of India into a socialistic democratic State.

(8) The people of India gave the Constitution to themselves but in these thirteen years, the majority political party has scrapped all Fundamental Rights. Chapter III of the Constiution is dead in so far as agriculturists are concerned, who are 80 per cent of the population. The remaining 20 per cent will be broomed out overnight.

(9) The present amendment being of a very serious nature, we submit that it is the duty of the Joint Select Committee to tour the country and examine the peasants on whom the real development of the country depends and finally assess the opinion held by them and report to the Parliament.

(10) The present amendment intends to add to the Ninth Schedule 124 Acts passed by the States. They are going to form a part of the Constitution. In important matters like the ceiling provisions, compensation, mode of payment, exemptions and resumptions there is no common policy in those Acts. Such enactments should not be validated without further scrutiny by an impartial body of jurists. This is essentially a task that could be undertaken during peace-time and not advisable at the present national emergency.

(11) The Joint Select Committee may be pleased to note that no amendment of the Constitution has evoked so much of protests as the present one, which by itself is an indication of the adverse public opinion. To ignore it will be a crime against human rights.

Therefore, it is humbly prayed that the Joint Select Committee may be pleased to recommend to drop the Bill.

Shri Kasliwal: On a point of order. The witness has made some extraordinary statements that people are being exterminated by mass murders in China and Russia, and the same object is being achieved here by famishing the people and so on. I submit that all those observations should be expunged from the evidence.

Chairman: That is his opinion. That does not matter.

Shri A. P. Jain: You have said that the Prime Minister and Dr. Ambedkar gave a specific undertaking that ryotwari tenure as such would be excluded from the operation of articles 31A and 31B.

Shri Hegde: I shall quote from Vols. 12 and 13, Part II, 1951, column 9913 of the parliamentary debates. This is what Dr. Ambedkar said:

> "It is quite true that there are some States where the definition of the word 'estate' is a wide one and might possibly include holders under ryotwari or occupants under the Bombay land revenue code or ryots in other parts of India. At one time, I thought that it might be possible to give a limiting effect to the word 'estate' by the addition of an explanation, but on further consideration I find that it is more or less impossible to give an explanation which would cover the point. But I would like to say this that there is no intention on the part of Government that the provisions contained in article 31A are to be employed for the purpose of dispossessing ryotwari tenants."

Further he said:

> "....whenever any such measure comes before the President for consideration, the undertaking given in this House would be binding upon the President in giving his sanction so far as any such measure is concerned".

This is what the Prime Minister said:

> "Nobody is going to touch that kind of zamindar in this land. That was made quite clear. So that, normally speaking, of course, this does not refer to the ryotwari system".

Shri A. P. Jain: Normally speaking.

Shri S. D. Patil: You said that ryotwari lands cannot be taken over on the ground of violation of fundamental rights. When the country adopts a socialistic goal, the benefits of land reform should be passed on to the beneficiaries with the least trouble and disturbance. What is the alternative you have to the one suggested in this Bill.

Shri Hegde: I have dealt with the legal aspect of the question. The question is whether the Constitution is going to concede the right to a citizen to own property in land.

Shri A. P. Jain: You referred to a passage in the Prime Minister's speech. It has to be read in the context of all that he has said. I will refer you to what he said then and ask whether it modifies your original opinion or not. This is what he said:

> "We have to think in terms of large schemes of social engineering, not petty reforms but of big schemes like that. Now, if all our schemes like that are stopped—may be rightly stopped, may be due to a correct interpretation of the law and therein too the lawyers differ and even Judges have differed—again, I have no doubt that we have a generation to wait for things to stabilise. Then, we will have the help of the High Courts of the land, but we cannot wait. That is the difficulty. Even in the last three years or so some very important measures passed by State Assemblies and the rest have been held up. No doubt, as I said, the interpretation of the courts must be accepted as right, but you, I and the country has to wait with social and economic conditions—social and economic upheavals—and we are responsible for them. How are we to meet them? How are we to meet this challenge of the times? ....."

Again :

> "Ultimately, we thought it best to propose additional articles 31A and 31B and in addition to that

there is a Schedule attached of a number of Acts passed by State legislatures some of which have been challenged or might be challenged and we thought it best to save them from long delays and these difficulties, so that this process of change which has been initiated by the States should go ahead....".

This is the background in the light of which all other remarks made by him should be read.

Shri Hegde: The respected Prime Minister is after all the leader of a majority party in possession of Government. But the Constitution is something which people give to themselves irrespective of political parties or principles or political ideologies.

After the 17th Amendment is passed, what is there left in article 31 and in the fundamental rights chapter? Is there anything left to the agriculturists of this country? When the Constitution guaranteed the right to own property and when it guaranteed that if for a public purpose such a right would be taken, it would be after paying compensation, which was held by the Supreme Court as just compensation, my pleading is that it is wrong to take away the fundamental right of agriculturists alone, as if they are criminals, reducing them to a sort of second-class citizens, leaving all others free.

Shri A. P. Jain: You placed reliance on certain observations of the Prime Minister while articles 31A and 31B were being enacted. I am saying that those observations have to be viewed in the background of all that he had said at the time. Of course, Parliament is supreme; if the 17th amendment is to be passed, it will be passed according to its authority. You cannot sit in judgment over Parliament.

Shri Hegde: I am only pleading, not sitting in judgment.

Shri A. P. Jain: Do you modify your opinion in the light of the other statements made by the Prime Minister, one of which I quoted?

Shri Hegde: In 1951 and also in 1954, when the 1st and 4th amendments were passed, the definite idea was only to abolish intermediaries like zamindars, inamdars, jagirdars, etc., who had a right only to collect land revenue or land tax due to the State from the cultivators. They had no right to cultivate the land, which was the right of the cultivators. At that time, they were questioned whether that amendment would apply to the cultivators of land known as ryotwari holders. An assurance was given that it would not apply to such people. And, in fact, at least so far as the southern States are concerned, I have quoted a number of authorities to prove that the ryotwari holders were always considered as owners of land.

Shri A. P. Jain: I msut apologise both to the Chairman and to the witness for putting another question. Please refer to Schedule IX, item 2. It includes the Bombay Tenancy and Agricultural Land Act, 1948, which includes ryotwari area. So, in spite of what Dr. Ambedkar might have said and the interpretation you may put on what the Prime Minister said, actually, at that time a part of the ryotwari area was included in the Ninth Schedule.

Shri Hegde: That is because estates were defined differently in different States. So far as Madras was concerned, which included the present Madras State, a portion of Orissa, a portion of Mysore, a portion of Kerala and the whole of Andhra, only that land was known as "estate" in respect of which the right of the zamindar, inamdar or jagirdar was only to collect taxes. So far as Bombay is concerned, according to the definition it employed in its Revenue Code, the term "estate" included land under ryotwari holdings also. Therefore, it so happens that, so far as Bombay is

concerned, some fo the ryotwari holdings were included and brought within the term "estate", but not so, in the case of Madras. Because, in Madras "estate" meant only those estates which were held by the zamindars, not by ryotwaris.

Shri A. P. Jain: In other words, it is not a question of ryotwari or otherwise, but it is a question of whether the "definition of "estate" included ryotwari or not.

Shri Hegde: The word "estate" is defined sufficiently in the Constitution.

Chairman: But you have stated that under the Bombay Act "estate" included ryotwari tenures also.

Shri Hegde: Yes, the Bombay Revenue Code employed the word "estate" to include both the intermediaries as well as ryotwari holders. Therefore, it was applied against them.

Shri A. P. Jain: So, the distinction was not drawn on the basis whether the area was ryotwari or otherwise, but it was drawn on the basis whether the word "estate" has been defined or not and it included ryotwari holdings.

Shri Hegde: Strictly speaking, the term "estate" could not include ryotwari holdings.

Chairman: The Bombay Act has included it.

Shri Hegde: That is a mistake. So fas as the old Madras Presidency was concerned, which consisted of three or four States, the definition of the term "estate" was very clear. In fact, in the Kasargode case the Supreme Court has fully discussed this aspect of the problem. It has said that so far as Madras is concerned, ryotwari holdings will not come within the term "estate"; otherwise, it would not have applied articles 14 and 19.

Shri S. D. Patil What portion of the definition of the term "estate" do you object to and why?

Shri Hegde: I object to the inclusion of ryotwari holdings which were well-known as proprietary estates, or the holdings of *pattadars* as they were known in Madras Presidency. There is absolutely no doubt about it and I can show any number of Madras High Court judgments which have held that ryotwari *pattadars* are the owners. The Government of Madras, during the East India Company days, made a solemn declaration on that the ryotwari holders are the owners and proprietors of the land which they are holding and the Government had absolutely no interest in the land. Since Government was not the owner of the land, its interest was limited to collecting, as revenue, a fair share of the produce. I am quite certain, that was the position, so far as Madras was concerned, and I can give you any number of Madras High Court judgments which have held that the ryotwari holder is the owner of the land. Therefore, under "estate" you can only deal with intermediaries who are not owners of land but only collectors of revenue. So, I have got every objection to the present definition. I say that the real owners of land should not be brought within the term "estate".

Shri S. D. Patil:: In the States of Gujarat and Maharashtra, former Mysore and Punjab ryotwari holdings are "estate" under the local law.

Shri Hegde: If they are not estates in Madras and if they are estates in Punjab and Gujarat, it is not fair to treat them on the same footing.

Shri S. D. Patil After the reorganisation of States, some portions of Madras have gone to Kerala and Mysore. So, it can well happen that in those States already the term "estate" includes ryotwari and now because of reorganisation in certain areas "estate" does not include ryotwari.

Shri Hegde: So far as the old Madras Presidency was concerned, the meaning of the term "estate" was well known and there are many High Court judgments to that effect. Therefore, so far as Madras is concerned, the meaning of the term ryotwari holder and his rights are well-known. Simply because in some parts of the country "estate" is defined differently. I feel there is no justification to apply the same decision to lands which are governed by entirely different tenures.

Shri S. D. Patil: So far as Bombay is concerned, the definition of the term "estate" was made as early as 1857 and it was there all these years. It is in force in Maharashtra, Gujarat and parts of Karnataka. According to that definition "estate" includes ryotwari tenure. Suppose that definition is extended to other States also, without disturbing the rights of the persons, what objection have you got?

Shri Hegde: Because we are governed by entirely different tenures. The rights of ryotwari holders are well-known in our part of the country.

Shri S. D. Patil: What is your view about those hundred and odd Acts which were put in the Ninth Schedule just to give them protection from litigation? Do you not think that the intention of the Legislatures of the States to bring in land reform with the least delay, so that the benefits can be passed on to the actual tillers should be carried out? To that extent, why should you object to putting these Acts in the Ninth Schedule?

Shri Hegde: Now there is a fear that some of them, or all of them, might be held *ultra vires* of the Constitution by the courts. It is to overcome that, all these 124 Acts have been put in the Ninth Schedule to validate them. My prayer is, let us study these 124 Acts and see whether they can form part of the Constitution, thereby having a uniform policy of land legislation. That aspect has to be studied.

Shri S. D. Patil: Have you any objection to land reforms so that there can be ceilings on land? Or do you basically oppose the idea of tenancy legislation?

Shri Hegde: We are for tenancy legislation. The tenants must be protected against eviction so that they will have the incentive to increase food production.

I have not objected to tenancy legislation. Our objection is with regard to taking away all fundamental rights so far as landed interests in the country are concerned.

With regard to ceiling, the ceiling is not uniform in all States. In some States the income is taken into consideration, that is, the ceiling is fixed based on income. In some States the area is taken into consideration. On the whole, as far as my study goes, I find that there is absolutely no uniformity.

So far as the Mysore Land Reforms Act is concerned, this was assented to by the President after the Supreme Court judgment and it is held up because of the Supreme Court judgment. When I examined that Act, I found that though the ceiling is put at 27 acres, in the real working it is only the person who owns 2 acres and less who will be saved from the provisions of the Mysore Land Reforms Act. If the man owns 2 acres and 1 cent, he loses the whole thing. That is the legislation with regard to ceiling. That is a very serious objection. For instance, I may say that if a person has let out his land for various reasons, to deny him his right of resumption of at least that portion which you concede to him for his cultivation to make a living out of it either during his retired life or, at the end of his life, or to make a provision for his wife and children is something very repugnant

to the ordinary notions of justice. Today this amendment is affecting only the landed interests and not others. Where are these people to go?

With regard to compensation, it differs in different areas. You will be surprised when I tell you that the Mysore Land Reforms Act has classified land according to the number of inches of rain the land gets. If there is a barren land or even a rock getting 100 inches of rain, it is as good as a piece of first class *nanja* land in the Mysore State which gets the same amount of rain. There is this sort of difference and differentiation and a classification unknown to law and to tenures till now. For instance, in the old Madras State the land settlement has been perfect. I am confident, such a close examination of soil and fixing of assessment of land tax has never occurred in the history of this country. It is so perfect. The whole thing is given a go-by and land is classified according to the inches of rain that that land receives!

Chairman: They have taken the income also into consideration.

Shri Hegde: No, they have not. They have taken the income into consideration only in one respect, that is, while defining a small holder when they say "income from 2 acres of land plus any other income that that man may get the total of which is not less than Rs. 1,200". Only in that section income has been taken into account.

Chairman: For fixing the ceiling, I think they have taken it into account.

Shri Hegde: No.

Shri S. D. Patil: Will you reconcile yourself if we define 'estate' as that portion of the surplus land which is above the ceiling? Will you agree to that?

Shri Hegde: But I would like to know what that ceiling is.

Shri S. D. Patil: The ceiling will be whatever is held proper by the competent legislature and assented to by the President. If land which is and above that ceiling is brought under the definition of the word "estate", will you have any objection?

Shri Hegde: I have only one objection. The Constitution should not use a word the definition of which would be relegated to the State legislatures. It is a constitution of the country. Every word, particularly the technical words which are there, as far as possible should be defined in the Constitution itself. For instance, the word "estate" is defined. If you want to use the word "ceiling", do it, but for God's sake please define it as to what it is. Do not drive us to approach either the State legislatures or the Supreme Court to define that word. They can never do that. I have already told you that ceiling has got altogether different standards and different meanings in the various State enactments.

Shri S. D. Patil: Even the Constitution provides that land reforms which come under the State List should be the province of the States to legislate. If the Constitution provides that, why do you want to object to the States legislating and defining it?

Shri Hegde: I am not objecting to the State legislating. On the other hand, I want the State legislatures to be free to legislate. But you are makng a Constitutional provision by saying that we fix a ceiling and that above this ceiling this Constitution Amendment will take its effect; below that ceiling no Constitution Amendment shall take effect. If that is the standard that is going to be maintained by the Seventeenth Amendment, my prayer is that for God's sake please fix what that ceiling is. Let it be anything; let it be one cent. That does not matter, but please say whether it is by area or by income or by rainfall as Mysore has done.

Shri P. Ramamurti: Even that will contradict your fundamental objection.

Shri Hegde: That will be there. I am only answering a question. Please do not think that it is my suggestion.

Shri S. D. Patil: You have said that the term "estate" and the ryotwari *pattas* in the State of Madras differ in their incidence. How does the incidence of ryotwari *patta* in Madras or in Kerala differ from the incidence of ryotwari tenures in say, Maharashtra, Gujarat or Punjab, where the term ryotwari tenure is used? What are the exact points of difference according to you?

Shri Hegde: So far as the old Madras State is concerned, the word "estate" had a definite meaning.

Shri Bibundhendra Mishra: His point is as to how far the incidence of ryotwari tenure, whether it is in Madras or whether it is in Gujarat, is different in this country.

Shri Hegde: When land tax was being settled zamindars were created by the British. After that they changed their idea and they wanted to create the ryotwari settlement. It was a settlement of tax and not land. Ryotwari tenures include two types of settlements. One is principally the settlement of tax on the holding of a cultivator. During those days several holdings were released by the ryotwari holders in favour of the Government being unable to pay the land tax. Such lands reverted to Government and in respect of those lands the Government created what are called *genivargs*. Geni means lease. They were leased by Government to some people who wanted to cultivate those lands because they reverted to Government.

Now, in practice, later on, they said that there was no difference between the original cultivator who accepted the ryotwari *patta* and also those lease-hold *genivargs*. Both were ryotwari *pattadars* for all practical purposes at that time under the rules then prevalent.

Shri Khandubhai Desai: That is limited.

Shri Hegde: It is not limited. The ryotwari pattadars who were the cultivators at the time of settlement of land revenue over their holdings were known as *khasvargs*, that is, lands which were originally cultivated by them and continue to be cultivated by them and they were the owners of that land. A doubt was created with regard to lease-hold rights which Government got back and they leased it back. Therefore, there is a confusion here, that sometimes the ryotwari is claimed to be an owner or a lease holder. That is how the confusion has arisen. So far as Punjab and Maharashtra are concerned, I am not in a position to distinguish whether they were the lease-holders of the Government or the real owners of the land. It requires to be examined. If they were the real owners of the land and cultivated it, they have got proprietary rights over the land.

Chairman: You said that in Mysore, even a waste land where there is a rainfall of 100 inches is brought under first class land. It is not so. I will read this out to you from the Act.

> '"Basic holding" means land which is equal to 2 standard acres.
>
> "Standard Acre" means one acre of the first class of land or an extent equivalent thereto consisting of any one or more classes of land specified in part A of Schedule I determined in accordance with the formula in part B of the said Schedule.'

I will read out the Schedule too.

> "First class—Wet land or garden land possessing facilities for assured irrigation where two crops of paddy can be raised in a year."

It is not a waste land. Even take the 7th class.

> "Dry land or garden land not falling under the 1st, 2nd, 3rd 4th or 5th class, in areas in which the

average annual rainfall is less than 25 inches or uncultivated dry land in areas in which the average annual rainfall is not less than 75 inches."

It is not a waste land; it is not so bad.

Shri Hegde: It is based on the rainfall.

Chairman: Based on the rainfall, but it is cultivated. It is not a waste land.

Shri Hegde: If you go further, you will find it is purely on the basis of rainfall.

Chairman: It is not so.

Shri Hegde: Take, for instance, the 5th class.

"Dry or garden land not falling under the 1st, 2nd, 3rd or 4th class in areas in which the average annual rainfall is more than 35 inches."

Chairman: It is dry land where crops are raised. It is not a waste land.

Shri Hegde: The classification is based only on the rainfall.

Chairman: Not only on the rainfall. The land must be capable of raising crops.

Shri Khandubhai Desai: It does not say, "rocks".

Shri Hem Raj: The present Bill is concerned about the inclusion of ryotwari land in the definition of "estate". At the same time you say that so far as Punjab and Gujarat are concerned, they had already included ryotwari land under the definition of "estate". Then, don't you think that if in a certain State those lands had been included and in certain other States they have not been included, that will become discriminatory?

Shri Hegde: This is certainly discriminatory. But unfortunately the decision of the Supreme Court has been there in this respect. There could be a discrimination between a State and a State. Still the Supreme Court is unable to interfere in the matter. It is a moral discrimination. Legally, it is not.

Shri Hem Raj: For the purpose of uniformity, will it not be better to bring all the States on a uniform basis and include the ryotwari lands within the definition of the word "estate"?

Chairman: You need not argue on that point.

Shri Hem Raj: So far as ryotwari lands are concerned, whether it be within the ceiling or above the ceiling, will you consider the ryotwari owner as an intermediary or will you consider him still to be the owner?

Shri Hegde: He is still the owner. I will give an example. You let out a house and if the tenant occupies it for 100 years or so, does he become the owner?

Shri Hem Raj: But here is a question of getting more production. It is a social measure.

Shri Hegde: You fix a particular standard of production for the land and on that basis if a man fails to produce that much, then you snatch away the land.

Shri Kashi Ram Gupta: Are you in favour of unfettered right to any amount of property of land or do you want that a person should own as much land as he can personally cultivate?

Shri Hegde: You cannot make any distinction in the matter of property whether it consists in land or in buildings or in moneys in banks or in shares in companies. It will be discriminatory to separate the landowners as a class to be treated in a different way. That is my fundamental objection under article 14.

Chairman: You want any man to hold any extent of land whether he personally cultivates or not. Is that your view?

Shri Hegde: Today the position is that the idea has gone to the extent of nationalising every inch of land. That is the aim of the Seventeenth amendment to the Constitution.

Chairman: We are not concerned with the nationalisation of land. It concerns with land reforms. Are you in favour of a man holding any extent of land without any restriction?

Shri Hegde: In these days of greater production I am not for a man who will own any extent of land. I am not arguing on his behalf. I am arguing on behalf of people who have made agriculture their way of life, who depend upon agriculture as any other person in this country who is dependent either upon his trade or upon his profession, whatever it is. The effect of this legislation would be to annihilate the owners of land. This is something which cannot be tolerated, if there is a question of moral justice and if article 14 is going to be applied. I am against dealing with agriculturists differently from dealing with other sectors of life.

Shri Kashi Ram Gupta: You agree that if a person cannot cultivate the land, then that extra land can be taken away from him.

Shri Hegde: Supposing today a person is not able to cultivate all his land because of certain difficulties, you should not deny him the right when he wants to cultivate the land. The land should be given back to him.

Shri Kashi Ram Gupta: The limitations of cultivation are there. A person can cultivate the land upto a limit. That limit can be defined.

Shri Hegde: Let us have a common policy.

Shri Kashi Ram Gupta: You are agreeable to a common ceiling being fixed.

Shri Hegde: Yes, Common policy in regard to ceiling.

Shri Kashi Ram Gupta: My second point is this. There is another definition in the amending Bill. There is the last clause. You must have studied that clause. Are you agreeable to this *in toto* or do you want to suggest some amendment in that clause. I am referring to sub-clause 3.

Shri Hegde: You have included in this Seventeenth Amendment Bill every conceivable inch of land.

Shri Kashi Ram Gupta: Are you opposed to this clause?

Shri Hegde: We are opposed to this clause.

Shri Kashi Ram Gupta: Or do you want to have an amendment to this?

Shri Hegde: We are opposed to this *in toto*.

Shri Kashi Ram Gupta: You had suggested in your opening statement today that there should be a body of jurists to study the various enactments, before they can be included in the Ninth Schedule. What sort of body do you suggest?

Shri Hegde: I was suggesting a body of people who are known for their legal study, people who can be depended upon to suggest impartial enactments. After all, under article 14, the Constitution provides equality before law. So, we should not deny equality before law. A man may be a very big man or a rich man holding thousands of acres, and another man may own only two acres, but there ought to be equality before the law between them, as enshrined in article 14 of the Constitution. But by means of this amendment which seeks to include all ryotwari holdings also within the meaning of the word 'estate', you are denying the rights conferred by articles 14, 19 and 31.

Shri Kashi Ram Gupta: What is your concrete suggestion for having a body of jurists to examine these Acts?

Shri Hegde: Let a body of jurists be appointed to study these 124 Acts and see whether there is any difference between these 124 Acts, and whether all these 124 Acts should be made part of the Constitution.

Shri Kashi Ram Gupta: Will you be agreeable to having the Supreme Court Bar Association as the body of jurists to study them?

Shri Hegde: You can appoint them. The Bar Association contains many members.

Shri Kashi Ram Gupta: Do you suggest that the net income of an agriculturist should be defined in relation to the ceiling?

Shri Hegde: The ceiling could be fixed only on two grounds, either on the basis of the income or on the basis of the area. In fact, the Planning Commission themselves first thought of income; later on, they gave up the idea of income, and they thought of the area. There is thus a lot of confusion.

Shri Kashi Ram Gupta: What is your suggestion? Should we stick to income or to the area?

Shri Hegde: I would like to stick to net income.

Shri Kashi Ram Gupta: That is, net income, after taking his own labour into consideration?

Shri Hegde Yes.

Shri J. R. Mehta: You seem to be making a great distinction between jagirdari and zamindari holders on the one hand and ryotwari-holders on the other, by saying that the jagirdars and the zamindars used only to collect taxes, while the ryotwari-holders personally cultivate the land. Where the ryotwari-holdings are very extensive in area, and where the ryotwari-holder collects taxes for a major part of his lands, should he not be treated on the same level as a jagirdar or a zamindar who collects taxes? Is he also not an intermediary?

Shri Hegde: It is a mistake to think that a ryotwari-holder is collecting taxes. He is only collecting rent for the use of the land which is occupied by somebody; just as the owner of a house collects house rent, the ryotwari-holder collects the rent from the user or the occupant.

Shri J. R. Mehta: If he does not cultivate his land but only collects taxes, then is he not as good an intermediary as the jagirdar or the zamindar?

Shri Hegde: That is the question which I have just answered. If a house-holder does not occupy his house, can you say that the house belongs to the tenant?

Shri J. R. Mehta: Do you or do you not agree that the intermediaries should go?

Shri Hegde: They have already gone. The Government of India have published that there are no intermediaries in this country today. I have already referred to that quotation.

Shri J. R. Mehta: If they are still there, do you think that they should remain or they should go?

Shri Hegde: The intermediaries should go.

Shri J. R. Mehta: If the removal of the intermediaries comes into conflict with the right to property, then what remedy would you suggest?

Shri Hegde: They must be given full compensation.

Shri Ram Sewak Yadav: As far as I have been able to understand the reply given by you to Shri Kashi Ram Gupta's question, you agree to ceilings?

Shri Hegde: Yes, for all sectors.

Shri Ram Sewak Yadav: So, what objection have you got for the inclusion of the ryotwari lands within the meaning of the term 'estate'?

Shri Hegde: The two things are quite different. You cannot call a black thing as white, and give both of them a common name. How can you bring white under the category of black? They are absolutely two different legal rights.

Chairman: Suppose, under the ryotwari tenure, a man owns about three thousand or two thousand acres of land. A man can personally cultivate at best only about 50 or 60 acres. Do you mean to say that he should be allowed to own as much as he likes?

Shri Hegde: I am not saying that.

Chairman: When the tenants are cultivating the excess of land over fifty or sixty acres, do you hold those owners as intermediaries or not? Are they not intermediaries between the tillers and the State?

Shri Hegde: I would not say that they are intermediaries at all. The word 'intermediary' was definitely used for a person who used to collect the land tax due to Government.

Chairman: So, you would not consider such a ryotwari-holder as an intermediary?

Shri Hegde: No, I do not consider him as an intermediary.

Chairman: So, you want that a man who gets his land cultivated through tenants can be allowed to own any extent of land?

Shri Hegde: That was why I said that you might fix a ceiling, instead of denying them of everything that they hold.

Chairman: So, you agree that anything above the ceiling can be taken over by the State for the purpose of land reforms?

Shri Hegde: Provided full compensation is paid, because that person is the owner. We cannot treat him as a zamindar and pay him only nominal compensation.

Chairman: What is the definition of 'full compensation' according to you?

Shri Hegde: That is well known. Leave it to the courts.

Chairman: You do not want to leave it to the legislature?

Shri Hegde: No. It must be made justiciable, if there is to be justice.

Shri Rohit Manushankar Dave: Is it your contention that the Chapter on Fundamental Rights in the Constitution is a bar to any change in the existing economic and social relationships?

Shri Hegde: No, it is not.

Shri Rohit Manushankar Dave: Therefore, it is possible to conceive of a situation in which the right to property might be examined in terms of whether the obligations of holding the property are fully discharged or not, and if it is found that the obligations are not discharged, then, it is the intention of the people of India to see that the right to property should be so construed that those obligations are enforced. Would you agree with that proposition?

Shri Hegde: I agree with that. But let the obligations be first created. That is the point.

Shri Rohit Manushankar Dave: if in a given situation a particular landholding amounts to a mere collection of rent without discharging any obligation either regarding the land which is held or regarding the society on whose behalf that land is held, would you agree if the people of India desire that a situation should be created where that type of right should be annulled?

Shri Hegde: This raises two questions. One is this. What are the obligations that are imposed by the State or under the Constitution on the person who owns land? We are not definite about that. No such obligation has been fixed by any enactment.

Shri Rohit Manushankar Dave: Would you agree that the entire intention of articles 31A, 31B and the present seventeenth amendment is to define those obligations by implication?

Shri Hegde: No. Where is the implication there?

Shri Rohit Manushankar Dave: The obligation is simply this, that if you cultivate that land personally, then you are discharging your obligations; if you are merely collecting rent from the tenants, and have no obligation either to improve your land or to see that more production takes place, and if your entire intention is merely to collect the rent on the plea that you are the owner of that land as defined under a certain Act, then you are only exercising your right and not discharging your obligations; in that case, the people of India expect Parliament to so construe that right as to ensure that a right without obligation is not recognised.

Shri Hegde: My feeling is that you are ascribing certain obligations to this amendment which are not found there.

Shri P. Ramamurti: You were talking of fundamental right to property, right to life and liberty. You will appreciate that these rights cannot be guaranteed just by inscribing them in the Constitution. If you take land, which is tangible property, the people who hold the right to property are hardly 10 per cent of the total population.

Shri Hegde: No.

Shri P. Ramamurti: This is according to government statistics. Over 50 per cent of the rural population is landless. How many landless labourers are there?

Shri Hegde: There are a large number of landless labourers.

Shri P. Ramamurti: Over 50 per cent of the rural population do not possess land.

They are landless labourers. Over and above that, there are large sections of the rural population who are tenants, who do not own an inch of land, who are just tenants. You will therefore agree that this so-called right to property is a fictitious right enjoyed only by a minority of the population, and the majority of the people do not enjoy that so long as the total area of land is limited. So in order to make this right available to as large a section of the population as possible, land should be taken away from those who own large areas of land.

Shri Hegde: Your question, a long one, presupposes several presumptions. In the first place, the Constitution of the country did not recognise any right as fictitious. There is no such thing as a fictitious right. If anything is fictitious, there is no right at all. It is wrong to think that the Constitution has created a right in a human being that the country would provide land to every man. No such proportion was put forward at the time the Constitution was framed, nor does chapter III dealing with fundamental rights confer land to any

person who asks for it. If it is a question of adjusting rights for the development of the State for the well-being of the society, we are one with it. But unless a right which was conferred in the Constitution is respected, unless property right is respected in a democratic State—I always imagine that the State is democratic—you cannot have the incentive to develop the State, develop agriculture and land or create or build a welfare state. If you kill incentive, we will see here what we are seeing in China and Russia—importing foodstuffs from capitalist countries.

Shri P. Ramamurti: We are not discussing Russia and China here.

Shri Hegde: We are going that way under the 17th amendment. I am only warning.

Shri P. Ramamurti: You were also talking of murder by starvation. A number of States have provided for ceiling, upto which the land will not be taken away under any circumstances. In Madras it is 30 standard acres. Is it your contention that the ceiling provided is such as will lead to starvation? After all, the above-ceiling land is taken away on payment of compensation; even if there is no compensation paid, do you suggest that the land left will not be sufficient to enable him to live and it will lead to his starvation? If that is so in the case of these people, then the majority of people starve because they do not own any land at all.

Chairman: No arguments.

Shri Hegde: The 30 standard acres fixed by the Madras State is not the ceiling in other States.

Shri P. Ramamurti: What does it matter?

Chairman: In Mysore it is 27.

Shri Hegde: But in practice, it is reduced to 2. That is my contention.

Chairman: How can you say that?

Shri Hegde: Given time, I will explain it.

Chairman: That may be your opinion.

Shri Hegde: Please read sections 14-17 where a person though owning he cannot resume it. Then where is the question of ceiling. When you fix a ceiling, you must ensure that that I get at least that. But you take away all that under different sections. It is there in sections 14-17.

Chairman: You have no objection if the basic ceiling holding is left with the cultivator, the ryotwari-holder.

Shri Hegde: I have no objection but let it be fixed.

Shri A. V. Raghavan: Are we to take it that you want uniform ceiling throughout India?

Shri Hegde: Yes, based on income.

Shri A. V. Raghavan: But the pressure of population per sq. mile varies from State to State.

Shri Hegde: So far as I know, at no time has the Planning Commission, the authors of the land reform, ever argued that the ceiling should be based on population.

Shri P. Ramamurti: In your memorandum you have taken objection to some of the policies of the Planning Commission. Now you are quoting the opinion of the Planning Commission in support of your contention.

Shri Hegde: Because it is their Plan that we are discussing. This is as a result of their Plan.

Shri A. V. Raghavan: So long as the pressure of population varies from place to place it is not possible to have uniform ceiling: For example, in Kerala the pressure of population is very high as compared to other States.

Shri Hegde: The problem of living is almost common in the entire country. When it is a question of taking away the wherewithal of the family, the ceiling on income will have to be taken into consideration. That is why I said that a ceiling on income is better than a ceiling on land.

Chairman: If we are to have a ceiling on income, the acreage will have to differ because the yield varies from place to place.

Shri Hegde: That is so.

Shri A. V. Raghavan: There are several intermediaries even in the ryotwari system. What is your view regarding the abolition of the intermediaries and bringing it under Government?

Shri Hegde: Give them sufficient land for cultivation.

Shri A. V. Raghavan: From where?

Shri Hegde: Lands which they own:

Shri A. V. Raghavan: Then, should they be given the unfettered right of resumption?

Shri Hegde: Those people who own land as owners should have the right to cultivate, which they would not have if this Bill is passed. Give them as much of land as is necessary so that they can have a living by land, instead of driving them out of their lands and making them seek employment elsewhere.

Shri A. V. Raghavan: In that case, those persons who have been tilling the land all these years will become landless. What will happen to them?

Shri Hegde: That is a serious problem. That is why I say there ought to be no objection to allow the tenants to continue.

Shri A. V. Raghavan: Do you say that the State should have power to give nxity of tenure?

Shri Hegde: It is done everywhere.

Shri A. V. Raghavan: How does it come in in a constitutional amendment?

Shri Hegde: We are not considering those things under this amendment.

Shri A. V. Raghavan: If you agree that the State is competent to give fixity of tenure to the tenants, how can the landlord resume the land?

Shri Hegde: Subject to this right of resumption, because he is the owner.

Shri A. V. Raghavan: Suppose the State Legislatures have got the power to give fixity of tenure to tenants even without the amendment of the Constitution and there is such a legislation, where do you get the right of resumption under the Seventeenth Amendment?

Shri Hegde: Some States have given the right of resumption.

Shri A. V. Raghavan: Suppose they do not give the right?

Shri Hegde: They ought to give it. But if they can do that, where is the necessity of this amendment?

Shri A. V. Raghavan: Different States are governed by different laws. For example, under the Malabar Tenancy Act, no landlord can resume his land even with the amendment of the Constitution. So, even if the State Legislatures pass such a legislation, where do you get the right to resume land?

Shri Hegde: The right to resume land is connected with the ownership of the land. In a ryotwari holding, he is himself the cultivator. In course of time, a person might have amassed a lot of land, but you cannot deny the initial right he had to cultivate the land which he held under the ryotwari tenure.

Shri A. V. Raghavan: In the Malabar area of Kerala, all lands are covered by the ryotwari system. There is no other type of tenure prevalent in Kerala.

Shri Hegde: All lands in Kerala do not come under the ryotwari system.

Shri A. V. Raghavan: I come from Kerala and I am an advocate. I know the position there. Can you mention any other system prevalent in Malabar?

Shri Hegde: What about *jenmies*?

Shri A. V. Raghavan: They come under the ryotwari system.

Shri Hegde: Overnight they came under the definition of "estate" in 1954.

Shri A. V. Raghavan: Can you point out a single instance where the land is not ryotwari?

Shri Hegde: If you construe the Act strictly, when the Kasargode area was transferred from the old Madras State to the Kerala State, the ryotwari-holders there did not come under the definition "estate". That is why the Act was struck down. The Kerala Ministry was afraid every land in Kerala is ryotwari holding. So, they did not enforce the Act.

Shri A. V. Raghavan: I am quoting the judgment. It says:

> ". . the learned counsel urges that the expression 'jenmam' right occurring in Article 31A(2)(a) must be correlated to the absolute proprietorship of land of a *jenmi* recognised by decisions of courts as well as the statutes bearing on the matter. According to the learned counsel, after the Ryotwari system was introduced, first between 1900 and 1904 and later when there was again a resettlement in 1930-32 the owners of lands in Malabar cannot be considered to be the absolute proprietors of the soil. The learned counsel also urged that even the Supreme Court in the decisions referred to above has held that the basic idea underlying an estate is that the person holding the estate should be the proprietor of the soil and should be in direct relationship with the State paying the land revenue to it; applying that est, it cannot certainly be stated that the petitioner fulfils the requirements of a *jenmi* having an absolute proprietorship in the soil. Quite naturally, the learned counsel referred us to the incidents of ryotwari tenure as noted by their Lordships of the Supreme Court in Karimbil Kunhicoman *vs.* State of Kerala . . . . Mr. Wanchoo, speaking for the Court in that decision, has adverted to the fact that holders of ryotwari pattas hold lands on lease from Government and the basic idea of ryotwari settlement is that every bit of land is assessed to a certain revenue and assigned a survey number for a period of years . . . ."

Now, can you point out any case of any tenure other than ryotwari in Malabar?

Shri Hegde: As far as my study goes, some portion of land in the present Kerala State....

Shri A. V. Raghavan: I am speaking of the Malabar area of Kerala, which earlier formed part of the Madras State.

Shri Hegde: There is a distinction. So far as I know, in Malabar, Government was not the owner of even a single inch of land. The *jenmies* of Malabar were the real owners of the land, including forests. That was the peculiar position of Malabar. On the question whether the *jenmies* were ryotwari-holders or not, I have to examine it. Because the *jenmies* were estate-holders under the 1954 amendment, if they were originally ryotwari-holders, they are, and we cannot help it.

Shri Nafisul Hasan: Should I presume that your main objection to this amendment is based on the ground that it violates the fundamental rights just as the earlier amendment which

incorporated article 31A and 31B curtailed the fundamental rights?

Shri Hegde: The 1951 and 1954 amendments, that is, article 31A and later on some amendments here and there, certainly cut down the fundamental rights. There is no question about that but today it is too late. They refer only to zamindars or the so-called intermediaries. The Seventeenth Amendment is so sweeping that the rights of any person owning even an inch of land and of any ryot connected with any land anywhere in the country are being denied and he cannot approach the courts of law to establish his fundamental rights.

Shri Nafisul Hasan: You have tried to make out a special case of owners under the ryotwari system. You say that they have a special status and there have been decisions of the Madras High Court holding that they are real owners and not intermediaries. As far as the status is concerned, may I tell you that the zamindars and talukdars in Uttar Pradesh were held to be owners in all respects. They had full domain over their property. They could transfer it to anybody without even asking the Government as to whether the other party to whom the property was being transferred was capable of collecting the rent or not. If they had been only rent collectors; something in that direction was absolutely necessary before the property was transferred. They were absolute owners, but because they were holding more than they could cultivate, in that respect they were only collecting rent and therefore they were held to be intermediaries. What distinction can you make between a person who holds, say, 2,000 or 3,000 acres of ryotwari land and cultivates, say, only 50 acres, and the zamindar or the talukdar who was holding more land than he could cultivate?

Shri Hegde: In the beginning itself I tried to explain the distinction between a zamindar and a ryotwari holder. That distinction the late Dr. Ambedkar knew. I read out that undertaking which he gave in 1951, namely, that the amendment was not intended to apply to ryotwari holders. The reason that should have been in his mind was that there should be a distinction between tha two and that he realised it. Now, if you study the tenures that prevail in this country, it will be very clear that zamindars were not cultivators of all the land that they possessed. Zamindars were created by the British. There was no zamindar, inamdar and talukdar before the British came to India. It is they who created the zamindars for a certain purpose which it is not necessary to go into. It is a creation in the course of revenue administration of the country and to a large extent their right principally was collecting land tax which was due to the Government. They were collecting the rent for cultivation from the ryots under them. They might have increased that tax—that is a different matter. But principally the original legal idea or concept of the zamindar was that he was a collector of revenue for the Government. Nothing more than that; nothing short. In course of time he might have possessed not only zamindari lands, called estates, but he might have had even lands that were ryotwari holdings. To that extent those ryotwari holdings should not have been taken away from him. I do not know whether U.P. has taken away that land or not; I am not aware of it. But the two rights are quite distinct and this distinction between the two legal rights was recognised in 1951 when the word "estate" was brought in for the first time.

Shri Nafisul Hasan: Do you agree with our land reforms policy the two most important aspects of which being, firstly, that the intermediaries should go and, secondly, that a reasonable ceiling should be placed on

[Shri Nafisul Hasan.]

holdings so that the person who cultivates is really in a position to increase the production?

Shri Hegde: I agree with both of your propositions provided, as you put it rightly, a reasonable ceiling is there for his cultivation because as the owner of land he should be allowed to have that and for anything in excess of that he should be compensated for the loss of his right in the property and that should be made justiceable. You should not close the doors of the courts against executive action which is not justice.

Shri Nafisul Hasan: I think, that is a thing which was dealt with at the time of the last amendment. The quantum of compensation is not to be made justiceable.

Shri Hegde: That was with regard to such big people who could afford to live, but what about the small men with whom you are dealing? They depend upon the income of their land. They have not accumulated wealth like the zamindars.

Shri Nafisul Hasan: You have suggested that the Acts which are proposed to be included in the Ninth Schedule should be examined by jurists. You know, these are State Acts and it may be necessary from time to time to amend them. Will you also say that before an amendment is undertaken, the jurists should again be consulted?

Shri Hegde: Yes. That was exactly my point.

Shri Nafisul Hasan: Even though the amendment may be delayed?

Shri Hegde: It is not a question of delay. It is not as if everything should be passed into an Act as soon as it is thought of. There should not be such a hurry.

Shri Nafisul Hasan: There are certain matters in which hurry is necessary. I do not say that in every matter the legislation should be hurried, but there are occasions when delay will defeat the very object of that legislation.

Shri Hegde: Delay can certainly be curtailed.

Chairman: It is a matter of argument.

Shri Bibhuti Mishra: You are not disputing the ceiling. You are not against the Constitution Amendment. You only want that land over and above the ceiling should be paid for at the market value.

Chairman: He has said that. He has also said that it should be justiceable.

Shri Bibhuti Mishra: Anybody going to court will have to go from the lower court to the Supreme Court and that will delay the very objective of this Bill.

Shri Hegde: No, it will not. Even the 1894 Act for acquisition of land has been so amended that you can decide to take possession of land and and take immediate possession even before payment of compensation by depositing the money in the court. Let the litigation take ten years. After all, the Government is rich enough and nobody will say that the Government will not pay. But immediately you pay a certain amount so that the man may live and litigation on the question of the adequacy of compensation be carried on. What does it matter?

Shri Bibhuti Mishra: There are certain talukdars who have got more than 50,000 acres of land.

Shri Hegde: But those talukdars are gone. We are not arguing on behalf of the talukdars today. Those talukdars are gone. They do not exist today. They are driven to the streets.

Shri Bibhuti Mishra: You know that there are talukdars who have got more than 50,000 acres of land.

Shri Hegde: I do not know. Are there any talukdars today? The Government of India says that talukdars have gone home. All their land has been already taken over.

Shri Bibhuti Mishra: What is your suggestion regarding giving land to the landless people?

Shri Hegde: Is there any programme of giving land to the landless people?

Shri Rajagopalan: The witness has been mainly arguing that Dr. Ambedkar who moved the Constitution amendment in 1954 did not refer to the ryotwari lands. Is it the contention of the witness that it prohibits any future legislation which could bring in the ryotwari land? I want a straight answer. Do you mean to say that if the Government gives an undertaking in 1954 on a particular amendment that that amendment is not going to take over the ryotwari land, does that undertaking prohibit from undertaking any future legislation?

Shri Hegde: Legally speaking, if it was prohibited, there was no necessity of my coming before you.

Chairman: There is no need of any argument here.

Shri Rajagopalan: I brought this argument because the witness was making much of that thing. He has all along been saying that. Is it that we are throwing away the Government's undertaking into the wind? That impression should not be there.

Shri Hegde: It is so.

Shri Rajagopalan: Legislature has always the right.

Shri Hegde: Legislature has the supreme right; Parliament has the supreme right. We are perfectly right in pointing out that in 1954 the idea was of abolishing only the intermediaries. The word 'estate' had a restricted sense. Do not expand it.

Shri Rajagopalan: We are not expanding it. We now see that ryotwari system also can be interpreted as intermediary. We want to bring in a legislation for that. Have you any objection to that?

Shri Hegde: The objection is for that.

Shri Rajagopalan: You say, Parliament is supreme. From where does Parliament derive its power?

Shri Hegde: From the Constitution.

Shri Rajagopalan: From the people; from the electorate.

Chairman: We need not argue here.

Shri Rajagopalan: I want to clear away that impression that we are doing something against the undertaking given by the Government. This is all propaganda: This is going to be published at a later stage.

Chairman: We are a Committee of Parliament. We need not enter into argument. We will consider it.

Shri Rajagopalan: He has said in his introductory speech that he wants impartial jurists. I do not know what he means by 'impartial jurists'. Jurists are always impartial. He is himself a lawyer.

Chairman: It is for the Committee to decide.

Shri L. D. Kotoki: The witness has agreed that there should be a ceiling on land holdings provided the ceiling is a reasonable one and also for the acquisition of land there should be reasonable compensation. He has also said that he is opposed to clause 2 of the amending Bill wherein the ryotwari land has been included in the definition of 'estate'. In view of the Supreme Court ruling, may I know how does he want to effect acquisition of surplus land unless the ryotwari land is included in the defition of 'estate'.

Shri Hedge: It can be acquired under the Land Aequisition Act. So many lands have been acquired under separate proceedings.

Shri L. D. Kotoki: You are agreeable to the fixation of ceiling and then there are ryotwari lands which would be above the ceiling fixed. How can you have any objection to bringing in this legislation?

Chairman: That is for the Committee to decide.

Shri P. R. Patel: You are a good lawyer, as I understand. Our Constitution is based on the preamable put on the first stage. The Constitution guarantees justice, social, economic and political. So, you will agree that those persons who do not hold land or who are tenants can also claim justice under the Constitution. The tenants of the ryotwari lands can also claim justice under the Constitution.

Chairman: Every citizen of India can claim social justice.

Shri P. R. Patel: At one time he said that the ceiling on lands would be discriminatory as there is no ceiling on other properties.

Shri Hedge: Yes, as between landed interests and other interests.

Shri P. R. Patel: Leave aside that there is discrimination. You deny ryotwari land to the tenant. Would that not also be denying justice?

Shri Hedge: It is not denying justice. We are not against tenats acquiring the land after paying compensation for the loss of interest in land to the owner of the land.

Chairman: No more questions. So, Mr. Hegde. thank you very much.

There is no other witness today. So, we will meet tomorrow at 10 o'clock

(The witness then withdrew)

The Committee then adjourned.

JOINT COMMITTEE ON THE CONSTITUTION (SEVENTEENTH AMENDMENT) BILL, 1963

Minutes of Evidence given before the Joint Committee on the Constitution (Seventeenth Amendment) Bill, 1963.

Wednesday, the 13th November, 1963 at 10.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bibhuti Mishra
3. Shri Suredranath Dwivedy
4. Shri Kashi Ram Gupta
5. Shri Harish Chandra Heda
6. Shri Hem Raj
7. Shri Ajit Prasad Jain
8. Shri S. Kandappan
9. Shri Cherian J. Kappen
10. Shri L. D. Kotoki
11. Shri Lalit Sen
12. Shri Jaswantraj Mehta
13. Shri Bibudhendra Misra
14. Shri T. A. Patil
15. Shri A. V. Raghavan
16. Shri Raghunath Singh
17. Chowdhry Ram Sewak
18. Shri Bhola Raut
19. Dr. L. M. Singhvi
20. Shri M. P. Swamy
21. Shri Radhelal Vyas
22. Shri Balkrishna Wasnik
23. Shri Ram Sewak Yadav

Rajya Sabha

24. Shri Tarit Mohan Das Gupta
25. Shri Rohit Manushankar Dave
26. Shri Khandubhai K. Desai
27. Shri Nemi Chandra Kasliwal
28. Shri Dhirendra Chandra Mallik
29. Shri Joseph Mathen
30. Shri Nafisul Hasan
31. Shri P. Ramamurti
32. Sardar Raghbir Singh Panjhazari
33. Shri S. D. Patil

34. Shri Kota Punnaiah
35. Shri G. Rajagopalan
36. Shri Atal Bihari Vajpayee
37. Shri J. Venkatappa.

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVE OF THE PLANNING COMMISSION

Shri A. N. Seth, *Assistant Chief, Planning Commission.*

SECRETARIAT

Shri G. V. Mirchandani—*Under Secretary.*

WITNESSES EXAMINED

I. Federation of Indian Chambers of Commerce and Industry, New Delhi.

1. Lala Bharat Ram
2. Shri M. L. Khaitan
3. Shri S. K. Somaiya
4. Shri G. L. Bansal
5. Shri N. Krishnamurthi.

II. Gujarat Khedut Sangh, Bardoli

1. Shri Khushalbhai Patel
1. Shri Vasant Rai D. Desai
3. Shri Dahyabhai P. Patel
4. Shri Bapubhai N. Desai
5. Shri Gabilal B. Marfatia.

III. Swatantra Kisan Sabha, New Delhi.

Shri M. R. Arya.

I. Federation of Indian Chambers of Commerce and Industry, New Delhi

Spokesmen:

1. Lala Bharat Ram.
2. Shri M. L. Khaitan.
3. Shri S. K. Somaiya.
4. Shri G. L. Bansal.
5. Shri N. Krishnamurthi.

(*Witnesses were called in and they took their seats*).

Chairman: Any evidence that you give is liable to be published and printed and distributed to the Members. Even if you want any portion of it to be confidential, that will be distributed amongst our Members of the Committee and also placed on the table of the House.

We have distributed your memorandum to the Members. If you want to stress on points or add anything more, you may kindly do so.

Lala Bharat Ram: Mr. Chairman, I am very grateful that the Federation has been given an opportunity to give some of its views on the Seventeenth Amendment Bill. We have already submitted a short memorandum on this matter. Mr. Khaitan would give some of the views of the Federation not merely on the Seventeenth Amendment—the present

Seventeenth Amendment is a continuation, shall I say, extension of the previous amendments—we would have to say something on the Fourth Amendment Bill as well as amendments made to the original Articles of the Constitution. I would ask Mr. Khaitan to speak.

Shri A. P. Jain: There is one point I would like to make. I think that the Seventeenth Amendment deals with the definition of estate and with laws to be included in the Ninth Schedule. I do not think that it comes within the scope of this Committee that whatever we have done in the past should be repeated. I seek your ruling on the points whether the fundamental principles, the 4th amendment and the previous amendments, which have been enacted, were good or bad should be discussed by this Committee.

Chairman: I do not think that it is the intention of the members of the Federation. Probably their view is that the frequent amendments to the Constitution are not advisable.

Shri A. P. Jain: That is a different matter. What I understand is that the Association also wants to express its views that the previous amendment has been fundamentally wrong.

Chairman: Is that your view?

Lala Bharat Ram: That is my view although you may not take cognisance of my view. We would like to place it before you.

Chairman: We are not concerned with that. If you want to say that frequent amendments are not advisable or not necessary, you may say so. You are perfectly at liberty to do so. But to say that the previous amendments of the Constitution are uncalled for or are not relevant will not be proper. Parliament is the supreme legislative authority and it has got full powers under the Constitution to amend the Constitution as many times as is necessary. So you may not sit in judgment over the decisions of the Parliament. If you say that it is not advisable to amend it frequently you are at perfect liberty to say that. At present we are only concerned with the present amendment.

Shri Khaitan: I am prepared to admit that we have nothing to say regarding the present amendment because I would rather be wasting my time in regard to that. In most of the other States, such lands have been included in the definition of the 'Estate'. As such, it is very difficult rather it is impossible even on any grounds to pass the present amendment and we cannot also discuss them since you have shut out. So far as the present amendment to the definition of the Estate is concerned, we have really no grouse to oppose the present amendment. But, since you have shut out any discussion in respect of the general aspects of the matter, I do not think the Federation can take your time any more on this subject.

Shri Somaiya: I would like to express a few words on this particular subject. I entirely agree that the comments on the previous amendments are uncalled for and we are at the moment concerned with the Seventeenth Amendment. Whether it is proper or whether it should be passed or not and if passed any amendment to it is called for is the question. The present Bill mainly divides itself into two parts—one is amendment to the definition of "estate" in Article 31A and another is to increase the list of enactments or rather extending the schedule Nine to 144 Acts.

This particular amendment has come in furtherance of the objective of Government for agrarian reforms. There can be no two opinions on this subject that today the nation's agricultural economy is such that agrarian reform is called for and something ought to be done in this regard. I

[Shri Somaiya]

think that one of the basis of agrarian reform has been accepted to be land ceilings, and this objective of the State Governments and the Central Government to impose land ceilings has been done according to their own thinking, and this has been attacked by the Supreme Court and the High Court judgments, and, therefore, there is an attempt at having a uniformity of the definition or the application of the word 'estate' to cover all agricultural property and accordingly, the definition of the word 'estate' has been included in this particular amendment.

I would like to divide my discussion, therefore, into two broad heads, namely article 31A and article 31B. Under article 31A, I would say that while agrarian reform has been the basic objective of Government, there has been nothing in the nature of a uniformity of approach or the method of getting about it in the different States, and this has resulted in each State applying its own formula according to its own light, and if I may put it, even according to the political exigencies arising at a particular moment or time at which a particular Act is on the legislative anvil.

If I may give an example, the first amendment to the Constitution came in 1951. At that time, the subject for discussion was the abolition of the zamindaris and the jagirs. The concept of land ceilings has come in, I think, in 1954 or 1955 with the Nagpur resolution of the Congress and also the Avadi resolution of the Congress. So the concept of land ceilings was mooted in the year 1955, and the different State legislatures were applying their minds as to how the land ceiling legislation was to be forged.

The first stage of this legislation was the tenancy legislations by which acquisition of property above a particular present holding was barred, and sometimes, under that particular legislation, the existing holding was protected but further purchase or acquisition or possession of holdings beyond that was barred. The next stage then came of putting a ceiling on the holdings.

In 1955, as I said, the concept of ceiling was settled, or rather it was under discussion and it was settled by the ruling party, and different States were thinking in different terms.

In Maharashtra, for example, in 1959, a Bill was introduced for the first time to impose ceilings on holdings. At that time, in keeping with the directives of the Planning Commission exemption was granted to the mechanised farms. As you would be aware, in the First and Second Five Year Plans, there has been a positive directive in his regard. While discussing the objectives of land reforms, we find a directive that plantations have to be exempted, such as coffee plantations, tea plantations, fruit gardens, rubber plantations etc., and sugar plantations have been specifically exempted. Then, there is a very wide and general directive that mechanised farms which are run efficiently and on which a lot of investment has been made should also be exempted. In the 1959 Bill, the Maharashtra Government did put in this particular provision for exemption.

I am not trying to go into the motives, but I am just trying to explain my viewpoint, when I say that the political exigencies have affected the decisions of the different States to arrive at their particular approach to the question of land ceilings or land reforms. At that time it was the bigger State of Bombay including Maharashtra; then, for some reason or the other, the Bill was not pressed and it was withdrawn. In 1961, when the Samyukta Maharashtra had been formed, the Bill was again introduced, and we found that the provision for exemption had been dropped.

What I am trying to say is that the concept of land ceilings was not introduced between 1959 and 1961, but it was a 1955 concept, but the different situations in the different States resulted in different kinds of thinking. I may be able to say

the same thing in regard to the Kerala State also, and in fact, that has been referred to in the Statement of Objects and Reasons attached to the present amending Bill, wherein it has been stated that the Kerala Act was struck down by the Supreme Court. I find from the press report that a new Act is sought to be rushed through in Kerala by the present Congress Ministry on a different proposition and on different premises from those on which the former Act was passed by the then Communist Government. But the Act included for validation or for blanket protection under the present amendment is the previous Act passed by the Communist regime. The it is not in keeping with their thinkthat that was rather a bad law, and it is not in keeping with their thinking on land reforms, and that is why this particular Act should not get a blanket protection but the Act that is sought to be passed through the Legislature now should be the Act that should be given the blanket protection.

The reason why I am stressing this point is this. The question of land reforms is a dynamic process. It is not a static process. Today what we are thinking may be the good thing and a proper thing for the community, but that does not necessarily mean that it is going to stand the test of time for all times to come. That is why in any dynamic process in which reorganisation or reform takes place, you cannot introduce an element which is not dynamic or an element which is purely static and which also depends on a particular political thinking or bias at a particular stage of the community. If that is accepted, then it is evident that it is not desirable to give a perpetual sanctity to such Acts.

Then, again, I may comment a little briefly on the subject of land reforms. what is the purpose of land reforms? We find that the productivity in India is very law. After Independence, at any rate, since 1949 up to date, the total agricultural production in India has registered a rise of only 40 per cent, and the index stands at 140. It is not in keeping with the best desires of everyone concerned, and it is also not in keeping with the tremendous investment that the has taken place on the agricultural front.

There are two avowed objectives, as I understand it, of agrarian reforms. One is not to permit anybody to hold land in excess of a particular ceiling and the other is to distribute the excess to the landless labour. I shall be able to quote chapter and verse from the Maharashtra Act in this connection. Since I come from Maharashtra region, I have got figures only in respect of that region, and I cannot quote with authority, the statistics in respect of the other States. In Maharashtra, there are about 5 crores of acres of land, and after all this land legislation process of bringing in land ceilings, what we are releasing for distribution is only 11 lakhs acres. Hardly 2% of the total area of the State gets released for this purpose of agrarian reform. I think that the basic issue, namely increased productivity, sometimes is getting drowned in this concept of land ceilings. The concept is that if we are to take the larger holdings from some people holding larger areas and then hand it over to the cultivators or agriculturists it is bound to lead to improvement of agriculture, brings in new dynamism and a new angle. But really the whole thing is that only 2 to 4% of the land gets released by this land legislation. If you take the figures of Maharashtra State, more than half the holdings are uneconomic holdings and the real problem is consolidation of these holdings. I know that we are at the moment on the subject of purely amending the Constitution. But the purpose for which this amendment is proposed is agrarian reform and that reform is being brought to increase the agricultural productivity in the

[Shri Somaiya]

country and to achieve this we are giving a blanket protection. We are giving very wide powers to the Executive and the question is whether such a wide power given to the Executive for this limited objective is justified. What ultimately are we to achieve by giving such powers is the point for our discussion and debate. If 2% of the land is going to be released, that is 11 lakh acres, against which the State has 23 lakh acres of undistributed cultivable land—on which even after 15 years of independence they have not settled the landless labourers—what purpose is going to be served by getting 11 lakh acres of land for the avowed object of distribution of land to the cultivators? These 11 lakh acres of land does not belong to the erstwhile or the type of people whom you call Zamindars. That problem was there in 1951. By virtue of Tenancy legislation in 1956 the intermediaries have been removed. Who are the owners of this land? Most of the owners are productive elements of the Society. I am proud to say that the agriculturists of Maharashtra are one of the most enlightened, one of the most forward looking agriculturists in the country. It is this productive element that is sought to be disturbed by virtue of this legislation. Ultimately what are you aiming at? By the agrarian reforms we want to increase the productivity in the country and in the process of achieving that objective the productive elements are adversely affected. So we must think twice about it.

If I may give the statistics relating to Maharashtra State, out of this 11 lakhs acres of land, the major portion affected is cane land. I am not suggesting that the sugar factories are only affected. I am giving the special problems of sugar factories. Generally, enlightened agriculturists in Maharashtra hold larger area and they are expanding their activities by virtue of that holding. What has happened by virtue of the present legislation? I know for certain that the agriculturists are going into neighbouring States, where still the exemptions are provided, where still the State is looking at this particular subject in a different angle. That brings me to my previous point that decisions are so often based on the political criteria. For example, look at the way the plantation is being treated in different States of the country. What have they done in Maharashtra? I do not know any reasons why did they not give exemptions. They do not want to give any exemptions to the plantations in spite of the positive directive by the Planning Commission in this matter. What do we find in Madras? The Act has provided that there will be an Expert Committee which will examine each individual case and after proper examination of cases only they will decide whether a particular plantation is to be exempted or not. In Kerala the present Congress Ministry wants to give a blanket exemption to the Plantations and highlights it as a progressive thing. That is what we also thought would happen in Maharashtra. Overnight we find that exemption is dropped. What has happened in U. P.? An Act has been passed but to the best of my knowledge and understanding, but no action is being taken.

Shri A. P. Jain: It is being taken.

Shri Somaiya: I am told that the present owners would be given the right of management; and that some scheme is being evolved. What I am trying to emphasize is that the approach to the reform is suited to political exigencies in a particular area. That is the basic thinking of my discussion. If a particular approach is to suit a particular exigency, can you give a blanket constitutional protection? What exactly are we trying to achieve? As I said, it would introduce a sort of static atmosphere in the State.

I am coming also to the bad effects of putting these Acts in the Ninth Schedule and under Article 31B. I am rather on the general aspects. In any scheme of reforms

current socio-economic thinking of the ruling party on a particular problem should determine what the solution should be in keeping with constitutional provisions. Land reform, like any other reform, is a piece of social legislation, and it is the privilege of the majority party in power in the Legislature to deal with it. I am not opposing that there should be no land ceiling. What I am suggestng is if a particular reform is called for at a particular time, leave it to the legisature to do it.

Shri Bibudhendra Misra: It is actually left to the legislature in the State. Even if it is included in the Ninth Schedule, the power of a legisture to amend a law to repeal a law, is not taken away. Supposing a State legislature repeals an Act which has been included in the Ninth Schedule, it does not affect anything.

Shri A. P. Jain: I would like to read the last portion of Article 31B which reads as follows:

> "Notwithstanding any judgment, decree or order of any Court or Tribunal to the contrary each of the State Acts and Regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force."

So, the State Governments will continue to have the right to amend the law even if it is protected under 31B.

Shri Somaiya: Actually that is very harmful.

Shri Bibudhendra Misra: Even if it is included in the Ninth Schedule, it is not affected.

Shri Somaiya: You have included 123 or so Acts in the Ninth Schedule. That means whether it is an agrarian reform or not, whether it is discriminatory or not, whether it provides real compensation or illusory compensation, all are brought under the Constitutional protection. So, the fundamental right attacked by protected legislation stands abrogated. As far as these Acts are concerned, they cannot be subject to judicial interpretation.

Shri Bibudhendra Misra: That is a matter which the Parliament is considering; the Select Committee is considering each and every Act. When you talk of Fundamental Right, if the Parliament thinks that Fundamental Right should stand abrogated in relation to State Acts because they are anxious about land reform, then it stands abrogated. It is according to the Constitution itself. The Constitution has in it that right. That stands abrogated the moment it is included in the Constitution. We are not doing something new. It is already there in the Costitution.

Shri Somaiya: That is what I am here to offer my comments on. I beg to differ on some of the thinking an that conection and want to make my submissions.

The Joint Committee's time is limited and it cannot go into every aspect of each State legislation under consideration. I can quote chapter and verse from the Maharashtra ceiling legislation citing a number of inequities, inequalities and discriminatory aspects. There are 12 or 14 of them. I am sure the Joint Committee would not have the time to go into the details of these. All these things are given protection under 31B. After this protection to these Acts, the ceiling could be reduced from 50 to 2 acres by a regime wedded to different political ideology—and what may appear tolerable now may become intolerable then and there will be no remedy possible. They could change some other provisions. Nothing will happen to get redress. The executive will have got the blanket protection of the Constitution.

As regards the future, it is even more dangerous. Here we are dealing with the Constitution and not an isolated piece of legislation. Today with a particular party in power, we may be safe. But what can happen when a different party with a different ideology comes into power? What can

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happen to the right of amendment and repeal of this very thing?

Chairman: It does not take away that power.

Dr. L. M. Singhvi: Is it his contention that any subsequent amendments of the Acts sought to be protected by this constitutional amendment would also be protected? Does the protection extend to any subsequent amendment to any Act (B) included in the 9th Schedule, effected by any of the legislatures?

Shri Somaiya: Does it not?

Chairman: It does not take away the power of the legislatures to amend these Acts simply because they are included in the 9th Schedule.

Shri Bibudhendra Misra: The amending Act is not automatically included.

Chairman: Please read the latter portion of 31B. The power to repeal or amend is always there. The local legislatures have that power.

Dr. L. M. Singhvi: My question is different. It is apparent that the power to amend and repeal the Acts remains intact. But the apprehension of the witness appears to be that even an amendment of the Acts sought to be protected by this constitutional amendment would be protected. That is not the position. Would he be pleased to cite any authority in support of his view, that all future amendments will be immune from any attack in a court of law.

Shri Somaiya: What happens is that the amended Act forms part of the Schedule.

Dr. L. M. Singhvi: I do not think it will be supported. Is it your own interpretation or are you so advised? Can you cite any authority for that view?

Shri Somaiya: Under 31B, would not the amended Acts be part of the 9th Schedule?

Dr. L. M. Singhvi: The amendment will not be.

Shri Bibudhendra Misra: It will not be.

Shri Somaiya: It will be.

Shri A. P. Jain: To be fair to the witness, I think the position is not clear, whether it is only the Acts as they are that will be protected or any subsequent amendments will also be protected. If you read the language of 31B, it protects the law. Subsequently amendments are allowed. I do not think there is any ruling of the Supreme Court that only the original Acts will be protected and the subsequent amendments will not be protected. I feel that it may be a 50:50 case. It should not be forgotton that the legislatures have the same powers to enact retrospectively as prospectively.

Chairman: It is a matter of legal interpretation. We can discuss it later among ourselves.

Shri A. P. Jain: The question has been raised.

Chairman: Even if he expresses any view, it is not binding on courts.

Shri Surendranath Dwivedy: Why should the witness at all take our time to discuss this matter?

Shri Joseph Mathen: Let us know what is the intention of Government in the matter.

Shri Bibudhendra Misra: I am sorry I have not got the judgment of the Supreme Court with me now. The Supreme Court has made it clear that the amending law will not be included. I will send for it.

Shri A. P. Jain: I would like to have a look at it.

Chairman: We will discuss it later.

Shri A. P. Jain: Either a point should not be allowed to be raised or if it is raised, different point of view should be allowed to be expressed. This point was not at all relevant. But since the Minister raised it, naturally some other persons also came in.

Chairman: We will discuss it.

Shri Somaiya: I will now make some specific observations about the Maharashtra Act to substantiate some of my arguments as to how this inclusion of the blanket protection granted under the 9th Schedule is not a very healthy way of going about doing things. The land ceiling legislation is a reform law. But as I understood the subject of land ceilings, as has been discussed previously, there are two basic criteria. One was to distribute the holdings in excess of the ceiling. But what excess would be there was a conjecture. The thinking was that every family should get Rs. 1800 per year nett or Rs. 3600 gross. The figures ranged between these limits. It could be Rs. 4000 or Rs. 3000 or Rs. 4500--we could understand a small deviation. After all, in an agricultural economy, you cannot measure upto the last rupee as to what will be the earning. But the measure has got to have a semblance of uniformity or has got to show a particular approach or method by which a particular decision or particular provision has been arrived at. Under the land revenue code, the land revenue is generally based on the productivity of the land and also a particular climatic situation, rainfall and what not, depending on the tract.

If we examine the ceiling fixed by the legislation in Maharashtra—I believe a similar positon may have been there in the case of different State enactments—we find it does not fall under any of the criteria that we may want to take. You may take the basis of productivity or the return from the crop or you may try to base your criterion on the land revenue or the market price of the land. If we examine from the point of view of any of these criteria, the variation is something fantastic. It is between 7—10 times in the same region. A basis to be rational has to satisfy some criterion.

In Kerala, latest reports say that they have arrived at the ceilings on the basis of the total yield from the land. No particular criterion is visible. Not only that. What we find in Maharashtra, for example, is that different districts have different ceilings for the dry crop lands without any basis. If I may put it, this whole pattern was also evolved to suit a particular set of conditions and circumstances. If I may go on to the aspect of discrimination, there is discrimination between Hindu undivided family and other families, between association and incorporated bodies, between members of a joint stock company and members of a co-operative society, between farmers who form themselves into a joint stock company and those who form themselves into a society, between lands used for industrial or non-agricultural purposes and those for agricultural purposes.

Shri Bibudhendra Mishra: But the High Court has struck down only section 28.

Shri Somaiya: In that particular case, only that section was in dispute.

Another point of discrimination is compensation. I appreciate that under article 31A it is not justiciable, but that is precisely our worry and fear. When the Fourth Amendment was passed, there were assurances that even if the compensation provided was not adequate, proper justice would be done. Before independence, land acquisition provided for 15 per cent solatium over the market price. After the passing of article 31A, the question of solatium does not arise, even getting the market price does not arise. What we are left with is a very illusory compensation, only one or two per cent of the market value. After all, you are not here

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dealing with absentee landlords who are exploiting the peasants. Crores of rupees have been spent and sunk in purchasing the property and bringing it to the particular level of efficiency. To give a paltry compensation of one per cent for it is rather unfair.

In the two Sugar Company Cases of Belapur and Maharashtra before Bombay High Court, they presented expert evidence. In the case of Belapur, the expert valuation was that their farms were worth Rs. 3 crores, and the compensation would be below Rs. 1 lakh. Similarly, for Maharashtra, their properties were valued at Rs. 2:8 crores, and their compensation would be about Rs. 3 lakhs. These are joint stock companies, wherein the hard cash of shareholders has been invested. It is very hard and unjust that compensation should be negligible.

That is why there must be a basis of fair compensation. If the market value is felt to be too high, at least the compensation should not be illusory or negligible. Even if social legislation demands the taking over of the larger estates from all over the country and the State cannot afford to give a very large compensation, get some criteria of fair evaluation and fair compensation have got to be evolved. One of the methods could be productivity, another market valuation, the third method is profitability. In the case of sugar farms belonging to joint stock companies, one of the easy criteria can be their market value.

To squeeze them out from this business on this paltry compensation is rather unfair, particularly when the all-India cane yield is only 13 to 14 tons an acre, as against theirs of 55 to 60 tons per acre. This is a result of their having sunk a lot of money. It will be pertinent to note that productivity in India has not registered a material rise in the last 30 years. For the last decade the average cane yield of the joint stock company's farms is as high as 55 tons and on other plantations it is not so. 13-14 tons yield is an all-India figure. In spite of the irrigation facility, climate etc. the average yield of other States is not high. It ranges from 10 to 20 tons. If you compare company farms' average yield with other states, this is a high productivity and this high productivity has not merely been the result of mother nature bestowing bountiful favours on us but it has been achieved by hard work. Besides, technological evolution has been responsible for this. Crores of rupees have been invested on this. I think any such legislation—if it is a land reforms legislation—should not take away the property with high productivity for the purpose of the reform. This particular method of dealing is in the nature of expropriation, particularly when we look at the compensation.

You are aware that just now a point was raised—Sec. 28 of the Lands Ceiling Act was struck down. That means the basic directive of the Planning Commission *viz.*, that the integrity of the farms should be preserved, the productivity shall not suffer and their valuable work that is being done should continue, cannot be complied with. Now apparently it seems—I read from the press statements—that nothing is very clear as to what is going to happen. Indications are that the lands may be distributed under other provisions disrupting their integrity.

My own belief would be that even if these Acts which are being included under Schedule 9 which protect the legislation irrespective of its merits or demerits is something which should be seriously looked into because, if Art. 31A widens the definition of the word 'estate' so as to include all 'agricultural land' or 'interest on agricultural land', then to widen the schedule under Article 31B itself is rather undesirable. In this particular case it is my submission that Schedule 9 should not include any new acts.

Chairman: It is not necessary to repeat what you have stated. Have you got anything more to say?

Shri Somaiya: If you widen the definition of Article 31A, there is no

need to give protection to all the Acts in Article 31B.

Chairman: Have you got anything more to say? I think you represent the opinion of the Federation because Mr. Khaitan said that he does not want to waste the time of this Committee.

Shri Khaitan: If you will allow me to speak on general aspects I can say something.

Shri Bansal: I would like to take five minutes only. I refer to the statement of objects and reasons and the new definition of the term 'estate'. Now it is generally agreed that the Constitution of India is a very sacred document. Of course there are powers under which it can be amended. But, by and large, it is generally agreed that it should be amended only when something very basic has to be done or something very drastic has to be done. It is not that these powers to make amendments are to be used lightly or for reasons which are not adequate.

Referring to the Statement of Objects and Reasons I find that there are only two reasons given for amending the Constitution. One of the reasons is that the Land Reforms and Enactment relate to lands which are not included in the 'estate' as defined in the Constitution. Now, Sir, the question that I would like to ask is that is it valid reason that because some of the enactments do not conform with the definition of the word 'estate' the Constitution should be amended? This is one question that occurs to me. Is this a valid reason that simply because in some of the enactments the type of land tenure taken over is not covered by the definition of the estate and so the definition of the estate is sought to be amended in the Constitution. The second reason is that on account of the reorganisation of certain States certain areas went to certain States as a result of which there is a multiplicity of definitions. I do not think that this is a very valid reason. If in a particular district or taluk the definition of estate is in existence and when that area has gone over to Kerala, then by simply amending or validating the Madras Enactment the definition can be made. For that some other formula can be found. For that particular piece of land that is covered by the erstwhile legislation of a particular State this can be covered up. Basically it comes to that. By this amendment of the Constitution, the Government of India is going to break the legislation that has been framed by some of the State Governments and also by only including Ryotwari lands in the definition of the Estate. When the amendment was being made I was sitting on the other side of the table. I know why the amendment was made. There were only three reasons which impelled the Government to frame this enactment. One was that some of the Chief Ministers were very much worried that they were being hauled up before the Courts on this provision or on the provision of the Zamindari Abolition Act. The second was to curtail the rights of the managing agency and the third was about the prospecting of oil and so on. For these reasons, Article 31A was sought to be introduced. The main purpose of the amendment which we are discussing to-day is that the State Governments have done something bonafide to take over the zamindari lands by abolishing the zamindari. It is against the system of land tenure against which the court has been fighting throughout. On the top of Zamindari and Land tenure abolition there was abolition of even the ryotwari system. What is the magnitude of the problem, how much land really vests in the ryotwari system and is it right for that small problem to amend the Constitution. We are not only bringing the ryotwari under the definition of the estate but we are also bringing in the smallholdings of cultivators as also agricultural labourers and village artisans under this definition. It is mentioned here in the amendment.

Shri A. P. Jain: On a point of order, Sir. Mr. Khaitan while speaking on behalf of the Chambers of Commerce

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and Industry said that he had no objection against the amendment to the definition of the estate. That is the extension of the definition of the estate. Now we find Mr. Bansal taking up quite a different attitude. Which of the two opinions are we to consider as that of the Chambers of Commerce?

Shri S. Kandappan: They have now revised their attitude.

Chairman: I have allowed Mr. Bansal to go on.

Shri Kasliwal: Mr. Bansal's opinion may be recorded as his personal opinion.

Shri Bansal: There were shakings of heads when I referred that the agricultural labourers and village artisans' lands will also be included in this definition. I am reading that from the Bill which is before me.

Shri Bibudhendra Misra: You wanted to say that by this definition the whole structure of the agricultural labourers is intended to be taken away. If this is the interpretation that you wanted to put I say that it is wrong.

Shri Bansal: If the interpretation is wrong then I bow to your superior wisdom. "Any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture and sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans."

Shri Bibudhendra Misra: "held or let. . . . other structures occupied by cultivators of land, agricultural labourers and village artisans". That is, the structure in which he is residing. Unless you have the power to modify the rights of the landholder, how do you keep the structure? He could be evicted. If you kindly look at the speech I made in the Parliament, I had made it very clear.

Shri Bansal: I am sorry I did not read your speech. With due deference I may say that for our discussion here we need not read the Minister's speech. I am reading from the Bill which we are discussing. As far as the Bill is concerned, according to my way of thinking, it is quite clear 'any land held or let'. I am not bothering about 'let' portion by agricultural labourers and village artisans. But the land held by the agricultural labourers and village artisans will be covered by the word 'estate'. I am pointing this out. It is for the judgement of this august body to see whether what I am saying is right or not. If there is any doubt you may like to clarify it. I am sure it is not the purpose of any amendment to the Constitution to bring in within the definition of 'estate' the land belonging to village artisans or the land belonging to agricultural labourers. Also I would go so far to say that it is really not necessary to have this amendment of the Constitution only to bring in ryotwari system and these small portions of land within the definition of 'estate'. This is too big and serious a measure that is being attempted for making small changes in the State legislation. I do not think it is the purpose of the Constitution to go on covering every type of legislation by the State Governments. The State Governments are there to take care that they have to work within the four walls and ambits of the Constitution when they frame their own legislation, rather than the other way about. My friend, Mr. Khaitan, was saying that already a large number of State enactments are in the Ninth Schedule. If they are in the Ninth Schedule, if some of the main enactments could also be in the Ninth Schedule, why there was this necessity of making this amendment; therefore my observations, Sir.

Shri P. Ramamurti: You were referring to Madras Act in regard to plantations. In Madras, with regard to plantations, it is a Board that has got to go into and see whether a

particular plantation is to be exempted. May I just point out to you the position from Chapter IX? 'Examine all plantations in existence on the date of the commencement of this Act'. The Board has been constituted not only for examining the question of exemption of plantation land on the date of the commencement of the Act; it has been constituted to see whether any land interspersed among plantations or contiguous to any plantation—they should see whether it is so—should also receive exemption for the purpose of expansion of plantation. Somebody may send an application stating that they want to expand their plantation. The Board has to see whether the land on which the expansion is to take place is interspersed or contiguous to the plantation and whether that land has also to be brought under exemption. This is the position. I wanted to correct misapprehension, if there is any. Secondly, you were saying that in a sugar factory in Maharashtra the properties were valued at Rs. 2.8 crores and the compensation would be about Rs. 3 lakhs. May I know the extent of land for which compensation was offered?

Shri Somaiya: Each of the sugar factory has 10 to 11 thousand acres of land. There are about 10 plantations and the total area covered by the land ceiling legislation by Maharashtra is about 99,000 acres for 10 plantations.

Shri P. Ramamurti: Does each factory own the land or do the factories enter into contracts with the individual farmers to supply the cane?

Shri Somaiya: In the sugar industry in Maharashtra, part of the cane comes from its own plantations. The factory owns parts of the land and parts of the land are leased out from the individual cultivators to the factory. All this leased land and the land owned by the factory from the plantation of the sugar factory.

Shri Khandubhai Desai: There are private plantations also which supply the cane to the factory.

Lala Bharat Ram: There are some individual farmers who supply the cane. Then, the factory has its own land, which belongs to the factory. Certain lands are also leased out to the factories by the farmers; the land does not belong to the factory.

Chairman: The factories do not own the land.

Shri A. P. Jain: The individual farmers grow cane and supply it to the factory. The factory farms consist of two parts. One part of the land is owned by the factory itself on which it grows sugar-cane; another part of the land is leased out from the tenant.

Chairman: The owner has leased it to the sugar factory: The factory is the tenant.

Shri A. P. Jain: That has been taken into account by the Bombay High Court in their judgment declaring Section 28 as void.

Shri P. Ramamurti: I am anxious to find what is the compensation offered by Government?

Shri Somaiya: I am giving only the principle; we can work out the figures later. For dry crop lands the compensation varies from district to district ranging from 70 to 140 times the land assessment. We may take the compensation on an average to be 100 times the assessment. Cane plantations are perennially irrigated area and compensation for these lands is twice that for dry crops. That means double, 200 times the assessment. In Ahmednagar from where I come—these two factories which I mentioned earlier are in the perennially famine track—the assessment is 15 annas to a rupee per acre. Compensation therefore will be Rs. 200/- per acre in 20 years 3 per cent bonds for purchased lands only. There is no compensation for lease hold land. The lands are selling at 2000 to 2500 rupees. After purchasing you have to do many things like manuring, levelling,

bunding and so many other things. The compensation should take into account those things also. Then there is the question of land purchased and leased. Suppose ten thousand acres are owned by a sugar factory, of which it may actually have purchased only about 2000 or 3000 acres, depending on the availability of the land, and about 6000 or 8000 acres are leasehold property. Now, what is happening is that on the leasehold property, there is practically zero compensation being only three times the assessment. On the property actually owned, it is about one-tenth or one-fifth of the market value. When you look at the overall compensation you will find that it comes only to about 2 per cent.

Shri P. Ramamurti: You were referring to a particular piece of land which is situated in a more or less famine-stricken area. If that particular land which you have purchased is under perennial irrigation, obviously even though it might be situated in a famine-stricken area, Government assessment for the land which is under the perennial irrigation system may not be the same as for dry land.

Shri Somaiya: They have not changed it; it exists. I am only telling you what the existing position is. I am not commenting on whether it should or should not be that.

Shri P. Ramamurti: I put this question to you because I wanted to know the amount of compensation that you would get.

Shri Somaiya: Take for example the Maharashtra area, or take the case of our own plantations in the Godavari area, where we have 12000 acres in our possession, of which about 3000 acres have been purchased, and 9000 acres are leasehold. In regard to compensation, Government have made two distinctions, firstly in regard to leasehold land and secondly in regard to land actually purchased, and even as regards leasehold land, they have made a further distinction, that in the case of property leased from Government, there will be a higher compensation, and in the case of property leased from the private cultivators, there is hardly any compensation.

Shri P. Ramamurti: What is the compensation for your own land?

Shri Somaiya: For my own land, it is about rupees three lakhs, and that too in bonds. As compared to this partly compensation, the profit at the end of the year is so many times the compensation amount.

Shri Kashi Ram Gupta: Shri Bansal was saying that if the present amendment is there, there is no need to have all the Acts in the Ninth Schedule. If the Joint Committee comes to a decision that the Acts may not be there, is he of the opinion that that amendment should still not be there?

Shri Bansal: In fact, I said quite the reverse of what my hon. friend has understood me to say. I had actually referred to what Shri Khaitan had said namely that some of the State enactments are already there in the Ninth Schedule. I say that if they are there and they have not been impugned, that does not mean that we must perpetuate one wrong by doing another wrong. I think that by making this amendment, we are not only perpetuating the wrong, but we are doing something which is worse, that is to say, we are accepting the principle of protecting every enactment of the State legislature without going into the merits of those legislations.

Shri Kashi Ram Gupta: You may have read it in the newspapers that while speaking on this point, the Law Minister had made it clear that the amendments were needed for ceiling purposes. If something to that effect is put in in the Bill namely that lands below the ceiling are not to be touched by this amendment, will you be agreeable to that?

Shri Bansal: My point was that zamindari abolition had a different

kind of appeal or connotation in the minds of the public or the people generally. When the Congress was fighting at that time for abolishing the zamindaris, they were having a particular type of land tenure system in view. They never had in view that the ryotwaris would also be subjected to any kind of abolition legislation. Now, if it is a question of land ceiling, I do not know whether for the purpose of land ceiling, an amendment of the Constitution is necessary, for, as Shri Khaitan has said, some of the State Acts are already in the Ninth Schedule, and they have not been challenged, and, I, therefore, do not see any reason why the definition of ryotwari should be changed by amending the Constitution.

Shri Kashi Ram Gupta: Do you mean to say that if a ryotwari-holder holds a large extent of land, that should not be taken away for being given to others?

Shri Bansal: My point was, and I shall repeat it, that when we are embarking on such a big thing as amending the Constitution, a view should be taken of the size of the problem, as to how many ryotwari holdings are of such a nature as have to be curbed. I have not made any statistical study, but I do not think that there is such a large number of ryotwari holdings for which an amendment of the Constitution is necessary.

Shri Kashi Ram Gupta: There may be a confusion on account of the present wording of the amendment. But if the purpose of the amendment is made clear and it is worded differently, would you be agreeable to that?

Shri Bansal: My overriding view is that the Constitution should be amended only in very special circumstances and not to take care of marginal cases.

Shri Kashi Ram Gupta: Do you not think that there is a special circumstance now since the Supreme Court has decided such Acts to be *ultra vires*?

Shri Bansal: It is not implied that the Supreme Court is there to declare all legislation by the State and the Centre as being reasonable and just. After all, the Supreme Court is meant for going into the laws which are passed and to decide whether they are in accordance with the Constitution or not.

Shri Kashi Ram Gupta: But Government have got a definite policy to have ceilings, and if that policy is hampered with, then they have got to come forward with a legislation to give effect to it.

Shri Bansal: On the question of ceiling, there may be difference of opinion, and as the chairman has ruled that we are not supposed to go into the various other matters which are not directly related to the object of this Bill, I am not going into that question. If the idea is that we should discuss the philosophy of ceilings, then, certainly, we are quite prepared to discuss that also

Shri Kashi Ram Gupta: There is no question of discussing the philosophy of ceiling. The main purpose of this amendment is to have ceilings.

Shri Bansal: According to me, the main purpose is to bring the ryotwari lands within the mischief of the definition of the word 'estate', and that is why I say that it is not at all necessary, in view of the relative smallness of the problem which is not so great in size, to amend the Constitution. On the question of zamindars or other kind of middlemen intervening between the landholder and the actual tiller, the problem was large, and there were certain psychological implications, and in fact, our whole Congress movement was directed towards the solution of that problem, and there was reason for that also. But to bring in a very small residual problem within the meaning of the definition of 'estate' is, I think, going

too far, as far as the amendment of the Constitution is concerned.

Shri Kashi Ram Gupta: What other means would you suggest to rectify the mistake?

Shri Khaitan: The other means is this. The Supreme Court has simply found that the definition of the word 'estate' does not include ryotwari land. So, the local Acts could be amended, and the definition of the term 'estate' in the local Acts could be amended to include ryotwari land, and it is not necessary to amend the Constitution for that purpose. That is the whole point.

Shri P. Ramamurti: You are only opposed to the procedure, I think, and you are saying that the same purpose can be served by the State legislatures expanding the definition of the term 'estate' in the local Acts.

Shri Somaiya: It is not a question of procedure only.

Shri Hem Raj: Instead of the different State legislatures being asked to amend the definition, if we put this amendment in the Constitution itself, do you not think that uniformity will be there for the whole of India, as far as the term 'estate' is concerned?

Shri Khaitan: The point which Shri Bansal made was this. For an insignificant change which can be done otherwise, why should the Constitution be amended?

Lala Bharat Ram: That was not exactly his point. The point which Shri Bansal made was not limited in fact to what Shri Khaitan had said that it could be done by an amendment to the local Acts. The basic thing which Shri Bansal said and which I also would like to emphasise is this that all Acts and all legislative thinking of the various State Governments cannot be covered by the Constitution. Perhaps there is no other country where all the various Acts of the various States are covered by the Constitution. There would be differences in different States according to different circumstances Is it the intention to introduce uniformity through the Constitution?

The other point made by Shri Bansal, which is very pertinent is that any change in the Constitution should be made if the problem is a wide and big one. What is the content of the problem here? How much is the ryotwari land? It is obvious to me from the discussion that it is intended that only land beyond a certain ceiling would be taken over for distribution to somebody else. What is the extent of that land?

Then it appears to the Federation that on principle it is wrong to amend the Constitution, which is a sacred document, involving the removal of a very important aspect of rights and so on of the people. Shri Bansal tried to emphasise this aspect.

What is the extent of land available according to present thinking in terms of ceiling? Let us, for the sake of argument, assume that 30 or 40 acres will be the ceiling. How many people are there who hold land over and above that? It is not our view that some States have gained in this particular respect and some have not in the sense that there is no uniformity. You will find that in so many hundreds of matters, there is no uniformity between the States because of the Constitution itself. Are we going to make changes in the Constitution so that there would be uniformity about everything in all States? It will depend on the extent of the problem.

Shri Hem Raj: You have said that it is not necessary to bring about uniformity in different States legislation. Is it not a fact that in some States like Punjab and Gujarat, the word 'estate' already covers ryotwari lands?

Then why should it not be made applicable to others also?

Shri Bansal: If it is covered, where is the need to amend the Constitution?

Shri Hem Raj: It does not cover the Southern States.

Lala Bharat Ram: That is exactly the point I was trying to make.

Shri Hem Raj: The problem is greater there.

Chairman: Shri Bansal's point is that the Madras legislature can amend the Act.

Lala Bharat Ram: The point is: are you going to change the Constitution for these small things?

Shri A. P. Jain: Lala Bharat Ram, as President of the Federation, will realise the importance of land reforms not only for India but all over the world. For the last 15—20 years we have been struggling to bring about land reforms. But on account of legal and other hindrances, we have so far achieved very little. Land reforms are important not only for rural India but also for industrial development. Your objection appears to be that we are taking away certain rights provided under articles 14, 19 and 31. Can you suggest any alternative by which the objective of quick land reforms can be attained?

Lala Bharat Ram: I am very glad that this basic question of approach has been raised. The Federation is not at all against land reforms. It has never been consulted in the matter. Reform must have an objective. We must know what is lacking, and what we wish to achieve. To the Federation, the most important aspect of any land reform is how to get greater productivity. The test of land reform should be whether it is going to increase the productivity of the country. I do not wish to talk on the importance of land productivity for the general economy of the country, as you must be all aware of it.

Secondly, in the matter of land reforms or any reforms, I would like to emphasize the question of compensation. Some assurances were given by the Prime Minister and Pandit Govind Ballabh Pant when this question of land ceiling was considered. Perhaps it is not on record, or Mr. Bansal would be able to quote where and when it was said. In fact, it was said: why do you ask for compensation? See the dictionary meaning of the word.

Compensation should have some relationship to the value of what has been taken away. We have to have a concept of compensation. It appears to the Federation that the same person who gives the compensation cannot be the competent authority to finally decide that this is the compensation. The Constitution itself should provide the concept of compensation, how it is to be given. If it becomes non-justiciable, it is something unjust. It cannot be left to the caprices of the State or the Government for the time being in office. Today the party in power may decide this compensation in one way, and tomorrow another party may decide it in another way. So, it is unfair that no principles have been laid down in the Constitution and it is also made non-justiciable.

The Federation would be with the Government and the country in the matter of reforms. These are basic things. If somebody in the Government is prepared to discuss it with us, I have no doubt that you will find the Federation taking a very reasonable view, because we are convinced that any worthwhile system must increase the productivity of the land, which is the basic thing for the country.

Secondly, compensation is important. Just as we want by some amendment of the Constitution to bring about uniformity in the matter of land reform, in the matter of compensation also, there should be uniformity in the Constitution itself. You cannot have two logics.

Chairman: It is the legislature that fixes the principles on which compensation is to be awarded.

Lala Bharat Ram: You know what happened in Kerala. One Government said one thing. Another Government came and changed the principle. Then it becomes an absolute farce.

Chairman: Even if it is provided in the Constitution the same thing may happen. Nothing is static in the world.

Lala Bharat Ram: It becomes much more difficult if it is provided in the Constitution.

Chairman: But the Constitution itself gives powers to the State legislatures either to fix the compensation or state the principles on which it is to be awarded. Evidently, compensation has to be different from State to State, and within the State itself according to the nature of the soil, rainfall, productivity etc. It cannot be uniform.

Lala Bharat Ram: The point is that the principle has to be uniform in all the States, and that should be decided by the Constitution.

Shri A. P. Jain: It is not in India that the question of land reforms and compensation has come up first. Leaving aside the communist countries, in the pre-war South-eastern Europe and in some of South American countries, for instances this has been done. Do you know of any example where the State has been able to undertake the responsibility of paying compensation on the basis of market value, because in a big land reform their resources are limited?

Lala Bharat Ram: All I say is that it should not be left to the different States.

Shri A. P. Jain: You raised the question of exemptions made in respect of orchards etc., in the Second Plan. That Plan itself states that in the nature of things, these are general suggestions which should be adapted to the needs and conditions of each State. Apart from that, if you look into the history of the land system, from the early time of the British land-system was wisely entrusted to States and was not made a central subject. It is impossible to have a common law for the whole land of 20 lakhs of square miles. You seem to insist upon uniformity for the whole country. How is it possible to have uniformity for the whole country either in the matter of compensation or in the matter of land reforms?

Chairman: It is for the Committee to decide.

Shri Somaiya: I only say that a uniform principle should be laid down.

Chairman: You want that the Centre should lay down the principles and not the States.

Shri Somaiya: We want to know by what methods we are ultimately to be governed.

Chairman: Every State Legislature lays down the principles, pays the compensation on the basis of the principles laid down.

Shri Somaiya: But the Constitution provides certain fundamental rights. What we are doing is that by including this in Schedule Nine we are taking away the citizen's rights. This is a discrimination. They are ultimately governed by the fundamental rights.

Shri A. P. Jain: So much has been talked about discrimination, that is, violation of Article 14. Then you objected to the exclusion of article 19 and 31. Under Article 31A, in matters relating to acquisition of any estate or any rights therein or extinguishment or modification of any such rights, the application of Art. 14, 19 and 31 is already exempted. You have no right to argue in a court of law that compensation is discriminatory.

Shri Somaiya: For this discrimination we can agitate.

Shri A. P. Jain: Please read out Art. 31A of the Constitution. It says:

> "Notwithstanding anything contained in article 13, no law providing for—
>
> (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31."

Is it your contention that Article 31A should be repealed?

Shri Somaiya: My submission is that in respect of Art. 31A in the first amendment and also in 1955, the judgment of the Kerala High Court was attacked by the Supreme Court. What I am telling is that in spite of this blanket protection against 14, 19 and 31, the Allahabad High Court delivered its judgment on the ground of discrimination that some of the plantations have been exempted and others have not been exempted. That discrimination clause is being looked into by the Supreme Court.

Lala Bharat Ram: Therefore the definition of the estate is being extended.

Shri Somaiya: What we feel is that by extending the definition you are taking away what little rights that have been allowed to the individual holders.

Shri A. P. Jain: I come to Mr. Bharat Ram's question. He said that the ryotwari system to which the word 'estate' is not applicable extends to 2½ states—the whole of the State of Madras, Andhra and part of Kerala. He also objected to there being no uniformity. Here it is a question of omission and not of uniformity alone. That is, the law applies only to a part of the country but it does not apply to another part of the country. Again Mr. Bharat Ram has been consistently objecting to discrimination. Then why does he want this discrimination to exist in different parts of the country?

Lala Bharat Ram: I would explain that. I was talking about the extent of the problems. Even in those two states how much of land a person can have? In other States how much is the extent of the problem? This is the point which I tried to make out.

Shri A. P. Jain: Even in Madras, it is higher than Hyderabad where no surplus land was found available. Why do you want two sets of laws—one for ryotwari areas and other for rest of India. Even in some ryotwari areas estate has been defined. There are some ryotwari areas where the estate has not been defined, but there are others where it is defined. Why do you want this discrimination between these two ryotwari areas to continue?

Lala Bharat Ram: We have given our views. I do not think we would be able to give anything more than this. These are to be examined from the point of view of the estate. We cannot say anything more on this before this Committee. We have said that there is discrimination and I have already explained my views.

Shri Khaitan: Here something is to be said about the estate that has been defined in the Constitution. It is true also that this has been defined in all acts.

Chairman: We have understood your position and so you need not elaborate your point.

Shri Khaitan: The whole point is as to why should this be done by an amendment of the Constitution. When this matter comes up before the local Legislature, the persons concerned may have a lot to say about this. Therefore, if the Legislature comes to the conclusion that it should be included, it may be included in the

Schedule but if it comes to the conclusion that it should not be included, then it need not be included.

Shri Kasliwal: I want to ask two or three questions. You have stated that the Maharashtra Government have got 23 lakhs acres of surplus lands. But, don't you know that they are all waste lands?

Shri Somaiya: I was only referring to the Second Plan as such. It has been stated that such of the states which have culturable waste lands may distribute them before applying a ceiling on lands. Twenty-three lakhs acres of lands are available in Maharashtra State. The Land Ceiling Legislation does not permit anyone to have more than 18 acres of perenially irrigated land. In Maharashtra the number of acres of lands available is considerable and highly cultivable and there is no absentee landlord at all. If this is enacted, it is going to interfere with the productivity in that State.

Shri Kasliwal: They are cultivable waste lands. Do you know as to whether the lands have been classified as cultivable lands or uncultivable waste lands?

Shri Somaiya: They call them as culturable waste lands. I am telling this from what I have read from the report of the Maharashtra Government. I can only say how much of the land or the extent of the lond is waste.

Shri Joseph Mathen: Mr. Somaiya stated that by inclusion of these Acts in the Ninth Schedule, we are giving perpetual sanctity to the agrarian reforms up-to-date. But, if there is a provision to amend those Acts and also to delete the Acts by amending the Constitution, I want to know whether Mr. Somaiya will object to the inclusion of these Acts.

Shri Bibudhendra Mishra: The question was raised, if an Act that has been included in the Ninth Schedule is amended, what is the result of that amendment. Does the amendment also go into the Ninth Schedule? As I said, here is the Supreme Court Judgment reported in All India Reporter 1959—page 459—which clearly states that the amending Act does not go into the Ninth Schedule. The State Government has also the power to amend the law or repeal the law. Supposing it does, even if it is included in the Ninth Schedule, it is not affected.

Shri A. P. Jain: The powers of the legislature to pass a law retrospectively is *pari passu* with the power to pass it prospectively. Supposing the amending law is passed retrospectively with effect from the year 1950—it says that the amendment will operate from the year 1950—what will be the position? Can you give me any judgment of the Supreme Court saying that a law which has been passed retrospectively will not get the protection.

Shri Bibudhendra Mishra: I think we can discuss it amongst ourselves.

Chairman: That is a matter for the Committee to discuss.

Shri Joseph Mathen: By the inclusion of these Acts in the Ninth Schedule we are giving perpetual sanctity to these Acts and probably get involved in it. He quoted the instance of Kerala Legislature wherein the Communist Government passed one law and the other regime another law. By change of time you have to change as and when you are introducing something new. If there is a possibility to amend the Constitution, because we are not precluded from amending the Constitution as and when we pass agrarian reforms, will you object to the inclusion of these Acts?

Shri Somaiya: We will have to fall back on the general reply. An amendment of the Constitution is very serious and an important matter. If by a simple legislative process you can get what you want, then that

simpler method is much more desirable. After all, a particular ideology of social and public life is adopted by a particular party. So it is better to have it that way, rather than sanctifying it under the Constitution.

श्री विभूति मिश्र : आप ने प्लांटेशन्स का जिक्र किया। आप शूगर केन की खेती को प्लांटेशन मानते हैं, आम के बगीचों को प्लांटेशन मानते हैं, 'काफ़ी और रबर की खेती को प्लांटेशन मानते हैं। क्या इस के जीवन काल में कोई अन्तर है ?

Shri Somaiya: It will depend upon the definition. The sugar-cane farms are highly mechanised farms which are working very efficiently. A lot of technological development has taken place in this sector through voluntary processes. The sugar-cane plantations are responsible for the technological revolution in the regions they are operating: and their results are comparable with the best of cane productivity in the world. If you look at the productivity of the farms engaged in the production of sugarcane, it is as high as 55 to 65 tons. It is accepted by the State Government. So, they should be protected.

Shri Bibhuti Mishra: Why do you want to separate sugar-cane from wheat, rice, coffee and other crops?

Shri Somaiya: What is the land ceiling applied for sugar-cane plantations, which are a highly developed industry? One tractor of 140 H.P. doing 12 inch ploughing costs 1½ lakhs of rupees. We have got tractors and implements worth over 2 million rupees and other capital investment would be arrived 5 to 6 million rupees in these plantations. We have done so much for the improvement of the land, like soil improvement, levelling, bunding etc. It is a highly complex technological set-up.

Chairman: Mr. Bibhuti Mishra's question is why confine it only to sugar cane plantations. If wheat fields or rice fields or other crops are also highly mechanised and done according to the latest techniques, why should they be excluded?

Shri Somaiya: I have no objection if he wants that. I rather support the view. I thought Mishraji wanted me to confine to sugar-cane plantations alone.

Shri Bibhuti Mishra: Supposing you give all these implements to a small grower of sugar-cane and all of them form into a co-operative society, they will also produce equally well.

Shri Somaiya: There are 17 Co-operative Sugar Factories in the State. The State itself runs State farms. They were running Tractorisation Department. My friends from Maharashtra here will agree with me if I say that they could not successfully implement the tractorisation programme. They could not even maintain the tractors. Till a particular level of administration is reached by them, the present set-up should not be disturbed.

Shri Bibhuti Mishra: All economists say that small farms are producing more than big plantations. If the small farms are given the assistance they require, they will produce equally well.

Shri Somaiya: I may point out that our average yield last year was 68 tons an acre for a 3000 acre plantation. I know also the yield of 100 tons or 85 tons per acre. I am talking of overall average. This is possible because of highly mechanised efficient cultivation.

Shri Bibhuti Mishra: I would like to know why the protection which you want to retain for big plantations should not be given to small farms. You know that in Champaran district people have sold their big farms to Government on account of uneconomic yield because of lack of protection.

Shri Somaiya: I am only saying that protection should be there for efficiently run plantations and not for

absentee landlords. I would also wish that protection is given to efficiently run small farms.

Shri Bibhuti Mishra: Every man can be made technologically fit in for the society.

Shri Somaiya: I entirely agree with the hon. Member.

Chairman: Let us not argue with the witness.

Shri Nafisul Hasan: Should I presume that your Federation is not opposed to our land reforms policy but it thinks that an amendment of the Constitution is not necessary for that purpose?

Shri Khaitan: It is not advisable and desirable to have the present amendment.

Shri Nafisul Hasan: Is it the position of the Federation that it is not opposed to land reforms but it feels that it is not necessary to amend the Constitution for that purpose?

Lala Bharat Ram: The position is that the Federation is not against land reforms, but it may have different views about what reform is, which we are not discussing today. We are confining ourselves only to the present amendment, and we think that it is not necessary to make this change in the Constitution.

Shri Nafisul Hasan: Does your Federation agree or not that in order to give effect to land reforms and to have increased production, intermediaries should go, and a ceiling should also be placed on land holdings?

Shri Khaitan: We are now talking only of the present amendment. There are no intermediaries here.

Shri Nafisul Hasan: There may be no intermediaries, but the question to be considered is whether a ceiling should be placed or not.

Shri Khaitan: There is no question of a ceiling either in the present amendment.

Shri Nafisul Hasan: When it is said that the object of amending the definition of the word 'estate' is to give effect to land reforms, and obviously, one of the steps has still to be taken in some of the States, namely the imposition of ceiling on land, then are we not to provide for it here?

Shri Khaitan: Under the Constitution, the term 'estate' has been defined and the meaning of the term would be as the local legislature has defined it. So, all that we say is that if it is necessary for good land reform that ryotwari land should be included, then that should be left to the local legislature.

Shri Nafisul Hasan: Your Federation has no views as to whether a ceiling should be placed on lands or not?

Shri Khaitan: That is not the amendment before us now.

Shri Nafisul Hasan: It may or may not be before us. But you do not want to express any views on that?

Shri Khaitan: We have not considered that matter at the moment.

Shri Kappen: You have stated that the amendment should depend upon the extent of the problem, and in the case of ryotwari lands, the problem is so small that no amendment like the seventeenth amendment to the Constitution is necessary. But take the case of a State like Kerala, where the extent of the problem is very large. You say that the State Government can legislate so as to include ryotwari lands. But will that amendment not be questioned in a court of law, and will it not hold up land legislation?

Shri Khaitan: It will not be questioned in a court of law, because the Constitution protects it. The meaning of the term 'estate' will be as defined in the local Acts.

Shri A. V. Raghavan: That protection can be there only if that definition of 'estate' was there when the Constitution came into force.

Shri Khaitan: You can have a double amendment in that case. You can have it with retrospective effect. It is a matter for the framers of the Act to decide.

Shri Bibudhendra Mishra: You say that the States are competent to change the definition of the word 'estate' and the Constitution need not be amended for that purpose. Kindly read the definition of the word 'estate' as it is given in the Constitution itself. It reads thus:

> "the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures . . .",

The terms 'existing law' has been defined in article 366.

Shri A. P. Jain: Shri Khaitan will say that a law passed today will also be treated as an existing law.

Shri Khaitan: That is very simple.

Shri Bibudhendra Mishra: But you cannot do it. The term 'existing law' means a law which is already there at the commencement of the Constitution. You say that a State Legislature is competent to give any law retrospective effect, a point which was raised by Shri A. P. Jain, and which I did not like to discuss at that time. But it is clear from the judgment of the Supreme Court that that cannot be done, because that would amount to giving the State legislature power to amend the Constitution itself, and that cannot be done.

Shri Khaitan: All that you have to do is to change the definition of the word here.

Shri Bibudhendra Mishra: Where?

Shri Khaitan: You have only to change the definition of the word 'estate'.

Shri Bibudhendra Mishra: You cannot change the wording here and then allow them to define as they like.

Shri Bansal: That is not the Federation's position.

Shri Bibudhendra Mishra: I think the position is clear.

Shri Khaitan: Whether you can do it or not is a different matter. The point is that the State legislature can do it.

Chairman: What Shri Bibudhendra Mishra has pointed out is that the State legislature cannot do it because the term 'estate' as defined in the Constitution means estate as defined in an existing law.

Shri Bibudhendra Mishra: His point is that the Constitution need not be amended, but you can ask the State legislatures to make the amendment.

Shri Khaitan: No, no; my point is that under article 31B you are putting all these Acts in the Schedule, and in that article you have given power to the State legislatures to repeal, or amend or continue in force all those Acts. So, why can they not do it?

Shri Bibudhendra Mishra: But it must be an existing law, that is, a law existing at the time of the commencement of the Constitution.

Shri Khaitan: The law is existing.

Shri Bibudhendra Mishra: It is not existing. The definition of the term 'estate' is not there . . .

Shri Khaitan: It is only a question of the definition of the word 'estate'. That is said so in the code itself. So, the law is existing.

Mr. Chairman: The law may be existing, but if the definition of 'estate' does not exist in that particular law, it cannot be amended by a State Act.

Shri Khaitan: Yet, under article 31B it has the power.

Chairman: Thank you for the evidence you have given.

Lala Bharat Ram: On behalf of the Federation, we thank you for giving us this opportunity to place our views before you.

(*The witnesses then withdrew*)

H. Gujarat Khedut Sangh, Bardoli

Spokesmen:

1. Shri Khushalbhai M. Patel
2. Shri Vasant Rai D. Desai
3. Shri Dahyabhai P. Patel
4. Shri Bapubhai N. Desai
5. Shri Gabilal B. Marfatia.

(*Witnesses were called in and they took their seats*).

Chairman: We have received your memorandum, and it has been circulated to the Members.

Today you have given another memorandum. It is not possible to distribute it. But if you want to stress any points in your earlier memorandum or add anything, you may do so.

Shri V. D. Desai: Is there any objection to our reading this memorandum here?

Chairman: I do not allow it. It contains certain allegations and statements which are not quite relevant.

Shri K. M. Patel: May I read out a letter to the Committee?

(*Witness was permitted to read the letter*)

Letter

"The Chairman and the Members of the Joint Committee.

Sirs,

The present 17th amendment of the Constitution has not been published or circulated in rural areas which are going to be affected. The cultivator, the agricultural labourer and an artisan in village is to lose his fundamental right of ownership in land and even in the house-sites land and structures of houses on payment of illusory and unjusticiable compensation.

So the amendment affects the rural economy and social structure of the country as a whole and fundamental rights guaranteed under the Constitution are sought to be snatched away without giving the persons who will be affected by the Bill even an opportunity to understand the implications of the Bill as per democratic principles.

Opinions should have been invited, which has not been done. Hence we pray in the beginning that the consideration by the Joint Committee be postponed for the present. Opportunity should be given to the people who would be primarily affected by this legislation and for that purpose, the copy of the Bill should be circulated to each village panchayat in the language of the State and time should be given to them to study and express their views before any further consideration of the Bill by the Joint Committee.

For that purpose, at least three months time should be given to elicit public opinion.

Dated 13th November, 1963.

Sd.|- Khusalbhai M. Patel."

Chairman: It has been published in the gazette.

Shri V. D. Desai: Unfortunately, we did not get a copy of the gazette in Surat district. Even the subscribers have not got.

Chairman: Do you mean to say it has been deliberately suppressed?

Shri V. D. Desai: No.

Chairman: How long has the Bill been before Parliament?

Shri V. D. Desai: Even today if you ask the subscriber in Surat, he will say that he has not received the copy. We had to ask from Bombay. Our friends in Delhi sent us the copy.

Chairman: The Lok Sabha Secretariat sales section sells the Bills. It was also published in the gazette.

Shri V. D. Desai: How many people are learned and educated to know all these things?

Chairman: Do you mean to say it has to be sent to all the 440 million people in the country?

Shri V. D. Desai: Government used to publish so many things by way of advertisement and so on. Why was not this Bill published that way?

Shri K. M. Patel: I cannot express myself adequately in English. Therefore, I would like to speak in Gujarati.

In the beginning, may I read out our memorandum given today?

Chairman I do not allow it. It contains certain allegations which are derogatory to the dignity of this House.

Shri B. N. Desai: The other portions may be allowed to be read.

Chairman: Without reading it, you can make out your points.

Shri A. V. Raghavan: Will this Bill affect you?

Shri K. M. Patel*: The 17th amendment affects not only agricultural land in the villages but also houses in village sites. Not only cultivators of land but also houses of agricultural labourers and artisans are affected. This would mean that all the agriculturists would be affected. Only some Brahmins, baniyas and barbers who do not own agricultural lands would not be affected.

Clause 2(a)(iii) states that only lands held or let for purposes of agriculture or purposes ancillary thereto would be taken away. This includes waste land, forest land. land for pasture etc. The property of cultivators of land, agricultural labourers and village artisans, all those who have something to do with agriculture, are not protected, and this includes even their houses. Only the houses of those who have no agricultural property are safe.

The Constitution has given equal rights to all citizens. By this amendment, the citizens in the cities are not affected. The equality guaranteed is abolished so far as agriculturists are concerned. If a guarantee is not given to the agriculturists in respect of their properties, then nothing would remain with them.

By this Bill agricultural production would not increase. The object of improving the social condition of agriculturists will also not be achieved.

In all, there are current 144 land reform legislations which are unconstitutional, which are sought to be made constitutional by this Bill. When the DMK party in Madras opposed the Constitution, Parliament stopped this by making a law. Is this respect for the Constitution if the unconstitutional legislations of State legislatures are made constitutional by an amendment? Is it democracy? This Bill will open the doors to communism in this country.

The population in the country is increasing, and therefore more grain should be grown. Industrial products should also be grown more. Because property right is going to be abolished by this Bill, there will not be any incentive to the agriculturists to work on land.

In the communist countries, all land belongs to the State, and they follow co-operative farming, but they have not been successful in producing more food crops and other crops Poland has given individual ownership rights, and that is why they have become self-sufficient. Four years back the Russian Agriculture Minister had to

*The witness gave his evidence in Gujarati which was translated into English.

resign. In spite of co-operative farming, Russia has not been able to produce more foodgrains, and they have to import at least 8.5 million tons of foodgrains from America. In China, because there is State ownership of land, more foodgrains could not be produced.

Shri S. D. Patil: All this is a sermon against communism. We want to know how you are affected by this amendment.

Chairman: Your view is that this is opening the doors of Communists. I may tell you that all these are not relevant presently. We are not concerned with what Russia or America is doing. We are concerned with how this Bill affects you. So you may confine yourself to this point only.

Shri K. M. Patel: In Gujarat, there are no intermediaries. Those who were intermediaries on lands have been abolished and the land now belongs to the cultivator of the land. Mr. Sen while moving the Bill stated that we are not going to abolish the tiller of the soil but we are going to abolish the intermediaries. In Gujarat, there is no intermediary.

Chairman: Then why do you fear?

Shri K. M. Patel: The consolation that was given by moving this bill is not borne out by the amendment Bill. By this amendment ryotwari land will be affected. It will be taken away. In Karachi, the Congress passed a resolution for abolition of the zamindaris. The zamindaris were abolished. Now these 144 laws are going to be applied even to ryotwari tenures. In all ryotwari tenures, the land belongs to the tiller of the soil. There is no intermediary. The Ceiling Bill takes away the land belonging to the tiller of the soil. Here the Law Member says differently. The guarantee is given only on the floor of Parliament. Such guarantees were given previously while moving the previous amendments and they have been broken. In the Ceiling Act of Gujarat, different types of compensation is required to be given for different kinds of lands. This is not scientific. The Ceiling Act was not at all necessary as far as Gujarat State was concerned because there the land was already distributed. Because of the Ceiling Act, only about a lakh of acres of land will be obtained. In the erstwhile Bombay State there was ryotwari system. There only 10 per cent of the landholders were of zamindari. There were tenanted lands in the ryotwari system. At that time only the moneylenders' properties were taken over. At that time, the land which belonged to the cultivator but tenanted were also taken away. In Bombay State there were 36 lakhs and odd (*khetedars*)—those *khetedars* who were having above 101 to 200 acres of land were 10,457; those who were having from 200 to 300 acres of land were 1,543 and from 300 and above, there were only 533.

Shri Khandubhai K. Desai: Others were not affected.

Shri K. M. Patel: I say that the big landlords are numbering 12,000 and odd. Now the tenants have become the owners as far as Gujarat State is concerned. In Gujarat there are more than 50 per cent *khetedars* who own upto 5 acres of land and from six to 15 acres of land are owned by *khetedars* numbering 28 per cent. Only 0·7 per cent is the number of big *khetedars*. Formerly, the landlord can take possession of 200 acres of land. This was reduced to 50 acres and it was reduced to 48 acres again. If it is a *kyari* land, then it should be half of what the *jarayat* has got. Out of 48 acres of land that could be irrigated it would come to 24 acres. If it is perennially irrigated, then it will be 12 acres, economic holding will be only 4 acres. Does it not mean that it is a distribution of land to individual kisans? The Tenancy Act was amended 18 times. Thereafter, the Ceiling Bill was introduced. When the Ceiling Bill was introduced, there were no intermediaries and the land belonged to the tiller of the soil. There is no guarantee that the ceiling

will not be lowered by the State Legislature. It was stated by the Revenue Minister, while moving the Ceiling Bill that they were making a model for bringing in future type of change in agriculture; thereafter, only one section can be amended for lowering the ceiling. If this Bill is passed, then it will give a licence to them to lessen the ceiling as they think fit. Therefore, there is no certainty that at any time the land will not be snatched away by the State Legislature from the peasants. So, there will be no incentive for the peasant to invest money in the land which is going to be snatched away because there is always a hanging sword of the State legislature.

In this country, if there is any problem, that is to increase production not only of foodgrains but of all the types of agricultural crops. Till that problem is solved, the poverty of the country cannot be abolished. Employment to more people also cannot be provided. If you want to give more and more employment to people and if you want to remove the poverty of the country, then the Government should not pass this Bill. For that reason, the burden on agriculture should be reduced. By distribution of land, the burden is being increased instead of being lessened. In America, 40 years back, there were 50 per cent agriculturists on land. Today, the percentage is only 12. Still they grow more food for their own country and also for the world. We also import foodgrains from America.

If certainty of ownership is given to agriculturists, then there will be incentive for the agriculturists to grow more food. Secondly, as against natural calamities of weather, they should also be given protection by the State by way of introducing insurance scheme for agriculture and cattle. Say, for example, one agriculturist has 10 acres of land; if he wants better crop from this land, he will have to invest Rs. 5000. And if there are natural calamities, he would not get anything from the land.

The agriculturist is also indebted. If any person tries to improve his land by putting in more money and if unfortunately natural calamities fall, he loses the money. Therefore, crop insurance would give him protection against this thing. The ownership of land also should be safeguarded. If these two things are done, there will be increase in production.

There are also fragmentations in agricultural land. The Gujarat State has passed a law for the consolidation and prevention of fragmentation. But the implementation of that law is not being made. There also there is uncertainty. Therefore, the peasants fear that they are not implementing the law because they want to bring in cooperative farming. The Nagpur resolution had said that there should be cooperative farming in the country. The people objected to it. Pandit Jawaharlal Nehru gave the assurance that it will be voluntary and not compulsory. But the Gujarat State has passed the Ceiling Act which takes away even 5 acres of land if it comes in the midst of the land which is to be acquired under the Ceiling Act. In Kaira district, the lands have been taken away. They approached the Collector and told him that there was an assurance given by the Prime Minister. The Collector replied that they have to implement the law as it is and not the assurance. I have some experience in respect of the cooperative farming in the State of Gujarat. I come from the historical Bardoli taluka and there are four cooperative farming societies in Bardoli taluka. They were set up in between the years 1948 and 1950. Mr. Jugat Ram Dave was the pioneer of the Society. He was the President of the Society. He is conducting the Vedchi Ashram. He came from the Ashram of Gandhiji. I have to tell you about the history of the cooperative society. Members of the society did joint farming and they got indebted. They were given to the inidvidual

landowners. Fifty per cent of the agricultural produce would go to the society and so fifty per cent would go to the individuals. In this case the owners of the land became the tenants of the society.

Chairman: We are not concerned with working of cooperative societies. Please come to the Bill. Please do not go beyond the scope of the Bill. What are the objections to the Bill? That will be relevant.

Shri K. M. Patel: If this Bill is introduced it will open the way for cooperative farming and it would not be successful.

With regard to the ownership rights of property, from the vedic times ownership of land was of the tiller. I have given reference to that in my further statement which I have submitted today. Even in Moghul times the ownership of land was that of the tillers. That was guaranteed in the Constitution also when it was passed in 1950. At that time there was a split in the Constituent Assembly on the question of property rights and Sardar Patel opposed tooth and nail. Now this Bill is being introduced to take away the property rights from the peasants.

An hon. Member: Has this anything to do with the provisions of the Bill?

Shri K. M. Patel: Yes. At the time of Bardoli movement which was led by Sardar Patel we were considered the owners of the soil, we who were actually peasants on the land. But today we are made landlords if we have tenanted even one acre of land. We are not sure where we are going to be if this Bill is passed because our houses are also being attacked. I do not think that this would benefit the country in any way. If unemployment is to be abolished then home industry in villages have got to be encouraged.

Chairman: I would request you to speak on this Bill. Let us not go talking about rural industries and all those things.

Shri K. M. Patel: This provision takes away the rights of people to go to courts.

Chairman: All that is relevant.

Shri K. M. Patel: Those acts which have been included in the Ninth Schedule cannot be taken up to any court of law. The courts are closed for them.

Chairman: How much more time do you want?

Shri K. M. Patel: Half an hour.

Chairman: All right. We shall now adjourn to meet again at 15.00 hours.

(The Joint Committee then adjourned to meet again at 15.00 hours).

(The Joint Committee reassembled at 15.05 hours).

Chairman: You can continue, Mr. Patel.

Shri K. M. Patel: Sir, I have submitted my further written statement today. Therein Your Honour felt that there are some defamatory statements. But we had no intention to make a defamatory statement against anybody. Whatever we know we have stated. We respect our Prime Minister, Shri Jawaharlal Nehru, like the late Sardar Patel and Mahatma Gandhiji. We have full regard for our Prime Minister. Therefore, there was no intention to make any defamatory statement against our Prime Minister. Still, if the Members of the Committee and Your Honour feel that there are any defamatory words in that, I may be pardoned. I apologize for the same.

Chairman: I accept that statement. You can now go on with your evidence.

Shri K. M. Patel: We thought that we would be allowed to read our further statement given today....

Chairman: But I have disallowed it. The relevant points you have mentioned.

Shri K. M. Patel: I have only touched the relevant points in my further written statement submitted today. Because it was written in English I could not give evidence para by para by reading the same. Therefore I have placed the facts as I could within my limits.

Chairman: I think you have been quite clear.

Shri K. M. Patel: I shall summarise what I have stated.

Shri Vajpayee: Sir, is any summary necessary?

Shri K. M. Patel: Only a few points.

In Gujarat there is only the ryotwari settlement; it is not an estate.

Chairman: You have stated all that in the morning. If there is anything more, you can add. No summarisation is necessary now.

Shri K. M. Patel: By this amendment the agricultural houses would also be included in the definition of the term "estate" and hence they also could be snatched away by payment of illusory compensation, and for that also the doors of courts would be closed. By this amendment inequality has been created between citizen and citizen, and that would kill the peasantry of India. The individualism of agriculturists would go away, and independence also. And thereby, if the State Legislature passed legislations which would be legalised by this amendment, the peasants would be turned into agricultural labourers.

Therefore, we oppose this amendment.

Shri Man Sinh P. Patel: May I put a question to the witness? The new definition of the word "estate" includes ryotwari tenure lands; and in Gujarat, Maharashtra and Karnataka the Land Revenue Code also defines "estate" as comprising lands which are under ryotwari tenure. What have you to say about that?

Shri B. N. Desai: Sir, may I answer this on behalf of my colleague, because it is a legal point?

Chairman: Yes, it will save time also. And you are competent.

Shri B. N. Desai: As far as Gujarat and Maharashtra States are concerned, the ryotwari tenure started much earlier. Before the Brifishers made the Bombay Land Revenue Code, 1879 the ryotwari tenure was in existence. The ryots were paying taxes to the State. There were no intermediaries between the ryots and the Government.

The word "estate" was defined in the Bombay Land Revenue Code, 1879 by section 3 sub-clause (5). It reads like this:

> " 'Estate' means any interest in lands and aggregate of such interest vested in a person or aggregate of persons capable of holding the same."

The definition is very loose. Really, as the word 'estate' reflects, it presupposes the idea of some intermediaries between the actual cultivator and the State. Therefore, at that time, by defining the word 'estate' we think that a ryotwari tenure was not included therein. Thereafter the State Legislatures have passed the tenancy legislations, the Ceilings Acts. But therein the word 'estate' is not defined. Now, that word "estate" is sought to be defined and put in the Constitution by this amendment to 31A(2)(a). So, our submission would be that it is not necessary for Parliament to define the word "estate" here. That should be left to the States if at all it is necessary to define it, because, so many agrarian reforms or legislation have been passed by the States but the word "estate" has not been defined either in the Tenancy Act or in the Ceiling Act. Ryotwari land does not come within the purview of estates,

and, therefore, if these amendments are passed, then ryotwari lands also would be touched and that would be snatched away.

Shri S. D. Patil: Did the peasants at any time previously represent to the State Government that the definition of the word "estate" as it is defined in the Land Revenue Code is vague and does not connote the meaning or did not comprise the lands under ryotwari tenure? Has there been any representation up to this time, or, are you coming out with this defence for the first time that the word "estate" is not clearly defined?

Shri B. N. Desai: The answer would be that up till now that occasion did not arise because in the implementation of the Tenancy Act that question did not arise, because the Tenancy Act up till now has not taken away the ryotwari land under personal cultivation. Undoubtedly it has protected these things. Only the Ceiling Act has taken away the ryotwari land under the guise of ceiling and on the score that the land comes under the intermediaries. Under that, up till now nobody's land has been snatched away, but the time will come. While actual taking of the land is done, then the court is to be approached. Before that, if the doors of the courts are closed, then that question cannot be agitated in a court of law. Therefore, the answer is that up till now that question did not arise.

Shri S. D. Patil: Are you opposed to the idea of ceiling itself?

Shri B. N. Desai: Yes; as far as Gujarat is concerned.

Shri S. D. Patil: Even though the ceilings are reasonable.

Shri B. N. Desai: We believe that there should not be owners of thousands of acres of land in our State. Really speaking, there are nil. The ceiling was proposed, I think, by the Planning Commission to the State Government, but the Gujarat State said that it was not necessary to pass any legislation like the Ceiling Act because few lands would come. Even at present, only the minimum ceiling is placed. Even then, about a lakh of acres of land could be recovered under the Act and this ceiling is much lower.

Shri S. D. Patil: Under the socialist pattern of society which is now the accepted goal of the country, and under the land reforms, would you not agree that the benefits of the land reforms must be passed on to the beneficiaries as early as possible without any litigation and in as peaceful manner as possible? The land reforms are part of the socialist pattern. They are a means to an end. If the land reforms are to be implemented and the benefits are to be passed on to the beneficiaries, would you not agree that there should not be any unnecessary crop of litigation which will prevent the benefits from accruing to the beneficiaries?

Shri K. M. Patel: When agrarian reforms are passed to bring the socialist pattern of society, we do not know where it would stop. Everything would belong to the State in a socialist pattern of society. If that pattern of society is to be implemented, then all the means of production would be put at the disposal of the State. Socialist pattern is not defined; it is left flexible. Therefore, I do not agree.

Shri S. D. Patil: You know that even earlier than this Bill which now puts a number of Acts in the Ninth Schedule to give them protection from litigation, there were about 20 Acts. Was there any objection from your colleagues to the inclusion of those Acts in the Ninth Schedule? You know they were passed by the Assembly as early as 1955.

Shri K. M. Patel: We did not object to the other laws that have been passed and which are put in the Schedule up till now, for the simple reason that they were laws for the abolition of intermediaries and absentee landlordism; they were laws which abolish-

ed the jagirs and inamdars and other intermediaries and absentee landlordism in the ryotwari system. Today, the position is, only the actual cultivator of the land is still on the land and there are no intermediaries because all are cultivators. Therefore, there is no question of objecting to the previous Acts which have already been implemented. But now, the only objection would be against the Ceiling Act which is now proposing to snatch away the actual land of the tiller himself.

Even in the present Ceiling Act there are many sections which are un-constitutional and they cannot stand the test of courts. The doors of courts will completely be closed now if it is placed in the Ninth Schedule.

Shri S. D. Patil: You have said that you do not agree with the definition of the word "estate". You do not also agree to these Acts being placed in the Ninth Schedule. Could you suggest some alternative arrangement by which the objective of the land reform could be achieved. Let us take the case of a man owning thousands of acres of land which he is not capable of cultivating himself. Would you not like the surplus land to be taken away and given to somebody who is in need of land? If you agree to that, will you define the word "estate" so that we are able to bring such lands under that definition?

Shri V. D. Desai: If the surplus land from persons owning thousands of acres is to be taken away, then the word "estate" should be defined by the State legislature in such a way as not to lower the ceiling hereafter. A family should have at least an economic holding so that the peasant can maintain himself and his family in a proper manner. We do not object to your putting a ceiling on the holding of persons who own thousands of acres. A reasonable restriction should be placed, but lowering the ceiling and bringing all peasants into poverty would be putting their families backward socially, politically and in every way.

Shri K. M. Patel: In our Gujarat Khedut Sangh Constitution, we have suggested that till ceiling is not fixed with respect to all properties for the progress and remodelling of the country, no ceiling should be placed on holding of Agricultural lands in Ryotwari Tenures. If ceiling is placed on all the properties, then ceiling on land should be in proportion to ceiling in other sectors.

Chairman: Has not Gujarat passed a Land Ceiling Act?

Shri V. D. Desai: Yes, but it is not scientific.

Chairman: What is the economic ceiling that they have fixed?

Shri V. D. Desai: It is given in the Schedule on page 27.

Chairman: They have said that for perennially irrigated land it should be 19 to 44 acres, for seasonally irrigated land it should be 38 to 88 acres, land irrigated from non-governmental sources should be 56 to 132 acres and so on. Is it your opinion that this is not economical for a family? What according to you is the economic holding?

Shri K. M. Patel: We feel that 19 acres of perennially irrigated land is not economical. We have asked for 24 acres as the economic holding. And, if a man owns more than 24 acres, then up to five times that economic holding should be allowed to remain with him. That is our demand.

Chairman: Is it your contention that it should be 120 acres?

Shri K. M. Patel: There are three categories of seasonally irrigated land. There is the dry crop land, rice land and perennially irrigated land. This schedule is given with regard to different areas. Different classes of land are also given.

Chairman: What we want to know from you is, in the case of, say, seasonally irrigated land, do you

think that the ceiling of 38 acres put by Gujarat is economical?

Shri K. M. Patel: It should be 48 acres according to us. We want 5 acres more in the case of perennial land and 10 acres more in the case of seasonally irrigated land.

Chairman: Taking a family unit to consist of five members, do you think a man can cultivate more than 38 acres?

Shri K. M. Patel: Yes.

Chairman: Is it your contention that if a man owns land above the ceiling fixed by the statute it should not be taken over by the State?

Shri K. M. Patel: Yes. I do not want the acreage to be lowered.

Chairman: Suppose, a man is left with 48 acres and any land in excess of the ceiling is taken over by the State for effecting land reforms, will you agree to that?

Shri K. M. Patel: Yes, provided ceiling is applied in all sectors.

Shri V. D. Desai: We have no objection but then full compensation should be given.

Chairman: You have yourself admitted that there are about 10,000 and odd landowners who own more than 100 to 200 acres. Now, you agree that land in excess of the ceiling can be taken over by the State. Suppose, in this area that is to be taken over there are forest lands, waste lands, houses etc. where labourers and tenants are living. Do you agree that those appurtenants also go with the land?

Shri K. M. Patel: No.

Chairman: Then how can the Government take it over? A man is left with the minimum, that is, the ceiling. His house is not touched; his cattlesheds are not touched. You agree that any excess land that is there can be taken over. On that excess land his tenants are living and naturally the land goes to his tenants. Wherever there are hutments in which the labourers are living and wherever there are cattlesheds in excess of the ceiling, that has to be taken over. So, do you mean to say that the hutments, cattlesheds and appurtenants are not to be taken over?

Shri V. D. Desai: As far as our State is concerned, the excess land may be taken away. There is no objection. But then the whole point is that there are no tenants there. The tenants have become the owners from 1st April, 1957.

Shri Bibudhendra Misra: Not even labourers?

Shri V. D. Desai: Labourers are there. But in Gujarat State there are no tenants.

Chairman: If there is no such land, this will not apply. But if there are such lands over and above the ceiling, you have no objection to its being taken away.

Shri V. D. Desai: As far as Gujarat State is concerned, all the zamindars or the intermediaries have been abolished by different legislations. The State legislature passed the Tenancy Act and the tenants were made the owners from 1st April, 1957. They have become the occupants.

Chairman: But it has come to the notice of the Government and this Committee that there are landholders even in the ryotwari areas who own more than the ceiling limit.

Shri V. D. Desai: They are actual cultivators; but they are doing it with the help of labourers.

Chairman: This does not apply only to Gujarat. If there are such ryotwari tenures in Gujarat, it will apply; if there are no such tenures, it will not apply. So, you agree that it can be taken over.

Shri K. M. Patel: Yes.

Chairman: Coming to compensation, what is the compensation that you want? This is land reform applying to the whole of India where probably 80 per cent of our population, that is, about 420 million people, live on land and in the villages. Do you mean to say that it is possible for the State to give compensation at the market rate? Remember, this is a social legislation and after all it is your legislature where there are elected representatives of yours which fixes what compensation should be given. Do you mean to say that that is not reasonable and the wisdom of the legislature should not be accepted?

Shri K. M. Patel: Full and adequate compensation must be given to the tiller and it should be justiceable.

Chairman: If that is given, you have no objection.

Shri K. M. Patel: No.

Shri Bibudhendra Misra: You have said that landlordism in the ryotwari areas of Gujarat has already been abolished. Would you object if landlordism in ryotwari areas in other parts of India is also abolished?

Shri K. M. Patel: It can certainly be abolished. We have no objection to that. We believe in that.

Chairman: I think, there is a clause in the Land Reforms Act that the object of land reforms is to give a minimum economic holding to the landowner so that he might have an economic living out of it. If, suppose, the owner wants to resume some land from the tenant, I think, the Land Reforms Act has got a clause saying that a minimum of 2 or 4 acres, or whatever it is, should be left to the tenant.

Shri V. D. Desai: That is over. As far as our State is concerned, that problem has been solved.

Chairman: Then, who told you that this amendment is going to apply to small tenants owning 8 or 10 acres? Wherefrom is this fear?

Shri V. D. Desai: Suppose, the ceiling is lowered tomorrow in the wisdom of the elected representatives.

Chairman: There is nothing static in the world. Our life itself is not guaranteed. We have to meet a situation as it occurs.

Shri V. D. Desai: If our rights are guaranteed, that is, below a certain limit our ownership will be kept up, we have no objection.

Shri Bibudhendra Misra: The Bill has two aspects. One is the amendment of article 31A and the other the amendment of article 31B. So far as article 31B is concerned, you have said that you are opposed to the inclusion of some Acts in the Schedule. So far as article 31A is concerned, what exactly is your position because, as I now find, the definition of the word "estate" given in the Bombay Revenue Code is the same as we propose here? So far as the ryotwari area is concerned, it is included in the definition given in the Bombay Revenue Code.

Shri V. D. Desai: We do not agree with that provision. It is not correct

Shri Khandubhai Desai: It is there.

Shri B. N. Desai: What is there is there. That is not a correct interpretation.

Chairman: You have not challenged it.

Shri B. N. Desai: That question had not come in. Now the time has come.

Shri Bibudhendra Misra: This is from the Bombay Land Revenue Code:

> "'estate' means any interest in lands and the aggregate of such interests vested in a person or

aggregate of persons capable of holding the same."

The Supreme Court has also given a ruling that ryotwari land in Gujarat comes under 'estate' under definition of 31A.

Shri B. N. Desai: With regard to the decision of the court, 61 Bom. LR Page 811, I may point out that when the question was to be decided by Justice Bhagvati, it was with reference to some other tenure other than the ryotwari tenure. So, that question has not come up before the court of law.

Shri Bibhudendra Misra: It is estimated that the surplus above the ceiling in Gujarat would be 2 lakh acres of land. Now, supposing there are agricultural labourers settling on that surplus land, having huts and all that, would you have any objection if those huts are taken away?

Srri B. N. Desai: The position is like this. Under section 17 of the Bombay Tenancy Act, the agricultural labourer is made the owner of that piece of land.

Shri Bibudhendra Misra: I am not referring to that. Suppose there is any excess land.

Chairman: Suppose you have an estate of 100 acres and the ceiling fixed is 48 acres. So, the remaining 52 acres have to be taken over. Now, if there are any labourers settling on that land, having their huts and all that, would you have any objection if they are taken away. The surplus land is to be taken over. Have you any objection to taking over those hutments? That is the purpose of the Act.

Shri B. N. Desai: As far as our State is concerned, the position is like this. Supposing there is a hut of a labourer, then that man is made the owner of that land. Our State legislature has passed the legislation. So, that land is not in excess. It has gone to him.

Chairman: Then the question of acquisition does not arise. But there are such cases where the hutments are to be taken over. You do not have any objection to that.

Shri B. N. Desai: Then, naturally there is no objection.

Shri Bibudhendra Misra: Is it true that section 17 has not yet been brought into force?

Shri B. N. Desai: In some parts they have brought into force.

Shri Bibudhendra Misra: Am I right that this section 17 has not been brought into force so far?

Shri B. N. Desai: That section is there.

Shri Ram Sewak Yadav: As I could follow, you have no objection to a ceiling being fixed.

Shri K. M. Patel: The peasants should be guaranteed that hereafter the ceiling will not be lowered.

Shri Ram Sewak Yadav: You also agree that the definition of the word 'estate' should be changed by the State legislature and not by Parliament.

Shri B. N. Desai: I think, that would be proper because the State legislature would be in a better position to define the word 'estate'.

Chairman: Suppose the State legislature has no power in that respect. In that case, the Parliament has to do that.

Shri B. N. Desai: We do not know whether the State legislature has such powers or not. We cannot say that at this stage.

Chairman: If you will look at 31A, it will be quite clear.

Shri Ram Sewak Yadav: If there is a provision to the effect that below the ceiling the land will not be taken away, then you have no objection to the ceiling being fixed.

Shri B. N. Desai: Then, naturally we have no objection. At least, there should be certainty that the remaining land will not be snatched away.

Shri J. R. Mehta: As I have followed you correctly, your main objection proceeds on the apprehension that the present ceiling might be further reduced. You have no objection to this Bill if the present position is stabilised? Am I right?

Shri K. M. Patel: Yes, subject to the reasonable ceiling being fixed. If that is accepted in the case of the State of Gujarat—everywhere there is a different position—then we have no objection to the ceiling being fixed if it is a reasonable one. Assurance must be given that it will not be further lowered.

Shri B. N. Desai: Otherwise, there will be uncertainty. No peasant would work on the land if he knows tomorrow his land is to be snatched away. A reasonable ceiling should be fixed according to the conditions prevailing in different parts of the country.

Chairman: What is the reasonable ceiling is to be fixed by the State legislature.

Shri K. M. Patel: That we have said before.

Chairman: If tomorrow some other Government comes, the Swatantra Government comes, they might change it.

Shri B. N. Desai: They might increase it.

Shri J. R. Mehta: If I remember correctly, you said that the total area of land which will be affected by the operation of this Bill will be about a lakh of acres. May I know how many individual land-holders will be affected?

Shri B. N. Desai: We have not got the actual figures.

Shri Kashi Ram Gupta: You have stated that if there is a reasonable ceiling you have no objection to it. Then, have you got any idea of change of words which can satisfy you? Have you any idea of change of words which can be made in this amendment? If you have got any alternative suggestion so that definite safeguards can be made, you may suggest that.

Chairman: About the policy of this Government, I may read out this extract from a report of the Planning Commission. It says: "Once legislation has been enacted, amendments should aim primarily at eliminating deficiencies and facilitating implementation rather than at introducing fundamental changes in the principles underlying the legislation." So, so far as this Government is concerned, you may rest assured that it would not be further lowered.

Shri B. N. Desai: Oral guarantees would not do. That should be provided for in the Constitution itself. So many oral guarantees were given by the then Law Minister. So many guarantees were given by the late Dr. Ambedkar also. Late Dr. Ambedkar said that the provisions of Article 31-A were not to be employed for purpose of dispossessing ryotwari holders. That is what he said while moving the First Amendment. He said: The President would not sign if such a Bill was passed by the State Legislature. That was the assurance given. That has not been followed. So, now we want that there should be a constitutional guarantee which should be given that hereafter this will not take place.

Chairman: Even under ryotwari system there should not be intermediaries.

Shri B. N. Desai: At present that is being abolished. Ceiling is lowered. Then more ryotwari land will be taken over.

Chairman: Do you or do you not agree that where the landlord gets his land cultivated through a tenant and gets rent, he is an intermediary?

Shri B. N. Desai: As far as Gujarat is concerned, this does not arise.

Chairman: In other States there are.

Shri B. N. Desai: Certain States have passed Tenancy Legislation and the tenants have become owners of the land.

Chairman: Some States have yet to pass.

Shri B. N. Desai: Present amendment would affect ryotwari tenure.

Shri Kashi Ram Gupta: What is your alternative suggestion?

Shri K. M. Patel: (The witness answered in Gujarati).

Shri B. N. Desai: I would translate what Shri K. M. Patel has said just now. This is from the last para of our first statement.

"It is submitted that an express guarantee be given in the Amending Act or by a separate Article in the Constitution that the actual tiller of the soil shall always remain the complete owner of it with rights under Article 14, 19 and 31, and the definition of tiller will include minors, widows, and persons under disabilities getting the land cultivated through servants or tenants and a Joint Family getting the land cultivated by a member of the family or with the help of the labourers. Also in Ryotwari the tillers of the land have sometimes to give their lands on account of some circumstances for temporary period or yearly tenure. Such tillers of the land should also be protected. It should be expressly provided that the tiller of the soil will not be deprived of the land without payment of adequate compensation justiciable in the Court of Law, or otherwise, and he will be able to question the alleged public purpose for which the land is to be taken."

Shri Kashi Ram Gupta: Do you agree that persons having land below the ceiling are the owners of the soil, according to you?

Shri B. N. Desai: If you take away the excess land we cannot object.

Shri Kashi Ram Gupta: The present ceiling is there. Are those having lands below the ceiling according to you tillers of the soil?

Shri B. N. Desai: That is, what amendment should be suggested, is that your question?

Chairman: Personal property is defined in every act. All these points have been covered. I have read some of the acts. Widows, minors etc. have been included. A member of the family may supervise.

Shri B. N. Desai: It should be considered personal property.

Shri Kashi Ram Gupta: When we fix ceiling, all those having land below ceiling are actually tillers of the soil. Do you agree to that definition or not?

Shri B. N. Desai: Yes, there are no tenants.

Shri Kashi Ram Gupta: Those whose lands are below ceiling are tillers according to you. Is it not?

Shri B. N. Desai: All are tillers of the soil.

Shri Kashi Ram Gupta: My last question is this. Why do you fear about this co-operative farming and why do you say that this co-operative farming of small holders should not come into being? Why should there be such a fear? According to present amendment there is no fear of the co-operative farming at all. If at all you think there is a fear in this, what harm do you think will arise by co-operative society? Voluntary co-operative societies are there. You say thousands of persons are having uneconomic holdings. They can be pooled together for making them

economic holding voluntarily. Have you any objection to that?

Srri B. N. Desai: If the small holders voluntarily make co-operative societies we have no objection. It should not be forced upon them.

Chairman: Times without number it has been made clear that there is no compulsion at all in this co-operative farming.

Shri B. N. Desai: In actual working it is not so, Sir.

Shri K. M. Patel: Sections 27 and 28 dealing with ceiling in the Gujarat act.

Shri Kashi Ram Gupta: Do you know of persons who were highest holders of land before ceiling? I mean, do you know who are largest holders of land in ryotwari system before this ceiling act was passed?

Shri B. N. Desai: That is put in our way.

Shri Kashi Ram Gupta: According to the Ceiling Act, that has not been taken away.

Shri K. M. Patel: In Ahmedabad there are mill-owners who own about 250 to 3000 acres of land and they have made them into registered farms which are protected under the present Ceiling Act, while the land of the actual tiller, which is even two acres in excess than the ceiling, is being snatched away.

Chairman: You please see the last two lines in Section 27. According to what is stated here there is no compulsion at all, so far as the law is concerned; but we do not know what is the actual practice.

Shri K. M. Patel: In 27 they define that. What about 28 and 29? They ask them whether they are willing to join or not. If they are not willing, they can snatch away their land for co-operative farming.

Chairman: We are not concerned with co-operative farming. According to what is contained in the law, it cannot be taken like that.

Shri Hem Raj: You have told us that there are no absentee land-lords in Gujarat State. Supposing there are certain persons following certain other professions like Doctors, Lawyers etc. who have some sort of land. They give their land to the labourers for cultivation.

Shri B. N. Desai: Hereafter, especially after the Tenancy Act lands in Gujarat State should be cultivated personally. If it is cultivated by a tenant, he becomes the owner one year after automatically. People have ceased giving the land to a tenant. Either they cultivate personally or they sell.

Shri K. M. Patel: Even if the holdings are uneconomic for them to cultivate, they have to cultivate the land personally. They will not be able to go to other professions than tilling the land.

Shri Hem Raj: Can they not get their lands cultivated by somebody else, so that they can continue in their profession?

Shri B. N. Desai: They can cultivate their land through any family member, or under the supervision of a family member through hired labour. Under the provisions of the present law, it should be personal cultivation.

Shri Hem Raj: The word 'Estate' has already been defined under your Bombay Land Revenue Code which applies to Gujarat. It may not be applicable to some other States. If a comprehensive definition is to be introduced in the Constitution in order to ensure uniformity throughout the country, would you object?

Shri B. N. Desai: It would be proper to leave it to the States concerned.

Shri Bibhuti Mishra: You have stated in your memorandum that it is not to save the tiller of the soil that the Seventeenth Amendment of the Constitution is sought for but to ultimately destroy him and to ultimately nationalise land to take the country to collective farming and communism. How do you say that?

Chairman: That is his opinion.

Shri Bibhuti Mishra: He has quoted from Mahatmaji's articles. This levelling up and levelling down—is it not in conformity with what Mahatmaji was saying? This amendment will bring some people down and some people up. In olden days because we were going to disobey the British laws, everyone had respect for non-tax payment movement etc. Now, how do they object to this constitutional amendment?

Chairman: Let us not argue ideological differences. You cannot prevent them from holding their own views. Ours is a free country.

Shri B. N. Desai: A short answer I will give.

Chairman: It is not necessary.

Shri Bibhuti Mishra: What is the maximum land which one cultivator holds in your Gujarat Khedut Sangh, Bardoli?

Chairman: What is the maximum that any person holds?

Shri K. M. Patel: There are in Bardoli only 14 persons who hold more than 75 acres, more than the ceiling. The maximum is 75 acres.

Shri Bibhuti Mishra: How many people in your organisation will be affected by the passing of this Bill?

Shri B. N. Desai: All.

Shri K. M. Patel (Answered in Gujarati).

Chairman: Their fear is that even small holders having eight or ten acres will be affected by this.

Shri Bibhuti Mishra: I want to know how they will be affected.

Chairman: If you give a guarantee that they will not be affected, they have no objection.

Shri K. M. Patel: Then we have no objection.

Shri Bibhuti Mishra: What is the average income from land in Bardoli?

Shri B. N. Desai: That varies according to lands. It may vary according to so many circumstances.

Shri Joseph Mathen: Are we to understand that if land below the ceiling is not affected you have no objection?

Chairman: They have said that.

Shri K. M. Patel: On the condition that ceilings hereafter should not be lowered.

Shri M. P. Swamy: You say that only the tiller of the soil pays the land revenue to the Government. Are there any tenants within the ceiling area in the ryotwari land?

Shri K. M. Patel: No, Sir.

Shri B. N. Desai: On 1-4-57 the tenants have become occupants. Even their lands will be lost. Their ownership land plus the tenancy land, if it is more than the ceiling, will be lost.

सरदार पंजहजारी : कितनी आमदनी आप समझते हैं ४८ एकड़ से पर यीअर होगी और क्या वह आमदनी ग्रास होगी या नैट ?

Shri K. M. Patel (Answered in Gujarati).

Sardar Panjhazari: That means 4,800 a year. Net profit?

Shri K. M. Patel: Gross. But not every year.

सरदार पंजहज़ारी : नेट या ग्रास ?

श्री के० एम० पटेल : ग्रास। कुदरती आफत आए तो कम होती है, वैगरीज ग्राफ नेचर पर यह डिपेंड करती है। नार्मल यीअर में इतनी आमदनी हो जाती है।

सरदार पंजहज़ारी : शहर में जो बसने वाले हैं, उनकी आमदनी में और अपनी आमदनी में तो आप फर्क करेंगे ही ?

Shri K. M. Patel: In sectors other than agriculture put ceiling on them also. Then we have no objection. As a principle we have no objection to accept ceiling. But let the ceiling be placed on every sector.

Shri B. N. Desai: On urban property also, including Ministers' pay.

सरदार पंजहज़ारी : आपने ४८ स्टैण्डर्ड एकड़ की जो सीलिंग बताई उस में आप फैमिली में कितने आदमी बताते हैं ?

Shri K. M. Patel: Five.

सरदार पंजहज़ारी : पांच आदमी हो गए और ४८ स्टैण्डर्ड एकड़ दे दी गई। चार या पांच साल बाद एक और लड़का ग्रोन-अप हो गया। उसका आप क्या चाहते हैं ?

Shri B. N. Desai: So the position is that all agriculturists who stay in the village will be backward economically, socially and politically.

श्री के० एम० पटेल : (उत्तर गुजराती में दिया गया)

Sardar Panjhazari: When you fix for a family of five members 48 acres, after four years when the other children grow up or get married, what is the safeguard for them to cultivate the land?

Shri K. M. Patel: We know that uncertainty. (Further answer in Gujarati).

सरदार पंजहज़ारी : आपने कहा कि जो कल्टीवेट करे, उसकी ज़मीन होनी चाहिये। एक बेवा औरत है, उसका बच्चा ग्रोन-अप नहीं है और काश्त नहीं कर सकता है, उसके लिए आप क्या सेफगार्ड रखते हैं ? एक साल तक जो टेनेंट काश्त करेगा वह ज़मीन को आक्यूपाई कर लेगा।

Shri B. N. Desai: Provision should be made for widows and minors and disabled persons. We have already stated that in our memorandum.

सरदार पंजहज़ारी : There is nothing about that in the memorandum.

Shri B. N. Desai: We have stated that widows and minors and disabled persons should be protected and their interests should be safeguarded.

सरदार पंजहज़ारी : आपने ४८ एकड़ की सीलिंग की बात कही है और आपने अभी कहा कि ४८०० ग्रास इनकम नार्मल साल में हो सकती है। अब अगर दो भाई हैं तो ऐसा भी हो सकता है कि एक भाई काश्त करे और

दूसरा सर्विस के लिए चला जाए । यह भी आप कहेंगे कि उसके बाद वह उस जमीन को किसी को काश्त करने के लिए दे सकता है और अगर ऐसा होता है तो उसका सेफगार्ड होना चाहिये । मैं जानना चाहता हूं कि इस तरह के केसिस में भी आप सेफगार्ड रखना चाहेंगे या नहीं चाहेंगे ?

श्री के० एम० पटेल : सीजनली इरिगेटिड लैंड . . .

सरदार पंजहजारी : ४८ की सीलिंग जब आप एक्सैप्ट कर लेते हैं और काश्त करने के लिए उनको दे देते हैं तो उसके बाद अगर कोई कहता है कि मैं बाहर जा रहा हूं, तुम काश्त कर लो और ५० : ५० बेसिस पर फैसला कर लेते हैं तो . . .

श्री हेम राज : दे कांट गिव इट । इसका जवाब दे दिया गया है ।

सरदार पंजहजारी : रूल्ज के मुताबिक वे ऐसा नहीं कर सकते हैं । सीलिंग को भी आपने एक्सेप्ट कर लिया है । यह भी आप चाहते हैं कि रूल्ज को थोड़ा सा ठीक किया जाए . . .

श्री के० एम० पटेल : नहीं । जो सोशल रिफार्म्स हैं . . . (उत्तर गुजराती में दिया गया) ।

सरदार पंजहजारी : एक आदमी बीमार पड़ जाता है और एक्ट के मुताबिक जो काश्त करेगा वही मालिक हो जाएगा । अब जो बीमार पड़ता है वह अगर किसी को कल्टीवेट करने के लिए दे देता है तो क्या वह उसका ओनर नहीं हो जाता है ?

श्री के० एम० पटेल : (उत्तर गुजराती में दिया गया) ।

सरदार पंजहजारी : इसमें कलैक्टर को इजाजत है कि वह एग्जैम्प्ट कर सकता है । इससे क्या कुरप्शन नहीं बढ़ेगी ?

श्री के० एम० पटेल : बढ़ेगी ।

सरदार पंजहजारी : एक्ट में इसके बारे में भी प्रोवाइड होना चाहिये ।

श्री के० एम० पटेल : (उत्तर गुजराती में दिया गया) ।

Shri B. N. Desai: Below the ceiling no law should apply.

सरदार पंजहजारी : आपने कहा कि आप कोआपरेटिव फार्मिंग के खिलाफ हैं लेकिन आप देखें कि कोआपरेटिव फार्मिंग में अच्छे इम्प्लेमेंट्स, अच्छे ट्रैक्टरों का इस्तैमाल करके क्या प्रोडक्शन को नहीं बढ़ाया जा सकता है ।

श्री के० एम० पटेल : नहीं जी । (उत्तर गुजराती में दिया गया) ।

Shri B. N. Desai: There would not be any incentive to work on land, if co-operative farms are established.

Chairman: How many Members has your Sangh got?

Shri K. M. Patel: The number is more than 25,000 in Gujarat.

Chairman: What is the number of the pattadars?

Shri K. M. Patel: It is not a question of pattadars. All are kisans.

Shri B. N. Desai: All are agriculturists, and all are tillers.

Chairman: How many members are there in the Khedut Sangh which you represent? Out of these 25,000 kisans, how many are your members?

Shri K. M. Patel: We represent the Gujarat Khedut Sangh. Our organisation has 25,000 members. That was what I had said. In Saurashtra, which was a different State previously, there is another branch of the Khedut Sangh. The number is much more there.

Chairman: Thank you very much for the evidence that you have given.

Shri K. M. Patel: (Spoke in Gujarati).

Shri B. N. Desai: If we have committed any mistake in speaking while giving our evidence, we may be pardoned.

Chairman: There is no question of any mistake.

(The witnesses then withdrew.)

III. The Swatantra Kisan Sabha, New Delhi.

Spokesman:

Shri M. R. Arya

(The witness was called in and he took his seat.)

Chairman: Shri Arya, whatever evidence you give will be distributed to our Members and printed and published; even if you want any portion to be treated confidential, it is likely to be made available to Members.

We have received your memorandum which has been distributed to all the Members. If you want to stress any point or add any new points, you may do so.

श्री आर्य : इस विधेयक के द्वारा सरकार अपने संविधान में जो १७वां संशोधन करने जा रही है (धारा ३१ में) उस से सब से पहला नुकसान यह होगा कि जो हम लोगों के जन्मसिद्ध अधिकार संविधान की धारा १४, १९ और ३१ के अनुसार सुरक्षित हैं वे इस से समाप्त हो जायेंगे । इस से सरकार को कानूनी हक मिल जायेगा कि जो किसानों की अपनी जायदाद है उस को भी वह हासिल कर ले। जिस प्रकार से कम्युनिस्ट देशों के अन्दर होता है कि किसान या छोटे तबके के लोग सरकार की मर्जी से जिंदा रहते हैं और उन को अपनी जायदाद का कोई हक नहीं होता उसी प्रकार से सरकार यहां भी संविधान में सत्रहवां संशोधन करने जा रही है। जिस प्रकार से कम्युनिस्ट देशों में किसान या दूसरे लोग सरकार का विरोध नहीं कर सकते, इस तबदीली के बाद यह सरकार भी देश के अन्दर वही सारी चीजें लायेगी ।

प्रजातन्त्र देश के अन्दर जहां हम लोकतन्त्र की दुहाई देते हैं, वहां जरूरी है कि जनता के जन्म-सिद्ध अधिकारों से खिलवाड़ न करें। इस तरह से न तो किसी देश के अन्दर प्रजातन्त्र कायम रह सकता है और न वहां के लोगों की व्यक्तिगत आजादी ही बरकरार रह सकती है। इसलिए जरूरी है कि प्रजातन्त्र की रक्षा करने के लिए संविधान में जो भी अधिकार सुरक्षित रखे गए हैं, उन को कायम

रखा जाये और सरकार महज अपनी रक्षा के लिए संविधान के अन्दर तबदीली न करें।

पिछले दिनों जब मैं गांवों में गया, तो वहां के लोगों को यह भी पता नहीं था कि सत्रहवां संशोधन क्या चीज हैं। जब सरकार देश की ८५ प्रतिशत जनता के भाग्य का फैसला करने जा रही है, तो उसे कम से कम यह जानना चाहिये था कि इस संशोधन बिल की जो अच्छाइयां और बुराइयां हैं और लोगों पर उन का जो असर पड़ेगा, उस के बारे में लोगों का क्या ख्याल है। इसके लिए यह जरूरी था कि गांवों के अन्दर जो गांव-पंचायतें हैं, उन को उन की क्षेत्रीय भाषा में इस बिल को वितरित किया जाता और यह पता लगाया जाता कि आया वे चाहते हैं कि संविधान के अन्दर यह तबदीली की जाये। यदि उस के आधार पर यह कानून बनाया जाता, तो हम सही मानों में कह सकते थेकि अपने देश की सरकार जनता की आवाज की परवाह करती है, और यह संशोधन विधेयक जनता की खुशहाली के हक में है। लेकिन ऐसी बात नहीं की गई है।

जब मैं दिल्ली के गांवों के अन्दर गया, तो वहां के किसानों के अन्दर इस विधेयक के खिलाफ़ बहुत रोष पाया। वे कहते हैं कि यह एक अजीब सी बात है कि एक तरफ तो संविधान की प्रस्तावना में हम स्वीकार करते हैं कि सब लोगों को जायदाद का हक हैं, दूसरी तरफ सरकार ऐसा कानून बना रही है, जिस के द्वारा वह जनता के जायदाद रखने के हक को समाप्त कर रही है। किसान लोग इस विधेयक से बहुत निराश हैं और अपने सीमित साधनों के अनुसार उन्होंने बहुत से विरोध पत्र भी भेजे हैं।

आज ऐसे बहुत से ऐसे वकील भी हैं, जिन्हें यह पता नहीं है कि संविधान का सत्रहवां संशोधन क्या बला है। आज सरकार ८५ प्रतिशत जनता की जमीन छीनने के लिए यह संशोधन ला रही है, लेकिन १५ प्रतिशत जनता को भी पता नहीं है कि इस के क्या दुष्परिणाम होंगे, सरकार इस से क्या सुधार लायेगी और इस से क्या नुकसान होंगे। सरकार अपनी समझ में इस संशोधन से कुछ सुधार लाना चाहती है, लेकिन वास्तव में इस पर उन लोगों की राय ली जानी चाहिये थी, जो कि इस के दुष्परिणाम के शिकार बनेंगे। इस कारण मैं चाहता हूं कि सारे देश के हर एक गांव के अन्दर उस क क्षेत्रीय भाषा में इस विधेयक को छपवा कर बंटवाया जाये और देखा जाये कि कितने किसान चाहते हैं कि संविधान के अन्दर यह तब्दीली की जाये। यह प्रजातांत्रिक देश है और प्रजातंत्र के अन्दर जनता की आवाज को कायम रखना होगा और जो जनता की भावनायें हैं, सही मानों में उन का भी आदर करना होगा। अगर ऐसा नहीं किया जाता, तो अपने देश में और दूसरे कम्युनिस्ट देशों में कोई फर्क नहीं रह जाता। जिस प्रकार से वहां का किसान गुलाम है उसी प्रकार से जो अपने यहां ८५ प्रतिशत किसान हैं, वे भी गुलाम हो जायेंगे।

अभी तो यह कहा जाता है कि सरकार को कुछ सुधार लाने हैं, लेकिन उन के लागू किये जाने में कुछ ऐसी दिक्कतें हैं, जो कि सुप्रीम कोर्ट उपस्थित कर सकता है। जब तक संविधान में तबदीली नहीं की जायेगी, तब तक वे कांग्रेसी सुधार लागू नहीं किये जा सकेंगें।

जहां तक इस देश का ताल्लुक है, अगर हम किसानों की आजादी और उन के हकों की रक्षा करने के लिये कोई कदम उठायें, तो हमें उन सारी चीजों का ध्यान रखना पड़ेगा, जिन क हम ने १९५० में संविधान बनाते समय प्रतिज्ञा की थी। हमें यह नहीं चाहिये कि अपने स्वार्थों में फंस कर, जिस से कि हम हमेशा के लिये शासन में बने रहें, अपने पवित्र संविधान को हमेशा परिवर्तित करते जायें। इस से देश के अन्दर वास्तविक लोकतन्त्र कायम नहीं हो सकता। यह तो उसी तरह से है, जैसे कि चीन ने किया। एक तरफ चीन ने

इस दृष्टि से अपने देश पर आक्रमण किया है. . . . .

श्री पंजहजारी : आप का प्वायंट क्या है ? आप कह क्या रहे हैं ? कुछ उद्देश्य अपना बताइये ।

श्री आर्य : जो इम्प्लीकेशंज हैं इस के

श्री पंजहजारी : इस का चीन का आक्रमण होने, न होने से क्या वास्ता ? आप जो कह रहे हैं, वह यहां कहने वाली बात नहीं है । यह कोई पब्लिक मीटिंग नहीं है । यह पार्लियामेंट की ऐसी मीटिंग है, जिस में आप शहादत देने के लिए आए हैं । आप कहिए, आप चाहते क्या हैं ?

श्री आर्य : मैं चाहता हूं कि इस जनता विरोधी बिल को वापस ले लिया जाये ।

श्री पंजहजारी : आप ने अभी यह कहा था कि यह बिल पास हो जाने के बाद किसान कुचला जायगा और इस सरकार में और रूस के कम्युनिस्टों में कोई फर्क नहीं होगा । यह कैसे ?

श्री आर्य : यह इस प्रकार से कि सरकार को यह हक हो जायेगा कि वह किसानों की किसी प्रकार की जमीन, चाहे चरागाह हो, चाहे पड़ती जमीन हो, ले सकती है और अपनी मर्जी से किसानों से काम ले सकती है । हम न कोर्ट में जा सकते हैं न इस के बारे अपील कर सकते हैं । इस प्रकार से कांग्रेस पार्टी ने सन् १९५९ में जो क्लेक्टिव फार्मिंग या को-आपरेटिव फार्मिंग का प्रस्ताव पास किया था, सरकार उसे इस बिल के द्वारा करना चाहती है ।

श्री पंजहजारी : आप ने कोई खास जवाब तो दिया नहीं । जहां तक चरागाह का सवाल है वह तो इस में आता नहीं ।

श्री आर्य : वह इस में आता है ।

श्री पंजहजारी : आप ने इस को गलत तरीके से पढ़ा है । इस में चरागाह नहीं है, दूसरे इस कानून से जो ज्यादातर किसान हैं उन को फायदा होगा, आप दिल्ली का प्रतिनिधित्व करते हैं । क्या आप बतला सकते हैं कि दिल्ली में ७५ प्रतिशत किसानों के पास कितनी जमीन है ?

श्री आर्य : यह तो मैं ने अध्ययन नहीं किया ।

श्री पंजहजारी : कितने किसानों के पास ज्यादा जमीन है क्या आप यह बतला सकते हैं ?

श्री आर्य : मैं नहीं बतला सकता ।

श्री पंजहजारी : आप को सारी स्टडी करने के बाद राय कायम करनी चाहिये । यह बिल तो किसानों के भले के लिए है । इस से तो उन को फायदा होगा । फिर उनको वोट देने का अधिकार है । आप अपने दोस्तों से मिल कर इस पर गौर कीजिए फिर अपनी राय कायम कीजिए ।

श्री वाजपेयी : मैं जानना चाहता हूं कि आप खुद खेती करते हैं या नहीं ?

श्री आर्य : जी हां, मैं खेती करता हूं ।

श्री वाजपेयी : आप किसानों के जिस संगठन का प्रतिनिधित्व करते हैं उस के सदस्य कितने हैं ?

श्री आर्य : मैं सिर्फ दिल्ली के किसानों का प्रतिनिधित्व करता हूं । हमारे छोटे छोटे संगठन हैं जो कि हर एक गांव में हैं । दस ग्राम पंचायतों में हमारी संस्थाएं हैं ।

चेयरमैन : इन के मेम्बर कितने हैं ?

श्री आर्य : इन की हम ने साधारण मेम्बरशिप नहीं रखी है । दस पंचायतों के प्रधान ही इन के सदस्य हैं ।

श्री राम सेवक यादव : ये जो आपकी संस्थाएं बनी हैं ये कब बनी हैं ?

श्री आर्य : ये मार्च सन् १९६३ में बनी हैं ।

चेयरमैन : रजिस्टर कराया हैं ?

श्री आर्य : अभी नहीं ।

श्री काशी राम गुप्त : यह जो सीलिंग का कानून है इस की आप किस आधार पर खिलाफत करते हैं ?

श्री आर्य : मुझे फिर मजबूर हो कर रूस का नाम लेना पड़ता है । वहां भी ऐसा ही किया गया था । पहले बड़े लोगों की जमीन ली गयी, फिर बीच के लोगों (कुलक्स) की जमीन ली गयी और उन को खत्म किया गया । फर दूसरे लोगों की भी जमीन ले ली गयी । वही यहां भी होगा ।

श्री काशी राम गुप्त : क्या आप सीलिंग के खिलाफ हैं जिस के अनुसार उन लोगों से जमीन ले कर जिन के पास ज्यादा है उन को दी जानी है जिन के पास कम है या बिल्कुल नहीं है ?

श्री आर्य : जी हां ।

श्री काशी राम गुप्त : क्या आप चाहते हैं कि जिन लोगों के पास बहुत ज्यादा जमीन है उन से वह ले कर उन लोगों को न दी जाए जिन के पास कम है या नहीं है ?

श्री आर्य : जी हां ।

श्री काशी राम गुप्त : किस कारण से ?

श्री हेमराज : आप बड़े बड़े लोगों के पास ज्यादा जमीन क्यों रखना चाहते हैं ?

श्री आर्य : जी हां इस दृष्टि से कि जो रूस में किया गया वही यहां भी न किया जाय ।

श्री काशी राम गुप्त : लेकिन सीलिंग का मतलब तो यह है कि छोटे किसानों को जमीन दी जाए ।

श्री आर्य : अगर आप छोटे किसानों को जमीन देना चाहते हैं तो वह जमीन उन को दें जो कि पड़ती पड़ी है । पहले रूस में भी यही कहा गया था ।

श्री काशीराम गुप्त : तो आपका मतलब यह है कि अगर किसी के पास दस हजार एकड़ भूमि है तो उस से न ली जाए । वह अकेला उस की खेती कैसे करेगा ?

श्री आर्य : वह उस पर उसी प्रकार खेती करेगा जैसे कि अब तक करता आया है ।

श्री काशी राम गुप्त : इस समय तो दूसरों से खेती कराता है ? क्या आप इस तरीके को जारी रखना चाहते हैं ?

श्री आर्य : जी हां ।

श्री हेम राज : आप के विचार से देश की खेती की उपज बढ़नी चाहिए या नहीं ?

श्री आर्य : जी हां, उपज बढ़नी चाहिए ।

श्री हेम राज : लेकिन आप तो कहते हैं कि जिन के पास हजारों एकड़ जमीन है उन से वह न ली जाए । आप बताइए कि एक आदमी अकेला ज्यादा से ज्यादा कितनी खुद काश्त कर सकता है ।

श्री आर्य : ऐसे कितने लोग हैं जिन के पास इतनी जमीन है ?

श्री हेम राज : कुछ तो हैं । अगर उन से जमीन न ली जाए तो क्या देश का नुकसान न होगा ?

श्री आर्य : ऐसी बहुत सी जमीन पड़ी है जिस को कि उपजाऊ बना कर उन लोगों को दिया जा सकता है जिन के पास कम जमीन है

श्री जमीन नहीं है । ऐसी बहुत सी जमीन मैं आप को दिल्ली में और उत्तर प्रदेश में दिखा सकता हूं ।

श्री हेमराज : लेकिन जिन के पास नहीं है उन को देने के लिए तो जमीन चाहिए ?

श्री आर्य : पहले जो जमीन पड़ती पड़ी हैं उस को लोगों को दिया जाए, उस के बाद दूसरों की जमीन लेने की बात सोची जाए ।

श्री राधेलाल व्यास : अभी आप ने फरमाया कि पहले बड़ों को खत्म किया जाएगा और फिर छोटों को खत्म किया जाएगा । मैं जानना चाहता हूं कि जो जमींदारी और जागीरदारी प्रथा समाप्त की गयी इस से क्या देश को नुकसान हुआ ?

श्री आर्य : इस का तो मैं ने अध्ययन नहीं किया है ।

श्री राधेलाल व्यास : आप किसानों के हित में यह ही आवश्यक समझते हैं या नहीं कि कुछ भूमि सुधार किए जाएं ?

श्री आर्य : आवश्यक समझता हूं ।

श्री राधेलाल व्यास : तो वे किस तरह से भूमि सुधार आप की संस्था लाना चाहती है ?

श्री आर्य : पहली बात तो यह है कि जो बहुत सी जमीन देश में पड़ती पड़ी है उस को उपजाऊ बना कर लोगों को दें ।

श्री राधेलाल व्यास : वह तो भूमि सुधार नहीं हुआ । जिन लोगों के पास जमीन है उस के बारे में कुछ सुधार होना चाहिये । क्या आप समझते हैं कि इस समय जो जमीन के बटवारे की विषम स्थिति है इस को ठीक किया जाए या नहीं ?

श्री आर्य : हम तो यह समझते हैं कि जो जमीन पड़ती पड़ी है उस को पहले लोगों को दिया जाए, किसी से छीन कर जमीन न दी जाए ।

श्री राधेलाल व्यास : वहां के लिए आप क्या कहेंगे जहां कि ऐसी जमीन नहीं है ? जैसे मध्य प्रदेश में हमारे भिंड में आपको कोई ऐसी जमीन नहीं मिलेगी जहां कि लोगों को दे दें । जहां बहुत घनी आबादी है और वहां के लोग जाने को तैयार नहीं हैं तो वहां आप क्या करेंगे । वहां एक के पास जमीन नहीं है, ज्यादातर लोगों के पास जमीन नहीं है लेकिन कुछ लोग ऐसे हैं जिन के कि पास सैकड़ों बीघे जमीन है और वह खुद उस पर काश्त नहीं कर सकते और दूसरे जरिये से और कुछ लोगों को थोड़ी मजदूरी दे कर अपना मुनाफा कमाते हैं, तो क्या आप चाहते हैं कि ऐसी स्थिति बने रहने दी जाये ?

श्री आर्य : लेकिन यह भी तो हैं कि जिन की आप इस बिना पर जमीनें छीनेंगे वे लोग क्या करेंगे ।

श्री राधेलाल व्यास : उन का भी ख्याल तो रक्खा ही जायेगा । उन को कोई भूखों थोड़े ही मरने दिया जायेगा । जितनी उन को जरूरत हो सकती है और जितनी पर वह खुद काश्त करते हैं उस को उन के पास रहने दे कर बाकी फालतू जमीन ले कर अगर भूमि-हीन लोगों को काश्त करने के लिए दिलवा दी जाय तो क्या आप इसे पसन्द नहीं करेंगे ?

श्री आर्य : जी नहीं ।

श्री रामसेवक यादव : यह बिचौलिये (मध्यवर्ती) रहें या वे मिटा दिये जायें, इस में से आप क्या चीज पसन्द करते हैं ?

श्री आर्य : मैं समझा नहीं ।

श्री राम सेवक यादव : एक तरफ तो वे लोग हैं जो कि वाकई जमीन को जोतते हैं

और एक तरफ जमीन के मालिक हैं जो कि उन बड़ी जमीनों पर स्वयं काश्त नहीं करते हैं खाली लगान वसूल कर के सरकार को दे देते हैं, आप इन बिचौलियों को रहने देना पसन्द करते हैं या उन का मिटाना पसन्द करते हैं ?

श्री आर्य : बीच वाले तो आलरेडी खत्म हो चुके हैं ।

श्री रामसेवक यादव : आप का ख्याल है कि वह खत्म हो गये लेकिन यह तो बतलाइये कि वे रहने चाहिये थे या नहीं रहने चाहियें थे ? मध्यवर्ती लोगों को आप कायम रखना चाहते हैं या उनको मिटाना चाहते हैं ? इस बारे में आप की क्या राय है ?

श्री आर्य : मुझे यह समझाया जाये कि मध्यवर्ती आप किसे समझते हैं ?

श्री राधेलाल व्यास : मान लीजिये मेरे पास वहां मध्य प्रदेश में ५०० बीघा जमीन है । मैं यहां दिल्ली में रहता हूं और जहां मेरी जमीन है वहां में जाता नहीं हूं । खुद उस पर खेती बाड़ी नहीं करता और दूसरे लोगों को १०, १० और २०, २० रुपये एकड़ पर दे रक्खी है । खाली एक दफे जाकर लगान ले लेता हूं । क्या आप चाहते हैं कि वह जमीन मुझ से छीनी न जाए और मैं ही उस जमीन का पूरे का पूरा मालिक बना रहूं ।

श्री आर्य : वह जमीन उन्हीं के पास रहनी चाहिए जिन की कि वह है ।

श्री राधेलाल व्यास : इस का मतलब तो यह हुआ कि मैं यहां बैठा रहता हूं, वहां पर जाकर काश्त नहीं करता हूं तो भी वह मुझसे छीनी न जाय और मेरे पास बनी रहनी चाहिए ।

श्री विभूति मिश्र: आप ने अपने मेमोरेंडम में यह लिखा है :

"The Government should be imaginative enough to realise that by taking away land on nominal compensation from the small landholder, it would be destroying the confidence in it of a class which is the backbone of the fighting forces."

मैं जानना चाहता हूं कि आपने यह बात किन से पूछी है कि अगर इस तरह का संशोधन विधेयक पास हो गया तथा जो फाइटिंग फोसेज के लोग हैं उन की राज्यभक्ति पर इस का प्रतिकूल प्रभाव पड़ेगा ?

श्री आर्य : मैं ठीक से तात्पर्य समझा नहीं ।

श्री विभूति मिश्र : यह जो आप ने अपने रिटैन मैमोरेंडम में आखिर में लिखा है कि अगर यह कानून पास हो गया तो हिन्दुस्तान के फौजी सिपाही जो कि सीमाओं पर तैनात हैं और लड़ रहे हैं उन की देशभक्ति और राज्यभक्ति में कमी पड़ जायेगी, मैं जानना चाहता हूं कि यह आप ने किस सिपाही से, कमांडर से या किस आदमी से पूछा है ।

श्री आर्य : किसानों से पूछा है ।

श्री विभूति मिश्र : आप ने यह किसी आर्मीमैन से नहीं पूछा ?

श्री आर्य : जी नहीं ।

श्री विभूति मिश्र : फिर आप अपने मेमोरेंडम में आगे लिखते हैं :—

"With an enemy sitting at our door, we cannot afford to do anything which would lower the morale of troops. No soldier whose land or whose relations' land is going to be taken, is likely to put his heart into fighting."

अब यह जो आप ने लिखा है तो यह क्या आप ने किसी फौजी जवान से पूछ के लिखा

है ? मैं इसका उत्तर चाहता हूं कि आपने फौजी जवानों से यह पूछा कि नहीं पूछा ?

श्री आर्य : नहीं पूछा ।

श्री विभूति मिश्र : फिर आप अपने मेमोरेंडम में आगे लिखते हैं :—

"What would he be fighting for if his family has been deprived of its little bit of land. This, in fact, is the most dangerous piece of legislation from the defence point of view."

अब इस लेजिस्लेशन में डिफेंस कहां इनवोल्व होता है ?

श्री आर्य : इस देश के अन्दर करीब ८५ प्रतिशत: किसान हैं । अब यदि उन की छोटी सी भूमि सम्बन्धी जायदाद को हड़पने के लिए इस प्रकार का कोई कानून पास किया जाता है तो वह यह महसूस करते हैं कि सरकार उनकी जायदाद को लेना चाहती है या जबरन ऐसा कानून बनाती है जिस से कि वह मनचाहा थोड़ा सा मुआवजा देंगे तो जाहिर है कि इस का उन पर बड़ा प्रतिकूल असर पड़ेगा । और सुरक्षा की दृष्टि से यह चीज निहायत खतरनाक होगी । सरकार को इस बात की सावधानी बरतनी चाहिए ताकि लोगों के मनमें इस तरह की एक भावना पैदा न हो कि सरकार उन के और उन की जायदादों के साथ खिलवाड़ करना चाहती है या उन की आजादी को खत्म करना चाहती है क्योंकि उस से हमारी सुरक्षा व्यवस्था और एकता पर प्रतिकूल प्रभाव पड़ सकता है ।

श्री विभूति मिश्र : आप ने अपने मेमोरेंडम के अन्त में यह एक वाक्य लिखा है :—

"The security of the country must not be sold for any ideology no matter how sacred."

मैं जानना चाहता हूं कि इस संशोधन विधेयक का देश की सुरक्षा से क्या सम्बन्ध है ?

(कोई उत्तर नहीं दिया गया ।)

श्री विभूति मिश्र : आप ने जो यह लिख दिया है :—

"We would like to give a note of warning to the framers of law that such an amendment is reprehensible not only because it involves a curtailment of basic human rights as conceived in democracy but also because the consequences of such a change in constitutional law will be disastrous to the nation and might lead to chaos and blood-shed in the whole country."

आप बतलायें कि इस से सोशल जस्टिस कहां खत्म हो जाती है ? आप ने यह राय कैसे कायम कर ली ?

Chairman: That is his opinion.

Shri Bibhuti Mishra: I want to know whether that opinion has got some sanction or not?

श्री हेम राज : यह फकत १० आदमियों को रिप्रजेंट करते हैं । एक वह खुद हैं और और बाकी नौ और हैं ?

श्री विभूति मिश्र : मैं जानना चाहता हूं कि उन्हों ने जो यह कहा है कि इस से ब्लडशैड हो जायगा तो वह किस आधार पर कहा है ?

श्री आर्य : मैंने गांवों का दौरा किया है । वहां के लोगों से मैं मिला हूं और उन से बातचीत की है । यदि आप मेरे साथ चलें तो आप को मालूम हो जायगा कि मैं जो कह रहा हूं वह सही है ।

श्री विभूति मिश्र : आप गांव के रहने वाले हैं या शहर के रहने वाले हैं ?

श्री आर्य : इस समय तो मैं शहर में रहता हूं। लेकिन आज से दो साल पहले मैं गांव में रहता था और अब भी कभी कभी गांवों के अन्दर जाया करता हूं और मेरी यह आरगेनाइजेशन गांवों वालों की ही है।

श्री विभूति मिश्र : दिल्ली के आस पास के गांवों की है।

श्री आर्य : जी हां।

श्री विभूति मिश्र : क्या आप किसानी करते हैं ?

श्री आर्य : इस समय तो मैं नहीं करता।

श्री विभूति मिश्र : जैसे कि आपने कहा कि दो साल पहले गांवों में रहता था और अब कभी कभी गांवों में चला जाता हूं और वहां आप को ऐसे ही किसान मिले जिन्हों ने आप से कहा कि हम इस संशोधन विधेयक के विरुद्ध हैं; यही बात आप कहना चाहते हैं न ?

श्री आर्य : जी हां।

श्री विभूति मिश्र : मैं आपको बतलाना चाहता हूं कि मैं हमेशा से गांवों में रहता आया हूं। मेरा गांव स्टेशन से २४ मील अन्दर जा कर है। रोज मैं किसानों के साथ मिलता हूं और उन में काम करता हूं लेकिन मुझ से तो किसी ने इस के खिलाफ नहीं कहा।

श्री आर्य : वहां के किसानों को इस का पता ही नहीं होगा।

चेयरमैन : अब मिश्र जी छोड़िये भी। उन की राय हमें मालूम हो गयी।

(*The witness then withdrew.*)

The Committee then adjourned.

JOINT COMMITTEE ON THE CONSTITUTION (SEVENTEENTH AMENDMENT) BILL, 1963

Minutes of Evidence given before the Joint Committee on the Constitution (Seventeenth Amendment) Bill, 1963

Thursday, the 23rd January, 1964 at 09.40 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bibhuti Mishra
3. Shri Sachindra Chaudhuri
4. Shri Surendranath Dwivedy
5. Shri A. K. Gopalan
6. Shri Kashi Ram Gupta
7. Shri Harish Chandra Heda
8. Shri Hem Raj
9. Shri Ajit Prasad Jain
10. Shri S. Kandappan
11. Shri Cherian J. Kappen
12. Shri L. D. Kotoki
13. Shri Lalit Sen
14. Shri Harekrushna Mahatab
15. Shri Jaswantraj Mehta
16. Shri Purushottamdas R. Patel
17. Shri T. A. Patil
18. Shri A. V. Raghavan
19. Shri Raghunath Singh
20. Chowdhry Ram Sewak
21. Shri Bhola Raut
22. Dr. L. M. Signhvi
23. Shri M. P. Swamy
24. Shri U. M. Trivedi
25. Shri Ram Sewak Yadav

Rajya Sabha

26. Shri Tarit Mohan Das Gupta
27. Shri Rohit Manushankar Dave
28. Shri Nemi Chandra Kasliwal
29. Shri Dhirendra Chandra Mallik
30. Shri Joseph Mathen
31. Shri Nafisul Hasan
32. Shri P. Ramamurti
33. Sardar Raghbir Singh Panjhazari
34. Shri S. D. Patil

35. Shri Kota Punnaiah
36. Shri Atal Bihari Vajpayee
37. Shri J. Venkatappa.

Shri C. R. Pattabhi Raman, Deputy Minister in the Ministry of Labour and Employment and for Planning was also present.

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVE OF THE PLANNING COMMISSION

Shri Ameer Raza, *Joint Secretary, Planning Commission.*

SECRETARIAT

Shri A. L .Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. United Planters' Association of Southern India, Coonoor.

Shri P. K. Kurian.

II. Andhra Pradesh State Convention Committee, Vijayawada.

1. Shri Pasupuleti Koteswara Rao
2. Shri Prakash Rao.

III. The Belapur Company Ltd., The Maharashtra Sugar Mills Ltd., Gangapur Sugar Mills Ltd. and Brihan Maharashtra Sugar Syndicate Ltd., Bombay.

1. Shri Porus A. Mehta
2. Shri M. L. Bhakta
3. Shri F. Edwards
4. Shri D. M. Dahanukar
5. Shri Limaye
6. Shri J. D. Kapadia
7. Shri S. K. Gubbi
8. Shri S. G. Phadke.

I. United Planters' Association of Southern India, Coonoor

Spokesman:

Shri P. K. Kurian

(Witness was called in and he took his seat)

Chairman: Mr. Kurian, whatever evidence you give now is liable to be published and distributed to our members. Even if you want a particular portion of your evidence to be treated as confidential, we will issue that also to the members. Have you any points to make apart from the memorandum submitted by the United Planters' Association of Southern India?

Shri Kurian: The main point stressed in our memorandum is that plantations should be excluded from the purview of land legislation in the States.

Chairman: As matters stand, they have been excluded.

Shri Kurian: But there is always the fear in the minds of the planters that the Act might any time be amended to cover the plantations as well.

it will affect the growth of plantation industry, which is a major export earning industry in the country. The earnings of tea, coffee, cardamom in export markets come to a considerable figure. It takes nearly 7 to 8 years for crops like tea and rubber to come to bearing stage. If there is fragmentation, the incentive to develop may not be there.

Chairman: How can you guarantee for the future and put a restriction on the legislative powers of the Parliament and State legislatures? Land is a State subject.

Shri Kurian: If there is a constitutional inhibition that plantations will not be included in this, it will help the growth of the industry.

Chairman: As matters stand, you have nothing to complain.

Shri Kurian: No. But, as I stated just now, the feeling of security will be there if there is a constitutional provision.

Chairman: Even if Parliament can amend the Constitution, we cannot guarantee for the future. Who knows what party will be in power.

Shri Kashi Ram Gupta: Cardamom is included in the plantation on what basis? It is cultivated by small cultivators; it can be cultivated individually.

Chairman: It is a plantation crop no doubt.

Shri Kashi Ram Gupta: But it is not included in the State Acts. Last year when we had been to Mysore State, we were shown small areas of cardamom cultivation. But, why do you fear that plantations will be brought under any such legislation?

Shri Kurian: There is already some sort of agitation. The privileges given to the planters are not in accordance with the trend of development in the country. Any time, the State Governments may amend the Acts.

Chairman: Parliament cannot put a block on their powers.

Shri P. R. Patel: You have not included banana and coconut.

Shri Kurian: We do not represent them.

Shri P. R. Patel: If they are included, there is no objection from you.

Chairman: It is for us to determine; he is not a legal expert.

Shri A. K. Gopalan: We are discussing a specific constitutional amendment bill. I don't think we can discuss about ceiling, exemption and other things.

Chairman: Certainly. It is out of bounds. Thank you very much.

(*The witness then withdrew.*)

II. Andhra Pradesh State Convention Committee, Vijayawada

Spokesmen:

1. Shri Pasupuleti Koteswara Rao
2. Shri Prakash Rao

(*Witness were called in and they took their seats*).

Chairman: You represent the Andhra Pradesh State Convention?

Shri P. Koteswara Rao: Yes.

Chairman: Whatever evidence you give is liable to be published. If you want anything to be treated as confidential, even that will be circulated to the members. If you want to press any point apart from your memorandum you can do so, because your memorandum has been circulated to all the members.

Shri P. Koteswara Rao: I would like to emphasize certain points in the memorandum. The abolition of estates and inams was intended mainly to give protection to the peasants by removing the intermediaries. But now by extending the definition of 'estates' so as to cover peasants also, the very

purpose for which the previous Acts were passed has been defeated because peasants are also being treated in the same way as zamindars and estates. When previously zamindars were abolished or inamdars were abolished it was with the purpose of stopping exploitation of peasants by the zamindars, inamdars and estatedars. Now by abolishing the rights that are to be enjoyed by the peasants, the exploitation by the estatedars may be substituted by the exploitation of the officers of the Government. So, we feel that in the interests of natural justice and in the interests of the spirit of democracy the Select Committee may kindly be pleased to advise Government to withdraw the amendment. That is the first point I would like to stress.

The other aspect of the matter is that when the Land Ceilings Act was being sponsored the general understanding among the people was that the surplus land after the Ceilings Act comes into force will be distributed among the landless poor. But ultimately the Government has given the impression that the surplus land will not be distributed. but the surplus land will be utilised for ushering in joint co-operative farming. Now, after the Ceilings Act was passed it has somehow found out that in most of the States no surplus land is available. After verifying that no surplus land is found for the purpose of ushering in this co-operative farming, the Government, we feel, has at this stage ushered in this amendment in the form of this Bill so as to overcome the hurdle of not finding any surplus land to establish joint oc-operative farming. We believe that the joint co-operative farming is harmful not only for the better production of food, but also for the preservation of liberty and freedom of 80 per cent of India, that is the rural area—the freedom which the country has fought and attained. The establishment of joint co-operative farming by way of this amendment will ultimately result, in our opinion, in the end of democratic rule and will slowly pave the way for the establishment of a totalitarian State. On this count also we request the Select Committee to advise the Government to withdraw this amnedment.

Thirdly, our Constitution has accepted fundamentally the institution of property by which every citizen is given the right of holding, preserving and disposing property. This principle will have no meaning in case 80 per cent of India, that is the rural areas, are deprived of their right to have a rightful and justiciable compensation in case their lands are to be acquired. So, ultimately the result of the amendment is to hit at the fundamentals of the democratic spirit of the rights of citizens to hold, enjoy and dispose of the property. So, that way we feel that the spirit of democracy is being hit at by this amendment and that is the third count on which we request the Select Committee to kindly advise the Government to withdraw this amnddment.

Fourthly and finally we feel that such an important measure as this, before referring to Parliament , must have been placed before the people at least in one general election. Since no mention of this was made at the time of the last general election, we feel and believe that it is not fair to usher in this at this stage without referring it first to the public and before getting a mandate from them in the general election. We, therefore, appeal to the Select Committee to advise Government to secure public opinion on this matter and withdraw this amendment.

..**Shri Kappen:** You say it is to protect the tenants and you want the amendment to be withdrawn. But do you think the 80 per cent of the people have land of their own?

Shri P. Koteswara Rao: But the amendment includes even the agriculturist labourers and the rural artisan who may not have land but who is living on agricultural land and doing artisan work. Since the artisan agri-

culturist labour and the peasants have been included in the amendment I have mentioned 80 per cent.

Shri Kappen: That is not what I ask. You mentioned 80 per cent of the people. But how many of them have lands of their own? Very few, is it not?

Shri P. Koteswara Rao: Maybe.

Shri Kappen: So, this amendment is intended to give them land. If so, you have no objection?

Shri P. Koteswara Rao: I am not able to understand how this amend- Joint co-operative farming?

Shri Kappen: By various land legislations in the State. You said there is no surplus land. It is not correct. There is surplus land. That surplus land will certainly go to the peasants who have not got land.

Shri P. Koteswara Rao: By way of distribution and not by establishing joint co-operative farming?

Shri Kappen: If that is necessary for the people. But nobody compels them. People can join together and form co-operative societies. The question is of giving land to the actual peasants who have no land. Is it not necessary? Don't you think so?

Shri P. Koteswara Rao: That is one count on which I have submitted my appeal. But there is another thing on which I differ from the view the hon. Member is taking, because I have already submitted that acquiring property from the citizen without paying proper compensation hits at the spirit of democracy.

Shri Kappen: So, if proper compensation is given, you have no objection to the amendment?

Shri P. Koteswara Rao: I have no objection.

Shri Kappen: Your objection is only with regard to compensation?

Shri Koteswara Rao: If justifiable and proper compensation is paid, I have no objection to the amendment.

Chairman: Don't you want any ceiling put on the holdings, or are you against all ceilings and you want unrestricted ownership of property?

Shri P. Koteswara Rao: I am for ceilings.

Chairman: If there is some property over the ceiling,—land, grazing ground or farm-house over the ceiling—you have no objection to their being acquired by the State?

Shri P. Koteswara Rao: By paying compensation.

Chairman: What is reasonable compensation has to be fixed by the legislature, is it not?

Shri P. Koteswara Rao: I think that has to be fixed by the courts.

Chairman: You are not for giving that power to the legislature?

Shri P. Koteswara Rao: Naturally.

Chairman: But as the Constitution now stands, it is the legislature that has to fix the principles or the compensation, is it not?

Shri P. Koteswara Rao: The legislature may fix the principle, but the question of fixing the compensation will differ from day to day, from year to year and from circumstances to circumstances.

Chairman: So, whether it is in accordance with the principle fixed by the legislature or not, you want the compensation to be determined by the courts?

Shri P. Koteswara Rao: Yes.

Chairman: You referred to fundamental rights. Fundamnetal right does not mean unrestricted ownership of property, is it not?

Shri P. Koteswara Rao: But it means ownership of property.

Chairman: But you are for ceilings?

Shri P. Koteswara Rao: I am for ceilings.

Mr. Chairman: And ceilings have been quite fair. You have no objection to the ceiling?

Shri P. Koteswara Rao: To the principle of ceiling I have no objection.

Shri A. V. Raghavan: From your memorandum I find that you object to the very principle of amending the Constitution. Is your objection only to a particular Act passed by the Andhra legislature or to the entire Bill itself?

Shri P. Koteswara Rao: I am against the principle on which the amendment is being sought, that is to acquire property without paying reasonable and proper compensation. That can be decided by the courts, if contested. Against that principle of acquiring property without paying reasonable and proper compensation I have objection.

Shri A. V. Raghavan: What is 'reasonable'? You mean market price?

Shri P. Koteswara Rao: Yes, the market price.

Shri P. Ramamurti: Do you agree that the compensation should not be fixed in such a way as to defeat the very purpose of the Bill. If you fix the compensation at such a heavy price that the peasant—the actual peasant, not the peasant of your type, I do not consider people of your type as peasants, those who do not till the soil—if the actual peasant is not in a position to acquire that by paying huge compensation, what is the use of passing such a legislation? After all, the legislation is to see that there is no concentration of property in the hands of a few people. You are talking of the right of property. We want to give the right of property to all the people. Today it is not so. Therefore if that right of property has to be given to the actual tiller of the soil, obviously some restriction has to be placed on the right of property held by the landlords, ryotwari landlords. So, if the compensation is fixed at the market rate, obviously it will continue to be in your hands.

Shri P. Koteswara Rao: But my submission is, if the Government is so interested to distribute the lands to the landless poor, we believe there is more waste land in our country than the land that has been brought under cultivation by the huge efforts of the landlords and which is now being attempted to be acquired.

Shri P. Ramamurti: You are evading my question. Do you want to continue to have the concentration of all that land in your hands?

Chairman: He has already said that he is agreeable to ceilings.

Shri P. Ramamurti: I am talking of compensation. If the compensation is fixed at such a high rate that the ordinary peasant will not be able to pay that and acquire the land, the purpose of these Bills is defeated.

Shri P. Koteswara Rao: Well, Government can pay and acquire the land and distribute.

Shri P. Ramamurti: Government will obviously tax you. Instead of that they are fixing a lower rate. Government can tax the landlords, and then pay.

Shri Surendranath Dwivedy: It appears you are totally opposed to this Bill and you want that it should be withdrawn. But I do not think the Joint Committee would recommend to the Government to withdraw the Bill at this stage. Have you any suggestions, any modifications to offer to the present amending Bill for the consideration of this Committee?

Chairman: He has not suggested any modifications.

Shri P. Koteswara Rao: No, I am not suggesting any modifications.

Shri Hem Raj: You have stated that you are in favour of ceiling. If some land at the level of the ceiling or below the ceiling is taken at the market price, do you still object to it?

Chairman: That question does not arise at all.

Shri J. R. Mehta: I would like the witness to tell us how he differentiates between a so-called tenant who has large areas with him which he cannot cultivate and a zamindar who has large areas of land?

Shri P. Koteswara Rao: I differentiate in this way: A zamindar is an intermediary who collects the rent by way of something like sista and pays a percentage to the Government, while a landlord is the man who owns the property in his ownership right and who tills the land with the aid of the agricultural labour and coolies. He is a man who invests in the cultivation of land, even though he does not actually till it and he engages labour or coolies, whereas a zamindar has nothing to do either by way of investment or by way of engaging coolies for cultivation of the land directly. In that way, I differentiate between the landlords and the zamindars.

Chairman: Suppose you own 3000 acres; you cannot cultivate all the 3000 acres; you can at best cultivate only about 30 to 40 acres of land, and you will have to get the remaining land cultivated through tenants or by labour. The labourer is the tiller of the soil and you would then become an intermediary. And still you want to be called a tenant. Is that not so?

Shri P. Koteswara Rao: The question of investment on the land is there. The landlord invests on the land for purposes of cultivation whereas a zamindar will not invest anything on the land.

Chairman: How do you say that?

Shri P. Koteswara Rao: The landlord who engages coolies or labour for the purpose of cultivating the land invests on that labour or on the coolies, whereas the zamindar would simply collect some money by way of sista and he will have nothing to do with the cultivation of the land.

Chairman: That is not what the zamindars have been doing.

Shri Rohit Manushankar Dave: The witness has already said that he has no objection to ceiling on lands. If the effect of the amendment is such that the land below the ceiling is protected from the mischief of this particular amendment, will he still have any objection to the amendment?

Shri P. Koteswara Rao: I have objection for this reason namely that today the land ceiling Acts as enacted in the different States lay down a particular ceiling, and if today the amendment is modified so as to give security for lands below the ceiling under the present Acts, tomorrow, some States may pass an amendment to the land ceiling Acts bringing down the level thereby taking away the security at present contemplated by this modification.

Chairman: You are only going to enact the law for today and not for tomorrow.

Shri P. Koteswara Rao: That is why I am saying that it would amount to placing some arbitrary power in the hands of the State legislatures to bring down the ceiling tomorrow and thus take away the security contemplated at present. That is why I am not willing to support this.

Chairman: How can we place restrictions on the legislative powers of the State legislatures? We cannot do that.

Shri P. Koteswara Rao: That is the reason why I am not supporting the modification suggested by the hon. Member.

Shri Rohit Manushanker Dave: Is it the opinion of the witness that the present pattern of ownership should be made sacrosanct for all times to come and at no time should this pattern be ever disturbed?

Shri P. Koteswara Rao: It can be disturbed by paying proper compensation, at the market price.

Shri Kashi Ram Gupta: In your memorandum you have stated that you are afraid of joint co-operative farming societies. But the Bill does not provide for any such thing, nor have the different States brought forward any legislation which compulsorily asks the cultivator to be a member of a joint cooperative farming society. So, what is the basis of your fear?

Shri P. Koteswara Rao: The basis of my fear is this. Suppose the amendment is enacted into an Act, and tomorrow some peasants in a certain area voluntarily accept the idea of their forming themselves into a joint co-operative farming society, and suppose in between the lands of the peasants who are willing to become the members of the joint co-operative farming society, there are lands belonging to peasants who are not willing to join it, then Government will declare an option for the unwilling ryots either to join the society or to leave the lands in lieu of compensation to be fixed, by taking advantage of this amendment. Thus, the peasants who are unwilling will be made to accept the proposal of Government to remain in the joint cooperative farming society instead of leaving their lands for a price probably lower than the market value, a matter in respect of which they will have no opportunity to approach a court of law. That is the fear that I have.

Chairman: You are arguing on hypothetical questions. What is the use?

Shri P. Koteswar Rao: That is how I fear the working of this amendment will be in actual practice.

Shri Kashi Ram Gupta: That can be done even now without this amendment.

Shri P. Koteswara Rao: That can be done only on the payment of proper compensation.

Shri Kashi Ram Gupta: Already there is a provision in the Constitution by which that can be done.

Chairman: We need not argue that point with the witness.

Shri Kashi Ram Gupta: You base your argument basically on the compensation point?

Shri P. Koteswara Rao: Yes.

Shri Kashi Ram Gupta: Proper compensation can be different from different angles. So, the term 'proper compensation' has actually nothing to do with the arguments advanced by you, because, after all, the compensation may be determined by the legislatures or by the courts. Your intention seems to be that under the garb of compensation you do not want any ceiling on lands. Is that the point?

Shri P. Koteswara Rao: That is not my point.

Chairman: We need not argue that point with him.

Shri P. R. Patel: The definition of the term 'estate' is within the jurisdiction of the States. The difficulty has arisen here because the word 'estate' did not include ryotwari land in Madras, and, therefore, this Bill has come. Do you not think that it should be left to the States concerned, namely Kerala or Andhra Pradesh or Madras and so on, to make the neces-

sary amendment to the definition of the term 'estate' in their land revenue code, and that would solve the difficulty without creating so much of agitation in the country?

Chairman: Why should we ask that question of the witness? The hon. Member may suggest it if he wants.

Shri P. R. Patel: Because that comes within the jurisdiction of the States.

Chairman: It is for the committee to consider all those things.

Shri P. R. Patel: This Bill has come because the definition of the term 'estate' did not include ryotwari land in Madras. Now, the States can amend the land revenue code in the manner they like.

Chairman: It is for the committee to consider that matter.

Shri P. R. Patel: A question was put to you earlier and it was said that if the market price was given for the land, that would not make it possible for the tenants to acquire the lands from those landlords who have got more land than the ceiling. If from the definition of the term 'estate' land below the ceiling is excluded and full market price is paid for such land, then what objection would you have?

Shri P. Koteswara Rao: I have already voiced my objection. Even though the present amendment may be modified to give security to lands below the level of ceiling, tomorrow, the States may bring forward amendments to their land ceiling Acts lowering down the present ceiling level thereby overriding the security that is being contemplated by this modification.

Shri P. R. Patel: Naturally you may have that fear. But how can we forecast today what will happen tomorrow or which type of Government will be there at the Centre or in the States? We can amend the Bill only as it stands today. Instead of leaving it to the personnel of a new government coming into power, it is better to place it in the hands of the law itself.

Chairman: Law is what parliament makes.

Shri Joseph Mathen: Tomorrow some other government may change the ceiling. If such amendments are not protected by this Act, have you any objection to this Bill?

Shri P. Koteswara Rao: Yes, because the present level of ceilings enacted by State legislatures are not sufficient.

Shri Joseph Mathen: Do you object to the present ceiling system and not the system that may be introduced later?

Shri P. Koteswara Rao: Even if the amendment is to be modified so as to secure the present ceilings, tomorrow this security may be overriden by any State Government by amending their own ceiling. The other thing is that I am not in agreement with the present Acts regarding ceiling level.

Chairman: Earlier you told me that they have been quite fair, that the ceilings fixed by various State legislatures have been quite fair.

Shri P. Koteswara Rao: I am sorry; I do not remember to have said that. I have said I have no objection to the principle of ceiling.

Dr. L. M. Singhvi: The witness has outlined many merits of the ryotwari system. Could he say whether there are any demerits in that system obtaining in his area?

Crairman: It is for us to decide. You have got the Ryotwari Act.

Dr. L. M. Singhvi: I am asking him about the working of the ryotwari system in his area.

Chairman: How are we concerned with it?

Dr. L. M. Singhvi: If we are not concerned with that, we are not concerned with anything else. If the working of the ryotwari system is such as to promote better agricultural production, we would have no business to recommend the adoption of this amendment.

Chairman: It is too wide a question.

Dr. L. M. Singhvi: Is it a fact that in the ryotwari system, as it operates in the area of the witness, there are large estates which are let out or sublet or where share croppers function and where the ryot or the person who holds the land does not himself engage in agricultural pursuits?

Shri P. Koteswara Rao: After the passing of the Ceilings Act and the Tenancy Act, it is not found out that large lands are being let out. Mostly the landlords have been personally cultivating. They have something between 20 and 30 acres only in our parts.

Dr. L. M. Singhvi: Are these mechanised?

Shri P. Koteswara Rao: No, one of them.

Dr. L. M. Singhvi: How much of agricultural labour is employed in the latest of these estates?

Shri P. Koteswara Rao: Per acre something like 10 agricultural labourers will be appointed. This is paddy. They are employed for 3 to 4 months.

Chairman: Continuously?

Shri P. Koteswara Rao: Not continuously, with one man. But they get continuous appointment for 3-4 months.

Chairman: Only during the sowing and reaping season.

Shri P. Koteswara Rao: Yes, but they are continuously engaged from one ryot to another in different lands for 3-4 months.

Dr. L. M. Singhvi: Witness said he is not in disagreement with the principle of ceiling. What is the extent of his disagreement with the actual application of the principle of ceilings in his State.

Shri P. Koteswara Rao: The ceiling in our State is fixed on the basis that the income should not be more than Rs. 3600 per annum. We feel that ceiling is insufficient. We have suggested to our Government that the income should be fixed at 6,000. We believe our Government had even suggested a ceiling of Rs. 5400 which is not acceptable to the Planning Commission.

Dr. L. M. Singhvi: Are you suggesting that ceilings on land are discriminatory inasmuch as they do not allow a landholder to make an income larger than some one in the urban sector?

Shri P. Koteswara Rao: That is also my argument.

Dr. L. M. Singhvi: Is there any large cultivable waste land in your State which the State has reclaimed?

Shri P. Koteswara Rao: The State has not reclaimed the wasteland which is there to a considerable extent.

Dr. L. M. Singhvi: Would you like ceiling to be fixed with reference to the size of land or the product or income?

Shri P. Koteswara Rao: I prefer the basis of size of land beause that will leave the initiative to the peasant to work harder so that he may retain the income however high it may be.

Shri Nafisul Hasan: You said you are not opposed to the principle of ceiling. You say that the ceiling in your State should be raised so that a person may be in a position to get more land and thereby get more income out of it. Is there sufficient land to satisfy most of the claimants if the ceiling is raised?

Shri P. Koteswara Rao: I feel that there is sufficient land because in our State something like fourteen districts are still remaining unexploited—the whole of Telangana area, ten districts and four districts of Rayalaseema.

Shri Nafisul Hasan: You also apprehend that the ceiling now fixed may be changed in future and that is why you are opposed to it. On account of increase in the productivity of the land as also expansion in the population, will there not be reasonable ground for further considering the question of reducing the ceiling in future?

Shri P. Koteswara Rao: I am not in agreement with that because the initiative of the peasant is gone.

Shri Nafisul Hasan: Do you not realise that the question of compensation is not the subject-matter of the proposed amendment. That is there already in the Constitution.

Shri P. Koteswara Rao: But the Supreme Court has decided that 'estate' does not include ryotwari land. That is why this amendment is needed.

Shri C. R. Pattabhi Raman: There has been a reference to the Planning Commission and I may clarify the position. I would refer hon. Members to para 40, para 246 on the book on progress of land reform. They say there that in determining the level at which ceiling should apply there is need for some convenient unit which could be indicated in a general way and later worked out in detail for different areas. They have also stated that the income from a given area of land depends upon the crop grown, level of agricultural efficiency and the amount invested. So, it is a comprehensive statement by the Planning Commission.

Shri P. Koteswara Rao: I stand corrected.

Shri Bibhuti Mishra: How much does an agricultural labourer get in kind or in cash daily? Do they have houses of their own or they live in the land of the landowners? Is there any difference between what a man and a woman gets as wages?

Shri P. Koteswara Rao: The labourers get between Rs. 2-3 per day; it is in cash. This differs from region to region. In areas where there are less of agricultural operations, naturally the labour supply will be more and the wages less. It is so in Telangana. About houses, they have their houses mostly on their own lands. Besides, I may add that they own their wn land to a smaller extent, half an acre or one acre or a quarter acre and working on that land also. The difference between a man and a woman in the wages would be about four annas or so, not more than that.

Chairman: Are you an agriculturist? How many acres do you own?

Shri P. Koteswara Rao: Yes, Sir, I am an agriculturist with about 12 acres of land. I have been cultivating them with the aid of coolies and labourers. I have not leased it out.

Shri L. D. Kotoki: You are not opposed to ceiling. Your complaint is that the present ceiling is low compared to what you think it to be reasonable. Do you not think that with more intensive cultivation from the same area of land, more income can be had and then you may even get the anticipated Rs. 6,000 and odd. What is the criteria that you have for a reasonable ceiling? Is it the area of the land or the total output or income derived from that particular area?

Shri P. Koteswara Rao: I mean a ceiling on the total area so as to keep up the initiative of the peasant. Some 30 acres are fixed.

Chairman: It may be that it is 30 acres of good irrigated land with three crops in one place and 30 acres of dry land in another place. The production will not be the same. So, you want a ceiling according to the quality or area? Quality means again

yield. According to the yield, the area has been determined. You cannot have any objection to that.

Shri P. Koteswara Rao: I do not have objection if it is decided on the basis of yield. But the principle on which it has been decided is the level of income. The peasant is not expected to get an income of more than Rs. 3600, whatever the yield may be. So, I oppose that.

Shri L. D. Kotoki: Can you give us an idea of the maximum area that a single holder can have in your area?

Shri P. Koteswara Rao: In our area in the Circars, 32 acres of wet land can be possessed by a single individual under the ceilings Act. All the individuals are having less than that.

Shri P. R. Patel: For a family you will agree that at least Rs. 3000 to Rs. 4000 are absolutely necessary to maintain the children, give them education, medical relief, etc. So, what will be an economic holding in your State which will give a family that much net income excluding the expenses on agriculture—a net income of Rs. 3600? I mean economic holding, not ceiling.

Shri P. Koteswara Rao: It should be at least 50 acres.

Shri L. D. Kotoki: Can one man be able to cultivate 40 acres without mechanised farming and without engaging agricultural labourers?

Shri P. Koteswara Rao: Agricultural labourers have to be engaged. Now there are cases where 50 acres are being cultivated with labourers.

Shri C. R. Pattabhi Raman: What will be the paddy yield on 50 acres?

Shri P. Koteswara Rao: It comes to 500 to 600 bags.

Shri C. R. Pattabhi Raman: Don't you have 2 or 3 crops?

Shri P. Koteswara Rao: We have only one crop in Circars, especially this year.

Shri C. R. Pattabhi Raman: If it is not paddy, you will have groundnuts or pulses for the second crop. It cannot be idle.

Shri P. Koteswara Rao: We have certain crops.

Shri C. R. Pattabhi Raman: So, what is the income that will be commensurate with an economic holding of 50 acres which you want? What will be the income from that?

Shri P. Koteswara Rao: The total net income would be Rs. 6000 or so.

Chairman: Thank you.

Shri P. Koteswara Rao: Thank you.

(The witnesses then withdrew)

III. The Belapur Company Ltd., The Maharashtra Sugar Mills Ltd., Gangapur Sugar Mills Ltd., and Brihan Maharashtra Sugar Syndicate Ltd., Bombay.

Spokesmen:

1. Shri Porus A. Mehta
2. Shri M. L. Bhakta
3. Shri F. Edwards
4. Shri D. M. Dahanukar
5. Shri Limaye
6. Shri J. D. Kapadia
7. Shri S. K. Gubbi
8. Shri S. G. Phadke.

(*Witness were called in and they took their seats*)

Chairman: The evidence that you give will be published. Even if you want a portion of it to be confidential, it is liable to be circulated to Members.

Your memorandum has been distributed to all the Members. If you want to stress any particular point, you may do so.

Shri Porus Mehta: Our representation is purely confined to the deletion of one Act—item 87—in the schedule

attached to the Bill. It is the Maharashtra Land (Ceiling on Holding) Act, 1961—Act 27 of 1961. This Act substantially makes two independent provisions. One is with regard to providing a ceiling for land for distribution to landless persons and to other societies. We have no quarrel with that provision because we concede that this is the object which is paramount, namely, agrarian reform. If Parliament itself and Constitution makers have already indicated their mind that fixing a ceiling on land and a proper and equitable distribution among landless persons is consonant with agrarian reform that certainly is a matter on which there can be no dispute. So far as we are concerned, we fully support that aspect of it as far as any support may be required.

Chairman: You are not opposed to ceiling.

Shri Porus Mehta: We are not opposed to ceiling as such. We have at no stage raised any objection to that. That is entirely a matter for Constitution-makers as well as for State legislature to do it in the manner they think is best.

As already pointed out in our Memorandum there are small surplus lands which would be obtained from enforcing this measure. The estimate by the State Government of Maharashtra is about 11 to 12 lakhs of acres. So far land, which can be taken away from industrial undertakings of the nature of sugar factories, comes to about 1 lakh acres. 2½ lakhs with regard to all the sugar-cane; and about a lakh or 99 thousand acres with regard to companies. This is stated by the Government themselves in their memorandum. That is about a lakh of acres. So the whole objection which we have is with regard to this 1 lakh of acres. This is the matter which I am placing before you and which I require you to give your anxious consideration.

However competent the State legislature may be, if they do it with the object of promoting agrarian reform, then it can concievably come under provisions of Articles 31A and 31B. That is now being held by the High Court of Maharashtra very recently. Copies of this judgment have already been supplied to you. I will read the particular portion from it.

This is what they say:

"Then we turn to the question of what is involved in 'agrarian reform'. It is essential to determine the precise connotation before we proceed to consider the applicability of Article 31A to the impugned legislation. Mr. Porus Mehta urged that 'agrarian reform' is equivalent to 'land reform' or the 'distribution of land among landless peasants' and that in that connotation there does not enter any element of the productivity from the land or of the yield therefrom, much less of any raw material or raw produce unconnected with the land. On behalf of the State the learned Advocate-General urged that agrarian reform is a reform relating to land or connected with land, and therefore productivity must necessarily be an element which enters into computation when effecting agrarian reform. Agrarian reform means reform relating to land or connected with land and if its objective is distribution or equality of distribution it cannot be affected without regard to the quality of the land or its productivity. Therefore, agrarian reform necessarily postulates some connection with productivity or the yield from the land and in determining the applicability of Article 31A to the impugned enactment that factor cannot be entirely ruled out. In our opinion a piece of legislation effecting agrarian reform may, and normally would, take into consideration the productivity of

[Shri Porus Mehta]

land. The latter will have two aspects. The first aspect arises because the object of agrarian reform is an equal or rather a more equitable distribution of land and equality and equity is to be achieved from the point of view of the area as well as the productivity, that is, the quality and the quantity of the crops the different lands can produce. The second aspect would arise because even when effecting agrarian reform provision would have to be made to ensure maintaining and improving the productivity of each land in the interests of the State and the whole nation. So far as productivity is concerned it can happen that a consideration of the second aspect may modify an equal or a more equitable distribution required by the first aspect, but even if that happens it would nonetheless be agrarian reform.

Mr. Mehta has in this respect confined his attack principally to the provisions of Sec. 28. As to the other provisions it is unnecessary to dilate upon them any longer. We have reproduced them and in our opinion the remaining provisions of the Act clearly partake of the nature of agrarian reform in whatever sense that expression is used—and even if the attenuated meaning for which the petitioners contend is given to it. Even assuming that it is used in the narrow sense of equal distribution of land still the provisions of the Act other than Section 28 clearly deal with the distribution of land and matters connected therewith".

Sir, I submit that High Court has clearly indicated that as far as distribution of land is concerned, section 28 deals with land of industrial undertakings. That is, 99,000 acres which we have pointed out. With regard to the other thing this is clearly agrarian reform and therefore the Act so far as those lands are concerned is perfectly valid and constitutional.

Why I am emphasizing this is that even if this particular Act is deleted from the Schedule, it will not affect your main purpose, namely, to see that the distribution of land to the peasants and the farmers and landless persons is carried out. It will not affect the rest of the land, namely, nearly 10 lakh acres of land which would be distributed.

Shri A. P. Jain: Except that section 28 will not be protected.

Shri Porus Mehta: That is so. Even if section 28 which has been declared to be *ultra vires* by the High Court of Maharashtra goes out, the rest of the legislation remains even if you do not put it in the Schedule because not only the High Court has accepted it to be *intra vires* but there has been no challenge in the State by anybody else. This is a legislation of 1961; today we are in 1964 and there is no challenge. Therefore there is no likelihood of there being any challenge where the other grounds are concerned.

Shri A. P. Jain: Is the judgement of 1963 under appeal?

Shri Porus Mehta: It is under appeal.

Shri A. P. Jain: Then it is possible that certain other portions of the Act may be impugned.

Shri Porus Mehta: But I might make it clear that in our challenge we cannot go beyond our petition. We have not challenged the other provisions as far as the distribution of land is concerned. We have only challenged the provisions which take away lands of the sugar industry which we regard and which has been declared by Parliament itself to be a controlled industry all over India.

Chairman: You have challenged only section 28.

Shri A. P. Jain: You had challenged other provisions also.

Shri Porus Mehta: We have not only challenged section 28. What we have challenged is any provision which affects lands of industrial undertakings, namely, of the sugar industry.

Shri A. P. Jain: You seem to have raised a larger question, namely, what is the definition of land reforms. Two interpretations were put, the one put on behalf of the petitioners was that it means only redistribution of land, that is, taking away the land from one person and giving it to another, a landless person and that it had not relation with productivity etc. Here the Court has held that the term 'land reforms' had to be used in a larger sense. That question is also under appeal; so, the judgment may be otherwise. It is not final.

Shri Porus Mehta: But even if the judgment may be otherwise, our challenge does not at all affect the other lands. We have made it clear in our petition. The judgment makes it very clear that we are not challeging it. We have narrowed our challenge only to industrial lands. Therefore whatever the decision of the Supreme Court ultimately may be, either for or against us, as far as lands other than those of the industrial undertakings are concerned, they will be completely immune from the challenge.

Shri C. R. Pattabhi Raman: I think, you have also said that the Act is a piece of colourable legislation and that under the guise of redistribution of land it attempts to confiscate land for purposes not related with land reforms, that is, the main objective.

Shri Porus Mehta: I am obliged to you for drawing my attention to it, but I may make it clear that that was a challenge to the competence of the Act. By putting it in the Schedule you are not in any way giving any immunity to the competence of the State legislature if it is not competent to enact the law. The Parliament and the Constitution-makers giving them immunity by bringing it under the Schedule will not in any way affect that challenge.

Shri A. P. Jain: That is, their competence can always be questioned?

Shri Porus Mehta: Quite so. Therefore Article 31A and Article 31B will not affect competence. Therefore what the hon. Member has asked me will in no way affect it whether you put it or you do not put it in the Schedule. The only immunity which will be given to it will be from the chapter on Fundamental Rights. If the Act violates articles 14, 19, 31 and so on . . .

Shri A. P. Jain: And other articles contained in the chapter on Fundamental Rights.

Shri Porus Mehta: Whatever those articles are, the main challenge was confined by us to articles 14, 19 and 31.

Coming back to the judgement, the High Court then proceeds:—

> "Turning to Section 28, however, there emerges a somewhat different picture. We have already analysed the section and those portions which indicate its main scope and purpose. We have also said that in our opinion in so far as the section provides for land and the production from the land it would be a piece of legislation clearly in the nature of agrarian reform. But clauses (1) and (2) of Section 28 deal with many more things than merely the land or the production

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therefrom. An analysis shows that it further legislates—

(1) for providing of raw material for the manufacture or the production of any goods;

(2) for the supply of raw material from the land to the undertaking;

(3) for ensuring the continuance of the supply of such raw material to the undertaking.

The provisions of the section dealing with land or the production from the land could, in our opinion, be justifiable as agrarian reform, but it seems to us that by no stretch of argument can it be urged that providing or supplying of raw material from the land to the undertaking is in any way connected with agrarian reform. A portion would, continuance of supply of raw material to an industrial undertaking, not fall within 'agrarian reform'."

Therefore they have come to the conclusion that in so far as lands are taken away from industrial undertakings, particularly from the sugar industry which is a controlled industry, it does not subserve the object of agrarian reform. It is entirely different from it because, as the High Court points out, under section 28 even if the surplus lands are taken away from the sugar factories, they will not be distributed among the landless peasants.

Shri A. P. Jain: Will you please read out that portion of section 28?

Shri Porus Mehta: May I complete it because it is analysed by the learned judges themselves and then take you back to section 28? Then, it continues:—

"In the section the expression used throughout is 'the undertaking.' By 'the undertaking' is obviously meant the industrial undertaking which is mentioned in the opening words of Section 28 (1). Therefore, the question is whether the supply of raw material from a particular piece of land to a particular industrial undertaking is a measure of 'agrarian reform'. It seems to us that there the legislation transgressed the legitimate limits of 'agrarian reform' and provided for a subject unconnected with 'agrarian reform'. Clause (a) and (b) of sub-section (2) confer the power upon the State Government to take certain steps. Clause (a) is prefaced by the words 'may..... for the purpose aforesaid.' Therefore, the self-same purpose which is mentioned in sub-sections (1) and (2) of Section 28 are the grounds for taking action under clause (a). Similarly clause (b) of sub-section (2) of Section 28 is connected with clause (a) by the word 'and'. The effect of the use of this conjunctive is that the words 'for the purpose aforesaid' in sub-clause (a) of sub-section (2) must be read into sub-clause (b) of sub-section (2) also. Thus both clauses (a) and (b) will give the power to the State Government to take those steps mentioned subject to the purposes mentioned in the opening words of sub-sections (1) and (2) of Section 28, and all those purposes refer to the supply or provision of raw material from the land to the undertaking or ensuring the continuance of the supply of such raw material to the undertaking, i.e., an industrial undertaking. None of these purposes we have already indicated can be purposes connected with agrarian reform.

In sub-clause (a) there is further a reference to the 'continued supply of raw material to the undertaking at a fair price.' It seems

to us that even the ensuring of a 'fair price' for the raw material to an industrial undertaking is no part of the objects of any agrarian reform. It must be remembered in construing the provisions of Section 28 that it applies only and especially to an industrial undertaking. We cannot see how a legislation providing for matters connected with an industrial undertaking and particularly for providing for supply of raw material to an industrial undertaking and at a fair price can partake of the nature of 'agrarian reform.'"

Then, the next point they take up is:—

"The learned Advocate-General sought to justify these provisions on the ground that they were provisions which were incidental or ancillary to agrarian reform."

Then, if you skip over just two paragraphs, you will find the conclusions to which the High Court has come. It reads:—

"We have so far assumed that the provisions of Section 28 regarding the supply and continuance of raw material to the industrial undertakings at a fair price are merely minor or incidental encroachments outside the sphere of agrarian reform. But in fact that is not so. The provisions of Section 28 will affect vast areas of lands in the Maharashtra State, no doubt small in proportion to the total land affected in the State, but nonetheless substantial. In the case of only one petitioner, *viz.*, the Belapur Company, the total land under sugarcane cultivation belonging to the industrial undertaking is 11,578.17 acres. The provisions of Section 28 moreover have been enacted deliberately and have not merely crept in an incidental manner. Section 27 has been deliberately excluded. We shall show a little later that the effect of Section 28 is clearly to infringe the fundamental rights of industrial undertakings in so far as it treats the lands which they hold Crown, on a footing entirely its own and in marked contrast with the treatment of the land belonging to the other land-holders or owners."

"Another answer to such a contention is that the lands belonging to an industrial undertaking could have been dealt with separately by other competent legislation not in the nature of agrarian reform in which case resort to Article 31A would not have been rendered necessary."

This is a very important paragraph which says what I started telling that really two independent pieces of legislation have been combined here. If the State legislature had separated this with regard to industrial undertakings, then you would not have even this matter put in the schedule at all because it would not have referred to agrarian reform. By putting in lands of industrial undertakings in the ceiling legislation, what is sought to be done is to give immunity to something which is not agrarian reform, which is outside the scope of Articles 31A and 31B. It is something against fundamental rights. Therefore, this is a very important part of what the High Court has said. This really is an independent piece of legislation. I appeal to you that you will not give immunity to something which has been deliberately brought into it in order to give it immunity. If the State legislature is competent to enact this to take away all the lands of the sugar factories, let them do it. But let not the Parliament give this immunity against fundamental rights when it is not connected with agrarian reform. This is the crux of our submission. You are giving blanket immunity to something which is outside the scope of this. We do not want that you should be parties to giving that kind of immunity to a

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legislation which the High Court has said could have been separately enacted by the State legislature. Whether it is competent or not, it is for the Court to decide.

Shri A. P. Jain: Can you now give an analysis of section 28?

Shri Porus Mehta: If you turn to page 5 of the judgment, you will see what the High Court has said about this. Before I come to that, I will give some idea of the same point. Like all other ceiling legislation, it provides that land beyond a certan limit fixed in the schedule shall be treated as surplus land and, will vest in the State. That is the basic scheme of the Act. Section 27 then provides for its distribution. Merely taking away the land from any land owner does not serve the purpose of agrarian reform. It must be distributed among landless persons or societies whatever may be the aim of agrarian reform. Section 27 provides for this particular division. I shall now read out that portion from page 4.

> "Next we turn to the important provisions of Chapter VI, and particularly of Sections 27 and 28, to which most of the very valuable arguments at the Bar were directed. Those sections provide as follows:"

The actual distribution is in sub-clause (5). The first division is only to those persons who have become landless as a result of acquiring their land for some social welfare purpose or public purpose. After that, the distribution is as follows:

> (i) a person from whom any land has been resumed by his landlord for personal cultivation under any tenancy law and who in consequence thereof has been rendered landless, provided that such person is a resident of the village in which the surplus land for distribution is situated or within five miles thereof;"

It goes first to the persons rendered landless by certain contingencies.

> (ii) "a joint farming society, the members of which answer to the one or more of the following descriptions, namely:—
>
> agricultural labourer, or landless person, or small holder;
>
> (iii) a farming society, the members of which answer to the one or more of the following descriptions, namely:—
>
> agricultural labourers, or landless person, or small holder;
>
> (iv) ex-servicemen who have no land of their own, but are capable of cultivating land personally."

This is mainly the scheme of distribution under section 27. Now, I would request you to turn to section 28 on the same page.

> "(1). Where any land held by an industrial undertaking is acquired by, and vests in, the State Government under section 21, such land being land which was being used for the purpose of producing or providing raw material for the manufacture or production of any goods, articles or commodities by the undertaking, the State Government shall take particular care to ensure that the acquisition of the land does not affect adversely the production and supply of raw material from the land to the undertaking."

This is called a special provision. Sub-section (2) is very important on which the High Court mainly relies. Section 27 dealing with distribution is excluded here.

> "(2). Notwithstanding anything contained in section 27, but subject to any rules made in this behalf, for the purpose of so ensuring the continuance of the supply of such raw material to the undertaking, and generally for the full and efficient use of the land for

agriculture and its efficient management, the State Government..."

Here the whole purpose of the distribution of land under section 27 is broken.....

Shri A. P. Jain: Not necessarily. You may form co-operative societies. It will encourage societies of the landless labourers.

Shri Porus Mehta: The power is given to the State Government to do this. The first point is that they themselves realise that they should be kept intact in compact form. That is laid down in the section itself. They may do this subject——

"to such terms and conditions (including in particular, conditions which are calculated to ensure the full and continued supply of raw material to the undertaking at a fair price) grant the land, or any part thereof, to a joint farming society (or a member thereof) consisting, as far as possible, of—

(i) persons who had previously leased such land to the undertaking,

(ii) agricultural labour (if any) employed by the undertaking on such land,

(iii) technical or other staff engaged by the undertaking on such land, or in relation to the production or supply of any raw material,

(iv) adjoining land holders who are small holders,

(v) landless persons:"

Next para is again important.

"Provided that, the State Government may—

(a) for such period as is necessary for the setting up of a joint farming society as aforesaid being not more than three years in the first instance (extensible to a further period not exceeding two years) from the date of the taking possession of the land, direct that the land acquired, or any part thereof, shall be cultivated by one or more farms run or managed by the State or by one or more corporations 'including a company' owned or controlled by the State."

This is another important part of this provision. Unlike section 27, for a period of three to five years, this can be run and managed by either the State itself or by the State farms.

Shri A. P. Jain: Is not setting up State farms part of the land reform?

Shri Porus Mehta: With very great respect I may submit that that is not an agrarian reform. It may be a laudable objective to nationalise the sugar industry but it is not agrarian reform. That is a matter which is not governed by Article 31A and 31B. If the Parliament so chooses, if the State Legislature so chooses, they can nationalise the whole thing but subject to the fundamental rights which are guaranteed by the Constitution. I am not quarrelling with you. You are the masters and you can decide for the country. You can have joint farms or community farms. But what I say is let it be done in conformity with the Constitution. Don't give a blank immunity under Land Reform. You can bring a separate Bill for this purpose. You are the Constitution makers and I am not competent to discuss with you what you should do. What I would like to stress is that whatever you do you don't give this blank immunity under Land Reforms.

Shri A. P. Jain: The main object of land reform is to increase productivity to meet the national interest. Some countries have tried to meet the national interest by creating State farms. It can take the form of splitting up or of consolidating lands.

Shri Porus Mehta: You may have State farms and you may improve the productivity. Capitalists or individual holders can also increase productivity. So, that is a negation of agrarian re-

form. Yours is some other kind of social legislation, whether it is socialism or communism. It is desirable or undesirable I am not competent to discuss. It may be a perfect ideology also. But, please do not give immunity under agrarian reform.

Now, please take Section 3, subclause (c) and (d):

"The State Government may provide that if it considers after such enquiry as it thinks fit, that the production and supply of raw material to the undertaking is not maintained at the level or in the manner which, with proper and efficient management it ought to be maintained, or for any other reason" (this is a wide phrase) "it is undesirable in the interest of the full and efficient cultivation of the land, that the joint farming society should continue to cultivate the land, the grant shall, after giving three months' notice of termination thereof and after giving the other party reasonable opportunity of showing cause, be terminated, and the land resumed. Thereafter, the State Government may make such other arrangements as it thinks fit for the proper cultivation of the land and maintenance of the production and supply of raw material to the undertaking."

So, this wide power is given to the State Government to resume the land given to the joint farming societies. They can make such other arrangements as they think fit. They can even give back to us or to any other person. Is that fair? Is that just? Does it appeal to anybody's sense of fairness? They will take away the lands by paying negligible compensation because of this blanket power given to them. Lands taken away from us can be given to any other person, X, Y or Z. Here, they are themselves in doubt about the success of their operations. That is why they say 'for any other reason.' They don't give us any just compensation. Where is the question of agrarian reform in this? Where is the question of distribution of land to peasants and landless labourers when they have the power to resume the same?

Shri Sachindra Chaudhuri: You give a narrow meaning to the term 'agrarian reform'. The purpose of agrarian reform is to increase productivity. The High Court has held.....

Shri Porus Mehta: The High Court has held that productivity is a factor. I had contended before them that it is not a factor. They have gone on the evidence before them. They have accepted the argument of the State Advocate General. Nevertheless, they say that this does not subserve agrarian reform. I have already pointed to you that productivity by itself is not agrarian reform. The High Court says very rightly that this legislation has gone beyond that inasmuch as it gives power to the State Government to completely do away with the question of distribution of land altogether. You may have joint farming societies; you will have mechanised farming etc. for the purpose of productivity. But, then Sub-sections 3(c) and (d) give that complete power to the State Government to negative the objective of distribution of land. They can deal with in any manner they think fit. This is not promoting agrarian reform because there is no distribution of land at all.

In page 26, which I read out, after analysing section 28, they point out:

> "The provisions of the section dealing with land or the production from the land could, in our opinion, be justifiable as agrarian reform, but it seems to us that by no stretch of argument can it be urged that providing or supplying of raw material from the land to the undertaking is in any way connected with agrarian reform."

Shri Sachindra Chaudhuri: Do I understand you correctly that if we do away with any provision in that

section 28 about supply of raw material to industry—in other words, take away the land but don't make any provision for supply of raw material to the factory—then it would be all right? Is that your argument?

Shri Porus Mehta: That is not my argument. That is the conclusion to which the High Court comes, that if you do this, this is the position. The High Court here is examining only the validity.

Shri Sachindra Chaudhuri: Therefore, the High Court has really struck down that particular section on the ground that you are doing something beyond your competence as set forth in the Act itself, namely, you are taking away the land—which you are entitled to; you need not distribute it—but you cannot take away land for the purpose of supply of raw material to the industrial undertaking.

Shri Porus Mehta: With one rider. The High Court further says that providing this under section 28 and doing what you stated is not promoting agrarian reform, because they point out expressely that, that is not what agrarian reform means.

Shri Sachindra Chaudhuri: Is not the High Court's judgment based on this that since you are directing or diverting the production from these fields to the industrial undertaking, the purpose of the section is really to assist the undertaking and not to promote agrarian reform? Therefore, if that objection is removed, then it will be valid.

Shri Porus Mehta: If that is removed. Let us take it the other way. The particular provision being there you cannot get immunity under Article 31A, which is again the same thing as what you say, that is, if it is removed the Act would be valid.

I now come to the other part. As you see, the State Legislature has been at pains, even in this legislation, and at the risk of being declared by the High Court as invalid, to see that this particular supply of sugarcane is maintained. Why? And that raises a very important question which affects the whole country, because there is no State in this country which has passed ceiling legislation, with the exception of one, which has by legislation allowed sugarcane or other plantations or mechanised farms to be taken away. They have expressly exempted—Andhra Pradesh, Madras, Bihar, Assam and various other States. We have in our memorandum given the whole list. They have not done it on their own only; but the Planning Commission has repeatedly, from its very first report, pointed out that though agrarian reform should be prompted by providing a ceiling on land, they have expressly exempted mechanised farms and sugar industry farms, that is sugarcane farms. The Planning Commission has stated it. You must be knowing it, but I may give you the bare reference to it.....

Shri S. D. Patil: This legislation has been passed in consultation with the Planning Commission.

Shri Porus Mehta: I am not competent to say about that. But I think State legislatures do not consult any particular body; they are supreme in their own sphere. And in spite of this recommendation of the Planning Commission they have chosen to do so. And no other State has done so.

Shri Sachindra Chaudhuri: You are not deriving so much assistance from the High Court judgment but I think you are putting it on the broad ground that the Planning Commission and other authorities in other States have recognised the necessity of maintaining mechanised farms and farms which are maintained for the purpose of supply of industrial raw material to factories, particularly sugar. So you are putting it on that broad ground, I think.

Shri Porus Mehta: Why I am referring to the High Court judgement is very important, and that is to show..

Shri U. M. Trivedi: The contention of the witness is very clear: does this come within the distribution of land to joint farming societies which is an agrarian reform? The question which is pertinent is whether under the guise of distributing land to joint farming societies, supply of raw material to a particular undertaking is an agrarian reform or not. Is that not your point, Mr. Mehta?

Shri Porus Mehta: That is my point.

Chairman: That is what he has been saying.

Shri U. M. Trivedi: I want to elicit it from him. Can it by any imagination fall within agrarian reforms, however much you might stretch it? Is the obtaining of raw materials a process of agrarian reform?

Shri Porus Mehta: I entirely agree. In a very clear manner you have put the crux of the point. You have really summarised it in a very substantial manner, for which I am very grateful, because you have put in a nutshell the point which I have been making, namely, as the High Court says, by no stretch of argument could you say that this is an agrarian reform.

May I reply to Shri Sachin Choudhuri on this point that I entirely agree that I am putting it on the broad ground suggested by him. But I am using the judgment to show that there are really two legislations in this. One is with regard to division or distribution of land to the landless persons. The other is to provide raw material efficiently to industries by first taking away the lands.

Shri Sachindra Chaudhuri: Would I be right in saying that the High Court has held that productivity....

Chairman: Let him finish his evidence. After he finishes his evidence, I will allow an opportunity to Members to put questions.

Shri A. P. Jain: We will obey what you decide. But certain ideas are thrown out. It is a far more fruitful method to put the questions as the ideas are coming out.

Shri S. D. Patil: Particularly, with reference to the High Court judgment.

Chairman: If we go on interrupting every time, we won't be able to finish.

Shri Surendranath Dwivedy: Let us have a clarification on this point.

Chairman: Let him finish the evidence. Let us not argue.

Shri Sachindra Chaudhuri: I am trying to get my own mind clarified. Mr. Mehta has made his point perfectly clear. There is no difficulty in my understanding it. But there are one or two points where I have certain doubts in my mind. I can do it at the end, if you like.

Chairman: Yes, let him finish.

Shri Porus Mehta: I shall take the liberty of immediately clarifying this particular aspect which has been raised by Shri Sachindra Chaudhuri and then proceed to complete my evidence.

Shri Sachindra Chaudhuri: If you would like me to put my question now, then I might be tempted to put further questions to you. So, you need not direct your evidence personally to me.

Shri Porus Mehta: Thank you.

If you would permit me, then I would like to read out from page 29 of the judgment. It says:

> "In these objectives and purposes of the Act the question of the production from lands is not in terms included. But we have already shown when considering the question of agrarian reform that the production from the land may justly enter into the concept of equitable distribution of agricultural land and equality in distribution of land cannot be

achieved divorced from the question of its productivity. That is made clear from the provision of Section 3 of the Act and the Explanation to Section 5(1) where 'the soil classification of the land' and 'the average yield of crops' are mentioned. It must be stressed here that none of the stated objects in the Act refer to the fixing of prices of farm produce in the process of distribution of surplus lands. It appears to have been taken into account in fixing the ceiling area, that is to say, for the purposes of acquisition; but having once been taken into account, it does not and cannot enter into computation a second time in the distribution of surplus lands; and yet as we shall show presently, that is precisely what Section 28 attempts to do.".

This is the clarification which was sought for by the hon. Member. The High Court says that productivity is a factor to be taken into account when you fix the ceiling, but when you distribute, it should not be a factor. It is not a factor under section 7, but unforunately under section 28 they have taken that factor, and the High Court says that, that is going beyond the purpose for which it was meant. Therefore, productivity is only a factor to be taken into account in fixing the ceilings and not in distribution; and in so far as distribution takes that into account, it negates agrarian reform. This is what the High Court has said, and this provides the clarification which was sought for.

The High Court further says:

"Secondly, it may be noticed with reference to the preamble and the policy statement to be found in the Act that it is nowhere contemplated that the land acquired will not be distributed to landless and other persons, or to put it positively, it is the purpose and object of the impugned enactment that all land acquired as surplus land must be distributed to the landless and others. We shall show that the provisions of section 28 are calculated to bring about a position in given cases where the land may not at all be distributed and to that extent the provisions of that section militate against the very object and purpose of the Act and the policy indicated therein."

Then, they say that for this reason section 28 is invalid and violates the Fundamental Rights of the various persons who are concerned, under article 14 of the Constitution. At page 31, in sub-para (4), they have stated:

"Fourthly, section 28(3) contains a provision that in the contingencies provided for in that sub-section, the State Government may resume the land which it has granted by way of distribution of surplus lands. There is, however, no provision for resumption in any contingency at all following upon the distribution of surplus lands under section 27. In one of the contingencies, namely, that under clause (c) of section 28(3), the resumption can be effected if the supply of raw material to the undertaking is not maintained at the level or in the manner which with proper and efficient management it ought to be maintained, which condition is unconnected with the efficient cultivation of land and is extraneous to the avowed object of the legislation which is for fixing a ceiling on holdings of land and the acquisition and distribution of surplus lands. Moreover, even after resumption, the sub-section specifically provides that the State Government may make such other arrangements as it thinks fit for the proper cultivation of land and maintenance of production and supply of the raw material to the undertaking. The legislation itself does not in any way define or indicate what 'such other arrangements' should be. It must

be presumed that a Government will act honestly and reasonably but none-the-less, this particular provision itself stipulates that in making such other arrangements, the State Government must bear in mind one of the objectives, namely, the maintenance of production and supply of the raw material to the undertaking. It is possible that if even after successive resumptions and distributions of surplus lands the production from the land falls either in quantity or quality or both, Government may honestly and reasonably decide to make, by way of 'other arrangements', some arrangement not to grant the land by way of distribution to any person or society but carry out the cultivation itself either departmentally or through a State Corporation or a State farm or any such like means. Therefore, in our opinion, so far as this aspect is concerned, there is a clear discrimination in the provisions under section 28 as compared with those under section 27 both as regards the resumption of the lands by Government and even as regards the provision as to what may be done after such resumption and the classification or differentiation has no bearing on the objects and purposes of the Act".

This is what the High Court has clearly held. I shall, therefore, summarise this by saying that the judgement lays down two important principles and draws two important conclusions. One is that that this particular provision with regard to taking over of distribution of industrial lands is not part of agrarian reform, and secondly, it violates the Fundamental Rights under article 14 of the Constitution.

Now, I come to the more important aspect of this matter which is, in my submission, a matter which concerns the whole country and not only the State of Maharashtra. In giving this blanket immunity, you are acting not merely for the State of Maharashtra, but for the whole country, though, no doubt, it may be at the request or behest of a partciular Government.

The facts and figures in regard to this submission have already been given in the memorandum supplied by us and also in the memoranda supplied by various other sources like the Chamber of Commerce and so on which are very relevant. I am referring here to the history of sugar production in the State of Maharashtra. I would not take the time of the Joint Committee by reiterating everything, but I would summarise it by saying that in Maharashtra, before 1930, there was hardly any sugar production, or even in the Deccan, for that matter. There used to be sporadic production here and there by individual cultivators of sugarcane, and it was largely used for the making of gur. At that time, we were getting sugar from Java on a large scale into India. Efforts were made to see that the local production of sugar was improved and our sugar industries throughout the country were put on a proper footing. For that purpose, companies were formed. One was the Belapur Syndicate in the Maharashtra State. That company had a factory for manufacture of sugar, but it was entirely dependent for its supplies on individual cultivators from outside, and they had no farm of their own. The result was that within a short time, they had to close down because they could not get sugarcane at the price which would be competitive in the market, and, therefore, the price of sugarcane became very uncompetitive. Secondly, they could not get sugarcane at the time at which they wanted, because the individual cultivators only cultivated in a particular season, with the result that the factories had to close down for nine months in the year and that became completely uneconomic. The third reason was that the quality of sugarcane was very low

and inferior; it had not the necessary sugar content. There was a quality which was locally grown, called the *Puniya* in the local language, which was a very low type of quality. Because of these reasons, the factory could not run economically and therefore had to close down.

Then, the Government of Bombay, as it then was, appointed a committee of experts, called the Kamath Committee, and that committee went through the whole problem and made strong recommendations to the effect that the only way in which sugar production could be improved in the Deccan was to see that the sugar factories had their own lands where they planted their own sugarcane and did not depend on outside agencies. That was the recommendation which was strongly made to the Government of Bombay, and they suggested that the Government should try to acquire lands for the sugar factory.

Shri A. P. Jain: When was that report submitted?

Shri Porus Mehta: In 1932. We have set out their recommendations in our memorandum. You will find it also in the judgment. It is in the middle of page 13 of the judgment. paras 34 and 35 of the Deccan Canals Finance and Improvement Committee. It is pointed also how precarious it is to depend on individual cultivators.

Shri A. P. Jain: The whole of the rest of India is depending on supply of canes from others.

Shri Porus Mehta: Sugar production in Maharashtra, because it owns or gets its own sugarcane, is on the average 57 tons per acre. The Belapur company and the Maharashtra Sugar company, which I represent, have increased production from 54 to 75 tons per acre, whereas the production in U.P. is 11·4 tons per acre.

Shri P. Ramamurti: In Madras it is 80 per ton—private farms.

Chairman: Recently I was in Hospet. There individual farmers have produced 79 tons per acre. They grow in about 10,000 acres of land.

Shri Porus Mehta: An individual cultivator here and there can do it. But he will not sell at that price. The Kamath Committee and other committees have pointed out from their own experience and we say it from ours, that individual cultivators may in some cases do it, in Madras and some other places. But they will demand a price at which you are unable to compete or buy. Secondly, the sugar content has also to be examined. The production tonnage may be high, but the quality of sugar may be low. Our sugar content in Maharashtra is the highest in India and competes with the second best in the world.

Thirdly, this may be spasmodic. The cultivator may not give you all the 12 months. If you could not get it, you are helpless.

I will give an instance. I am also here representing the Gangapur Sugar Mills, Maharashtra. They do not have farms. They have found that they have not been able to manufacture 25 per cent of sugar they used to do because, with all the assistance the State Government is giving today, they are unable to get cane from any part of Maharashtra or anywhere else. They have tried farming societies, individual cultivators—every possible source. The result is production has fallen. The country is crying for sugar. If you want to have a factory run efficiently and economically and also be able to buy at a price within its means which the country can afford, this should not be the approach.

The second aspect is that we are at great pains to export sugar. There is an Export Control Order which compels factories to export a certain percentage of sugar even at a loss. That is because of the great demand for foreign exchange. For that also, we need cane badly at an economic price,

so that we can compete in the world markets. We send it to USA; we compete with Cuba and Java. Therefore, we should have cane at an economic price and with proper sucrose content. That is possible—it has been proved by the experience of these committees and by our own experience—only if you have your own farms.

The figures with regard to production of UP and others are not given by me but by the State of Maharashtra itself which they published along with the Bill. They have broken up the figures and sown that the highest content is in Maharashtra, not Andhra Pradesh or Madras—though they say that individually some cultivators may produce that elsewhere.

Shri S. D. Patil: Your argument only shows that the state of the sugar industry in Maharashtra in private hands is very encouraging. At the same time, the co-operative sector is coming up there. If these lands are given to them, they can also do the same thing.

Shri Porus Mehta: The reply has already been given by me, that the State of Maharashtra itself thinks that it will not be feasible because they have provided in sec. 28 that they would at any time give this away. Why do they apprehend such a thing? Because from their experience in the past, they feel they may not be able to cope with it. Therefore, they have taken this power in their hands that they may give back to the private sector again.

But here I am not only talking of the achievements of Maharashtra because these are really the achievements of the whole country. I am not saying this in any spirit of rivalry or competition or even of pride—it is the pride of the whole of India that in Maharashtra we have an Industry which can produce sugar which can compete with the others in the world market.

My last point is about the importance of sugar not generally but *qua* what is happening in the legislation which Parliament itself has enacted. Sugar and sugarcane are controlled not by the State Government but the Central Government. There is the Essential Supplies Act of 1955. Under that sugar as well as sugarcane production is controlled. Then we have the Industries (Regulation and Development) Act under which the sugar industry has been declared by Parliament to be a controlled industry. For that very reason, sugar is regarded as the responsibility of Parliament. Therefore whatever may be done in good faith, with the best of goodwill—we do not challenge them; after all the State Government has got the welfare of its own people in view; I am not criticising them but they are not infallible. That is why the Central legislature has taken upon itself control over production of sugar and sugarcane in their hands.

Shri A. P. Jain: Not control over production.

Shri Porus Mehta: Under the Act, sugar industry is a controlled industry.

Shri P. Ramamurti: Not sugarcane.

Shri Porus Mehta: I am talking of the sugar industry. Therefore, they have the power, and they have enacted various control orders by which they say what manner of production, should be there, how much production and so on. This becomes related because without sugarcane there cannot be sugar. Under the control orders they declare as to what lands there shall be; there is control even on transfer of lands. In this judgment you will find reference to the Act itself. With regard to cane production also, under the Defence of India Act, there are certain control orders.

Shri A. P. Jain: It is an emergency measure.

Shri Porus Mehta: Even before 1961 there was control. It was only in 1961 that it was lifted. Cane prices have been controlled. My point is that they have got control over the whole of production. It is not a matter of the Maharashtra State only but the whole country and the development of sugar industry and therefore I request you not to allow the State Legislature to get away with it by getting this blanket power. Let them justify their acts in proper courts.

Finally, these 13 sugar factories in Maharashtra have 30,000 shareholders who come from the middle class. There is no control over them by one individual or syndicate. They share the profits and they have put in their little money. Maharashtra State Government have paid them a tribute to the great work which these incorporated companies have done for the production of sugar in the country. Many had failed and suffered losses and had to close down for years together they showed no profits. So, from the larger interests of the country, I request you to consider this.

Shri P. Ramamurti: In para 10 of your memorandum you say that in the case of farms owned by factories, the price of raw material, *i.e.* cane, will be roughly three annas less per maund. Today the difference would be more. The other factories have got to pay more for their raw material, while you pay less. Are you selling your sugar at a lower price?

Shri Porus Mehta: The price is controlled.

Shri P. Ramamurti: It does not prevent you from selling at a lower rate. You cannot sell at a higher price. That is control. A majority of factories in the country are not owning their own sugar farms. That way, you are getting a greater margin of profit.

Shri Porus Mehta: That is not correct for this reason that we are also made to export at a loss.

Shri P. Ramamurti: Other people also are made to export. Besides, be it for internal consumption or export the raw material is the same. Therefore, that does not much matter. Besides you get some concession in the matter of excise duties. Further, the world price of sugar is about Rs 1600 per ton whereas the internal price is Rs. 1050. So, do not bother about exports.

Shri Porus Mehta: I never quarrel with that. The issue is not whether I am making profits or not. The straight reply to your question would be that what we are doing here in our factories should be done on a larger scale, everywhere rather than the other way round. Then, the price of sugar will come down it will not come down by what is suggested in the Bill.

Shri P. Ramamurti: You are talking of high production in Maharashtra and comparing it with the productivity in U.P., Bihar, etc. Soil and climate have a great bearing on the yield per acre. Maharashtra, Tamilnad, etc., are in the 'sugar belt of the world'. The difference in productivity arises because of these factors, not because these lands are owned by the factories in Maharashtra.

Shri Porus Mehta: What you say is perfectly correct. Soil and tropical climate are relevant factors in production. That is why I referred to these two different reports. But what is the position in Maharashtra itself? Why did production go up during the last 20—30 years though the soil and climate where there for hundreds of years? Many factories had to close down earlier. Soil and climate alone are not enough. They had to spend crores of rupees on fertilisers, schools, dispensaries, hospitals, roads, railheads, etc.

Shri P. Ramamurti: What was production per acre before you took it up in Maharashtra?

Shri Porus Mehta: 25 tons per acre. It is now 75 tons per acre.

Shri P. R. Patel: I submit that these questions appear not to be relevant for the purpose of this Bill.

Chairman: He need not go into all these matters.

Shri P. Ramamurti: Section 28 deals with the question of distribution of land in a particular way, in order to see that it should not be distributed individually, but to joint ownership. That is the whole purpose.

Shri Porus Mehta: If the whole purpose is efficient distribution, then our submission is, why disturb this at all?

Chairman: It is a matter for argument.

Shri A. P. Jain: Assuming that it is a law providing for taking over small uneconomic holdings of the farmers and integrating them into big farms with a view to increasing production? Would you call it agrarian reform?

Shri Porus Mehta: With great respect, I would submit that is not agrarian reform. Agrarian reform is not merely increasing productivity. The other aspect is what matters, *viz.*, how you do it. May I put a counter question: Suppose you give it to five individual industrialists to do it, would you regard that as agrarian reform?

Shri A. P. Jain: You have stated that increasing productivity is an incidental factor and you have based your argument on the report of the Planning Commission. I will read out some sentences: In the chapter on land reform and agrarian reforms of the second Five Year Plan, in page 231 of this book *Progress of Land Reforms*, it is said:

> "Policies and programmes which are to be followed in different sectors of economy during the second Five Year Plan represent a balanced and combined approach to the central problems of economic development and social justice. Among these, measures of land reforms have a place of special significance both because they provide social, economic and institutional framework for agricultural development and because of the influence they exert on the life of the vast majority of the population. Indeed their impact extends much beyond the rural economy. The principles of changes and reorganisation on which the scheme of land reforms is based are part of the wider social economic outlook which must needs apply in some degree to every part of the economy."

Again in page 247 it is said—the exemptions are based purely on economic considerations—as follows:

> "Sugarcane farms operated by sugar factories to be exempted. Efficiently managed farms which consist of compact blocks on which heavy investment or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production."

So, my contention is that increase in production is the basic factor to be taken into account in effecting land reforms, apart from social justice. Are you prepared to revise your view now?

Shri Porus Mehta: With great respect, I do not agree. I submit that this very paragraph supports what I am saying because it expressly says that sugarcane farms operated by sugar factories should be exempted.

Shri P. Ramamurti: It does not say they should be exempted. It only says these considerations may be taken into account.

Shri A. P. Jain: Are you prepared to concede that increase in producti-

vity is one of the basic concepts of land reforms?

Shri Porus Mehta: I do not concede, because the Planning Commission itself has pointed out, as I have already conceded, that it is only a factor in determining the ceiling; it is not a factor in distribution. This is what the High Court also has stated. So, it may be a factor in determining the ceiling. When you take away lands not for that purpose but for distribution, then the Planning Commission itself recognises that sugarcane farms and mechanised farms should not be touched.

Shri A. P. Jain: It is true that it was recommended that sugar farms operated by sugar factories should be exempted. But they have also added. "In the nature of things, these are general suggestions and they should be adapted to the conditions of each State." Your State has decided that these farms should not remain as they are. This is the law of Persians and Medes!

Shri Porus Mehta: The Planning Commission does not lay down any law; it makes suggestions. My State has chosen to take away the farms on considerations which are really opposed to this because they themselves recognise in section 28 that they will have to handover again to somebody else. So, they have really in effect admitted what the Planning Commission says.

Shri A. P. Jain: You have impugned section 28 on the ground that it is primarily meant to assure supplies of sugarcane at a fair price to the factory. Representing the factory as you do, it is a concession to the factories, because as I pointed out, all sectors of economy have to be taken into account. So, are you not acting against yourself when you want this section to go?

Shri Porus Mehta: It is not my contention that section 28 should go. My contention is that sugar plantations controlled or owned by sugar factories should not be a part of the ceiling legislation.

Section 28, as the High Court has pointed out, only shows that when you do that, you are not doing any agrarian reform but you are really puting into effect just another concept altogether which has nothing to do with agraian reform. My contention is simply this that the High Court has pronounced and let this matter go to the Supreme Court. If the Supreme Court decides against us, the object of the State of Maharashtra is fulfilled.

Shri P. Ramamurti: The Court is not to decide, it is for us to decide.

Shri Porus Mehta: If you yourself consider disagreeing with the High Court and say that this does promote agrarian reforms, then I may submit that the submission I have made still holds good. You might say that the High Court is wrong but before you say that will you not allow the Supreme Court to have any say in the matter?

Shri A. P. Jain: All I can say is that I violently disagree with your concept of land reforms.

Shri A. V. Raghavan: What is the total acreage in the possession of the sugar companies?

Shri Porus Mehta: 99,000 acres.

Shri A. V. Raghavan: You said that seven States have excluded sugar from their ceiling legislation. But sugarcane is a major crop as far as Maharashtra is concerned and, therefore, the State has not exclued sugarcane, because otherwise no land reforms are possible in the State.

Shri Porus Mehta: The State of Kerala, the State of Bihar etc. have all expressly excluded plantations. I am concerned with sugar because in their States, sugarcane is not a major plantation.

Shri Sachindra Chaudhuri: Suppose this Committee came to the conclusion that the whole of the Act will go into the Ninth Schedule with the

exception of section 28, will that satisfy you?

Shri Porus Mehta: It will certainly go a great way in substantiating and to that extent my purpose will be served. But it will not be served completely because, as I pointed out to you, still the larger question remains. If section 28 goes, sugar production in the country is still affected.

Shri Sachindra Chaudhuri: Your real grievance is that there might be a fragmentation of the holdings of sugar companies and in that way it might affect sugar production.

Shri Porus Mehta: You are right.

Shri Sachindra Chaudhuri: If there is an assurance that this will not be the condition of the land and that whatever is taken over from the sugar companies will be used to the best interests of production, could there be any objection?

Shri Porus Mehta: We have an objection because if section 28 goes, as you have suggested, there is fragmentation. Section 28 itself is trying to negative fragmentation. So, if section 28 goes, we are exactly where we are. Therefore what we are suggesting is that not merely section 28 should be deleted, but that do not give a blanket recognition, as if it were, to this as far as sugarcane plantations are concerned and leave it to the State to bring out an independent piece of legislation to be decided by the Court.

Shri Sachindra Chaudhuri: That is another matter. We cannot ask the legislature of Maharashtra to do that, but what we can do is to say that either it should not be included in the Schedule or section 28 should go and the rest of it should go into the Schedule. Therefore, the whole question is whether you are happy with section 28 going out. But in that case you are arguing against yourself. There will be fragmentation. If section 28 is there, it assures everybody that where property is today owned by the mills it is taken away and managed by Government, co-operative farms and so on to have maximum production and that supplies to the sugar factory will be maintained.

Shri Porus Mehta: I have pointed out that in view of the pronouncements of two important committees of experts and our own experience it is not enough to divorce the supply of sugarcane from the sugar factories.

Shri Sachindra Chaudhuri: These two committees were held in 1931 and 1938 and much water has flowed since then. At that time Government did not take any power for any land reform, but today the Government is taking the power and is proceeding with agrarian reforms. In that process if Government says that it can manage the farms more efficiently—you may have your own doubts and you may think that so far as the sugar mills are concerned they manage their fields much better than any agency of Government; therefore, we must leave these sugar plantations sacrosanct where they are owned by the factory. But there is no proof.

Shri Porus Mehta: The reply to that is that it is not only the two committees, but our own working for the last 20 years has shown that the only way in which we can preserve this is to have our own farms and not depend on outsiders. When you were absent I mentioned the case of Gangapur Sugar Mills. They have got no farm of their own and they depend on outside sugarcane. Today with all the help which Government is trying to give and which we gratefully acknowledge, they have been unable to supply 75 per cent of the production with the result that today we are producing only 25 per cent of what we produced last year and the year before. Government are unable

to supply us the cane with all their goodwill. Section 28 itself recognises that difficulty and, therefore, provides that if all these fail—that is, the joint farming societies co-operative State-owned farms—they will make some other arrangements. Our case is why have this costly and hazardous experiment at a time when sugar is such a vital factor, particularly in the emergency. You are taxing us and you can take any effective measure for seeing that there is rural benefit. It is a rural industry. We have ourselves provided hospitals, schools and colleges and training. We supply fertilisers to even the other cultivators who are joining us in order to encourage them. We train them in how to increase the sucrose content. We do all this and the State Government may certainly pass legislation by which they may compel us to do more.

Shri Sachindra Chaudhuri: Am I right in understanding that your argument is that the 13 mills who happen to have 99,000 acres of land manage their land in such a way that it is impossible for any other agency at the moment to manage them in the same way?

Shri Porus Mehta: I say so with confidence and it is borne out because there are other co-operative societies who are actually in the field and whose production is much lower than ours.

Shri Sachindra Chaudhuri: When have the co-operative societies come in the field?

Shri Porus Mehta: They are in the field for the last eight years.

Shri Sachindra Chaudhuri: How long have you been there?

Shri Porus Mehta: For about 25 to 30 years.

Chairman: What is the total acreage under sugarcane in Maharashtra?

Shri Porus Mehta: 2,50,000 acres.

Chairman: Out of that only 99,000 acres are under you?

Shri Porus Mehta: That is owned by the corporate sector.

Shri J. R. Mehta: I would like to know whether the witness agrees or not that the fundamental concept of land reforms implies, firstly, that the land should go to the tiller and; secondly, that the intermediary should not be there. In the case of these sugar factories, the tiller is somebody else and the owner of the factory is somebody else. So, there is a distinction between the tiller of the soil and the owner of the land. Now in so far as we propose to take away this ownership and give the land to the tiller is it not an agrarian reform?

Shri Porus Mehta: That is what the Maharashtra Ceiling Act is not doing. They are not giving it to the tillers of the soil. They are reserving powers to give it to any other body or make any arrangement including State farms. They would not be giving away to tillers. Maharashtra Government has formed a private limited company which is going to take over. It is formed under section 28A. They have started it and the object of the company is expressly stated to take over the sugar farm. They are not giving to tillers. It will be a nationalised concern.

Chairman: The land does not belong to you?

Shri Porus Mehta: Some of the lands belongs to us. Some of the land is taken by us on lease and we employ the labour, etc.

Chairman: What is the percentage of land which belongs to you?

Shri Porus Mehta: 50 per cent belonds to us.

Chairman: Remaining 50 per cent belongs to whom?

Shri Porus Mehta: Separate land owners from whom, we have taken on long lease.

Shri J. R. Mehta: This legislation contemplates that the land taken over from them will be given to joint farming or other farms or there is the alternative of the State management also. Even if it is State management there will be no intermediary between the tiller and the State.

Chairman: It is a matter for argument.

Shri Hem Raj: 50 per cent of the land you have taken, you said, from the farmers. Do you not become an intermediary from the tillers then? You take from the tillers on lease and thereafter you have become, so to say, a farming institute. Actually the tillers are deprived of those lands, so to say.

Shri Porus Mehta: Actual tillers were not deprived. These were owned by individuals. A large number of acres. 1,000 or 5,000 acres are taken on lease. We are employing tillers; we ourselves till it directly too.

Shri Hem Raj: Those persons are deprived.

Shri Porus Mehta: They are themselves intermediaries or absentee landlords.

Shri Hem Raj: The lands were taken over by you from them. Were they not the actual tillers.

Shri Porus Mehta: They were owners of the land as we are today.

Shri Hem Raj: Is it a fact that 50 per cent were absentee landlords?

Shri Porus Mehta: Some of the lands were not even cultivable. We have made them cultivable and spent crores of rupees and brought them to cultivation. The actural tillers will hardly I think be two per cent. Most of the lands were barren, uncultivated and waste lands. We have taken them over and developed them and spent crores of rupees.

Shri S. D. Patil: Are you opposed to the very principle of ceiling?

Shri Porus Mehta: We are not opposed to principle of ceiling, as far as they have been outlined in the Maharashtra Ceiling Act. We are opposed to taking away compact lands of sugar industry for reasons which I have stated.

Shri S. D. Patil: Are there any pending applications in the High Court or elsewhere challenging the very validity of the Act?

Shri Porus Mehta: I know there were 4 or 5 applications which have been filed, 3 of them have been heard. The other two are pending in Maharashtra High Court. That will now follow the Judgment of the other. I think they will be subject to the judgment of the High Court. They will automatically go to the Supreme Court.

Shri S. D. Patil: Have you gone to Supreme Court?

Shri Porus Mehta: We have applied for leave to Supreme Court. We have been granted leave to go.

Shri S. D. Patil: Has Maharashtra Government gone on appeal?

Shri Porus Mehta: Yes.

Shri S. D. Patil: Section 28 is declared *ultra vires* by the high court. The State Legislature may amend or revise the legislation and make necessary changes which may provide that the land may be given to State farms or other agencies. If that happens have you got any objection to ceiling?

Shri Porus Mehta: The fundamental objection stands that that would be completely breaking up the sugar industry of Maharashtra State. That is our objection.

Shri S. D. Patil: He said he has objection to this, beyond this he has no other objection. Now High Court said this Act is valid except Section 28. The land vests in the Government. Government has got the power under Ceiling Act to make disbursement of land according to various methods laid down. Have you got any objection to the methods?

Shri Porus Mehta: It is the same question. If Section 28 is *ultra vires* Government have not provided any machinery for this. They will have to re-enact and when the Bill comes we will see.

Shri S. D. Patil: You said that 50 per cent of the land was taken by you from small-holders on lease and you developed those lands. Now in respect of these lands if Government chooses to give back these lands to those small-holders have you got any objection?

Shri Porus Mehta: If it is given to land owners we have no objection. All we want is to ensure our supplies for our own needs and not dependent upon somebody else.

Chairman: They want assured supply of sugarcane. That is their objection.

Shri S. D. Patil: You would agree that there are 12 or 13 cooperative factories who have not got sufficient lands of their own but they get the sugarcane from the various cultivators. Can you not adopt that system?

Shri Porus Mehta: The simple thing is this. The cooperative factories have themselves been getting it from their own members who cultivate. In effect they are themselves controlling. This is our point.

Shri S. D. Patil: You can get the sugarcane from some of your shareholders.

Shri Porus Mehta: Our shareholders are not all cultivators. They are living in cities. They are giving capital for industry to develop.

Shri S. D. Patil: You take land from small-holders because they entered into land lease under some force of circumstances and you want to impose those conditions.

Shri Porus Mehta: We have not done that. Government themselves encouraged these people to give it at a fixed price. There is the arbitration committee. Valuation is made and then only it is allowed to be given. We have not taken advantage of this at all.

Shri Kashi Ram Gupta: Various State Governments have enacted legislation in this regard. Their number is about 45. Have you studied all of them?

Chairman: He is concerned with Bombay Act.

Shri Kashi Ram Gupta: Have you studied those Acts and in your opinion, are there provisions like this.

Shri Porus Mehta: To the best of my knowledge the position is this. I can't claim to have gone through all the acts. But I have gone through some of the Acts. Whatever I have gone through, I find, they have exempted plantations. The question does not arise.

Shri Kashi Ram Gupta: Fifty per cent of land is acquired and owned by the factories themselves. How is price fixed?

Shri Porus Mehta: If the price has been fixed under Government of Maharashtra or under the machinery which determines that, that price has been paid. Sometimes the price has gone upto Rs. 1200 per acre. There is hardly Rs. 100 compensation for this very land.

Shri Kashi Ram Gupta: I wanted to know the actual position as to how these lands have been acquired. Is it by lease to the extent of 50 per cent?

Shri Porus Mehta: We have taken on lease whatever we could.

Shri Kashi Ram Gupta: Since the formation of your company what special measures and input have been there to prove that you have increased the output much more than others have done?

Shri Porus Mehta: As I have already said we have dug channels, built bridges and there are fertilisers, chemicals and manures.

Shri Kashi Ram Gupta: Your objection is not only to section 28, but to the whole Bill as it is?

Shri Porus Mehta: No. Our objection is to the inclusion of sugar plantation, not for the others at all. May I add that the Government of Bombay has itself acquired land and given it to us at a price fixed by them?

Shri U. M. Trivedi: As I have understood it, your contention is that this is not part of agrarian reforms in view of the special provisions of section 28. Since the preamble of this Act itself says about the maximum ceiling of holdings of agricultural land, don't you feel that, with this provision in section 28 (1), it is a piece of colourable legislation?

Shri Porus Mehta: I am obliged to you for drawing my attention to the preamble which itself negatives.

Shri P. R. Patel: You said that you have increased the productoin. I would like to know what is the yield per care in land owned by factories, co-operative societies and individual parties.

Shri Porus Mehta: I can give you the figure in a minute from the compilation. The average yield per acre of corporate bodies is 54 tons. Though the company I represent produces upto 75 tons per acre, the average is 54 tons per acre. As regards co-operative societies, I find from the Government publication that the average yield is 42 tons per acre.

Shri P. R. Patel: What about individual parties?

Shri Porus Mehta: That figure is not given here. But it will be much less.

Shri P. R. Patel: These are figures pertaining to Maharashtra. As regards U.P. can you give the figures under these three categories?

Shri Porus Mehta: That is given in the Maharashtra publication itself. It is 11:85 tons per acre.

Shri P. R. Patel: What about individual?

Shri Porus Mehta: In U.P. either it is co-operative or individual. No farms are owned by the factories.

Shri P. R. Patel: There are a few. Probably you have no figures.

Shri Porus Mehta: They are very few. This is the average given by the State of Maharashtra.

Shri P. R. Patel: According to you factories must have their own farms in order to have more sugar production. Is that your view?

Shri Porus Mehta: Yes, I am much obliged to you for that.

श्री विभूति मिश्र : यह फार्म आप ने कब से कब्जे में लिया है ?

Shri Porus Mehta: From 1932-33 onwards.

श्री विभूति मिश्र : पहले यह जमीन किस की थी ?

Shri Porus Mehta: Some of them were waste lands, some were acquired by Government and some of them were Government lands. But most of them were waste lands.

श्री विभूति मिश्र : उस वक्त आप ने उस जमीन की कितनी कीमत दी ?

Shri Porus Mehta: The price varies from time to time.

श्री विभूति मिश्र : उस समय आप ने कितनी कीमत दी थी ।

Shri Porus Mehta: Roughly it started from 500 to 2,000 per acre.

श्री विभूति मिश्र : आप के यहां गन्ने की कास्ट आफ प्रोडक्शन क्या है ?

Chairman: We are not concerned with that.

Shri Bibhuti Mishra: Let us know that from him. He is challenging the Maharashtra Government.

Shri Porus Mehta: It comes to about Rs. 2,500 per acre.

Shri Bibhuti Mishra: Per maund?

Shri Porus Mehta: I have not got the figures.

श्री विभूति मिश्र : आप के लिये सरकार ने गन्ने की कीमत कितनी निर्धारित की है ?

Chairman: All that you can get from the published figures.

Shri Bibhuti Mishra: I want to know from the witnesses.

Chairman: He is not having the figure.

Shri Porus Mehta: At the moment I have no figures.

श्री विभूति मिश्र : मैं यह जानना चाहता हूं कि क्या आप के यहां गन्ने की फसल तैयार होने में १८ महीने का समय लगता है ?

Shri Porus Mehta: Yes, 18 months.

श्री विभूति मिश्र : जितना पैसा आप लगाते हैं अगर उतना ही किसान लगावे तो क्या आप से ज्यादा पैदा नहीं करेगा ?

Shri Porus Mehta: It could not be.

श्री विभूति मिश्र : कोआपरेटिव शुगर फैक्टरीज हाल में लगी हैं और आप ३२ साल से यह काम कर रहे हैं । अगर कोआपरेटिव फार्म को इतना समय दिया जाए तो क्या वे आप से ज्यादा उत्पादन नहीं कर सकेंगे ।

Shri Porus Mehta: It will not be because past experience has demonstrated that it does not come up to what we do. That is my reply.

श्री विभूति मिश्र : मैं जानना चाहता हूं कि आप के यहां रिकवरी क्या है ?

Shri Porus Mehta: 12½ per cent.

Shri Bibhuti Mishra: In Bihar, Champaran, it is 11.25.

Shri Porus Mehta: We had 12.34 in 1961-62.

Shri Bibhuti Mishra: What is the present recovery?

Shri Porus Mehta: 12.57.

Shri Bibhuti Mishra: In Bihar today it is 11.25. It is in the newspaper.

Shri Bibhuti Mishra: You have not seen the newspaper.

Shri Porus Mehta: I have not been able to verify.

Chairman: Please ask him about Maharashtra. About Bihar you are the best judge.

Shri Porus Mehta: Recovery of sugar by the corporate sector in Maharashtra is the highest in India.

श्री विभूति मिश्र : यह सही है लेकिन मुझे मालूम है कि बिहार में एक इंडीविजुअल शुगर केन फार्म के गन्ने की रिकवरी ११.२५ है । और अगर इसी तरह से महाराष्ट्र में किसानों को सुविधा दी जाए तो वे १८ महीने में ज्यादा रिकवरी कर सकते हैं ।

Shri Porus Mehta: Regarding 18 months, it is really divided into three seasons.

Shri Bibhuti Mishra: Sugarcane is produced in 18 months in Maharashtra. In Bihar it is produced in 9 months.

आप के पास शुगर केन के लिए कितना एकरेज है ?

Shri Porus Mehta: About 10,000 to 11,000 acres. Belapur—10,000; Maharashtra Sugar Mill—11,000. For Ganganagar I have not got the information.

श्री विभूति मिश्र : आप को साल में कितना मूनाफा होता है ?

Shri Porus Mehta: We will have to look up to the balance-sheet.

Shri L. D. Kotoki: Your main contention is that Section 28 of the Maharashtra Act does not come under the shelter of Article 31A because according to you that Section does not relate to agrarian reform. Will you kindly see whether acquisition of land by the State Government has anywhere been specifically mentioned in the Article?

Shri Porus Mehta: The whole Article deals with agrarian reform, every word of it.

Shri L. D. Kotoki: I will come to the main problem of agrarian reform as it relates to Section 28 of the Maharashtra Act. According to my interpretation, the Article 31A does not specifically mention the acquisition of land by State Government.

Shri Porus Mehta: Article 31A does not and cannot mention.

Shri L. D. Kotoki: It is not mentioned. It provides that Maharashtra Government can acquire land belonging to the sugar mills. The State Government will ensure that the production of sugarcane continues. It wants to take away the land from sugar mills and give to the people categorised under Section 18, those people who are supplying sugarcane to you. Does it not form part of the programme of land reform?

Shri Porus Mehta: The Section has to be read as a whole and the whole section itself provides that they may make any other arrangement that they think fit.

Shri L. D. Kotoki: You have no objection to ceiling on other lands so long as it does not touch your land. That means you agree in principle. After ceiling is imposed, the land has to be distributed to landless labour. Whatever land is acquired, it is meant to be distributed to the tillers or different categories of people and an additional condition has been imposed that this land will be utilised for growing sugarcane to be supplied to you. This is under Section 28A.

Shri Porus Mehta: This is a special provision made and Section 28 categorically says it can be given to any person or anybody other than the categories mentioned therein.

Shri L. D. Kotoki: I will point out the case of another agro-industry, *viz.* jute industry. All the factories are located in Calcutta and the jute is grown in Bihar, Assam and West Bengal. Government have ensured that the supply of raw jute is continued. Similarly sugar industry is an agro-industry. They take away the land, but at the same time ensures the supply of raw sugarcane to feed your industry. How can you object to it?

Shri Porus Mehta: The Government itself is not confident of fulfilling its own professed aim because they say that if this objective fails, they will devise some other arrangement, which may include handing over the land back to us.

Shri L. D. Kotoki: It conforms to the policy we have laid down. That is what we have to see. Your interest is to see that your sugar mills go on functioning.

Shri Porus Mehta: That is not our interest. Our interest is to see that

sugar is produced at economic rates for the whole country.

Chairman: It is for us to decide what our policy should be.

Sardar R. S. Panjhazari: You purchased the undeveloped land at a cost of between Rs. 500 to Rs. 2000. After developing the land, what is the market price?

Shri Porus Mehta: The price is about Rs. .10,000 per acre or even more than that.

Sardar Panjhazari: How much you spend on the land for development?

Shri Porus Mehta: Crores of rupees. It is shown in our balance-sheets. We have been spending crores of rupees for putting manure, chemical fertilisers, building channels, digging, levelling, research work, and also for providing schools and other amenities to the people. Fifteen to twenty lakhs we are spending every year.

Shri Kashi Ram Gupta: What will be the compensation that they will get?

Shri Porus Mehta: Rs. 100 or Rs. 150 per acre.

Shri Hem Raj: In the judgment it is observed:

> "The effect of our decision, however, would not be to entitle the petitioners to get any declaration that their lands which are held by an industrial undertaking are exempt from the operation of the Act, nor that the orders passed by the first respondent on the 28th of February 1963 are null and void and have no legal effect. The lands will vest in the State, but they will not be entitled to deal with the lands under any of the provisions of Section 28."

May I ask you, if they vest in the State and it gives the land back to the owners, have you any objection?

Shri Porus Mehta: The State gives it back to the owners? They cannot do it. They have no powers. And if they give back, we are exactly where we are.

Shri Hem Raj: Have you any objection?

Shri Porus Mehta: Of course we have the same objection that it destroys the industry.

Chairman: The same question was put earlier. That is all, thank you.

Shri Porus Mehta: We are very much obliged and thankful to you for the patient hearing you have given us.

(The witnesses then withdrew.)

The Committee then adjourned.

JOINT COMMITTEE ON THE CONSTITUTION (SEVENTEENTH AMENDMENT), BILL, 1963

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE CONSTITUTION (SEVENTEENTH AMENDMENT) BILL, 1963

Saturday, the 22nd February, 1964 at 14.40 hours

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

LOK SABHA

2. Shri Bibhuti Mishra
3. Shri Harish Chandra Heda
4. Shri Cherian J. Kappen
5. Shri Lalit Sen
6. Shri Harekrushna Mahatab
7. Shri Bibudhendra Misra
8. Shri A. V. Raghavan
9. Shri Raghunath Singh
10. Shri M. P. Swamy.

RAJYA SABHA

11. Shri Tarit Mohan Das Gupta
12. Shri Rohit Manushankar Dave
13. Shri Khandubhai K. Desai
14. Shri Nemi Chandra Kasliwal
15. Shri Nafisul Hasan
16. Shri S. D. Patil
17. Thakur Bhanu Pratap Singh.

Shri R. M. Hajarnavis, Minister of State in the Ministry of Home Affairs, was also present.

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVE OF THE PLANNING COMMISSION

Shri A. N. Seth, *Assistant Chief, Land Reforms Division, Planning Commission.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESS EXAMINED

SWATANTRA PARTY (PUNJAB), PATIALA

Shri C. L. Aggarwal.

Swatantra Party (Punjab), Patiala

Spokesman:

Shri C. L. Aggarwal

(Witness was called in and he took his seat)

Chairman: Whatever evidence you give is liable to be printed and published. Even if it is not published, if you want any portion to be treated as confidential, it will be distributed to our Members.

We have received your memorandum and distributed it to the Members. If you want to stress any particular point, you may do so.

Shri Aggarwal: According to the view held by my party, this Bill seeks to spread its tentacles too wide. It is wholly expropriatory in nature and also discriminatory. It is likely to prove ruinous to agriculture and agriculturists generally in Punjab.

The first thing I want to invite your attention to is a cutting from the *Tribune* dated the 21st February where the leading article says. This is the effect of land legislation so far enacted in the Punjab according to me. It says, Punjab stands preeminently among States which are regarded as having sizeably reduced output. The State Finance Minister admitted in the Punjab Council on February 18th that the production of the main agricultural commodities had fallen from 62.90 lakh tons in 1961-62 to 56·99 lakh tons. There is no doubt that food production in Punjab has suffered a serious setback.

Chairman: Is it due to land reforms or bad season?

Shri Aggarwal: This is due to the agricultural legislation.

Chairman: But it has not come into effect.

Shri Aggarwal: It has come into effect.

[There is so much of surplus area which is lying vacant and unutilised. Here is another instance to support the same proposition. This appears in the *Tribune* dated 20th February, 1964. It says:

> "Tardy implementation of land reform in Punjab—75 per cent of surplus area remains unutilised".

I do not agree with the reasoning given here, but this is the fact which I want to bring to your notice.

About under-utilisation of irrigation, I may draw your attention to some very important facts. I happen to be a member of the Economic Committee of the Punjab State. There it was brought to our notice that in the Punjab, the irrigation potential, particularly the tube-wells, is not being utilised at all, what to say of being under-utilised. We called the Director of Irrigation for examination in the committee and I put some questions. I asked, why is it that the tube-wells are being under-utilised? He gave two reasons: The cost of lifting the tube-well water was higher than other modes of irrigation. Secondly, here is a tube-well and there are different land-owners and tenants. The water has to pass to this field through so many other fields. But there is no way by which the agriculturists would agree to bring it through a common channel. So, the water remains unutilised altogether. Then I asked, what is the cost of construction of a tube-well? He gave an almost fabulous figure of Rs. 50,000 per tube-well. I asked why so much money has been sunk by the State in building so many tube-wells all over the country when the water remains unutilised. He said, this money came from America by way of aid and if we had not accepted it, it would have to be returned. This is a colossal waste of money —accepting aid knowing that it will not be utilised.

There are one or two other instances. There is what is known as the Utilisation of Lands Act in Punjab. I know of a particular case which I conducted as an advocate and filed a writ petition. Affidavits were filed to the following effect: In a

particular area in the Karnal District, for instance, most of the peasantry were Hindus and there were very few Sikh peasants in that locality. One of the ministers of the State of Punjab managed to capture a substantial portion of the land in that village under the Utilisation of Lands Act and gave it away for cultivation for a number of years to a co-operative society formed of Sikh peasants called from Amritsar District. The people of that locality were sorely aggrieved by this action. They said it was not proper for any Minister, on communal grounds, to bring peasantry from his own district and settle them in another district. It is likely to create trouble. Instances of this kind have taken place in the Punjab. More and more power has been assumed by the Government of Punjab and it is being used in such a manner as to do injury to the public, to political causes as well as to the peasantry in general.

As a matter of fact, this is the way these Acts are being worked. The standpoint of the Swatantra Party in the Punjab is that we do not believe either in ceilings or in this kind of security of tenure provided to peasants or tenants. We think that security can be provided by giving a minimum holding to agriculturists. We do not believe in an under-fed, half-starved and more or less unemployed agriculturist.

Chairman: What is the minimum holding, according to you?

Shri Aggarwal: It should be at least 5 acres.

Shri Raghunath Singh: What is it at present?

Shri Aggarwal: Not even half an acre is the average holding. The maximum ceiling is 30 standard acres.

Shri Raghunath Singh: From where will land come?

Shri Aggarwal: Land will come by creating a free market for land. For instance, I am the owner of some lands in some villages of one of the districts of Punjab. I want to sell away my land. My difficulty is that I cannot sell my land because people say that they cannot purchase my land unless I give them vacant possession of the land. I have tenants on my land and I am unable to evict them. They are not prepared to work in the way I want them to work. They have no means to get tractors or the new implements of cultivation. They will not buy good seeds or take seeds from me. They are not able to show any increase in production. Therefore, I want to part with the land, but I am helpless and the land is lying where it is without any improvement during the last 16 years.

Shri Kasliwal: Give the land to the tenants.

Shri Aggarwal: That you can do. If everyone is prepared to part with his land, I am also prepared to do that voluntarily and willingly. But I am not in favour of the State snatching somebody's property and making property rights insecure. That will have very serious repercussions.

Shri Khandubhai Desai: Therefore, fundamentally you are opposed to land reforms.

Shri Aggarwal: This is no land reform, to my mind. What we call land reform is not interference with tenures, with the rights to property. By land reforms we should try to reduce the pressure of population on land and provide every tenant, every peasant, every farmer other means of livelihood. You must ensure a better standard of living by removing the pressure of population on land and giving the peasants some other side jobs, some industrial training and removing them from the villages to towns.

Shri Khandubhai Desai: What will they do in the towns?

Shri Aggarwal: If the State wants, let it give encouragement to the farmers by absorbing them in different industries. As a matter of fact, during the transition period some

suffering is bound to be there. Even now there is suffering. You have little knowledge of the suffering which our peasantry is undergoing. I cannot imagine any worse suffering if they are removed from the villages to towns.

Shri Raghunath Singh: You want a landless population?

Shri Aggarwal: Give land to everybody if you have it. As a matter of fact, my view is that all means of production can be held only by a few. They cannot be held by everybody. Take the case of machinery. Can everybody own big machinery? In the same way, land is a means of production. Entrepreneurial ability is something which everybody cannot have. Therefore, if these things cannot be shared, then why have mass equality only in the case of possession of land? This will ruin our agriculture.

Shri Raghunath Singh: You said that you are holding some land. Have you ever cultivated it with your own hand?

Shri Aggarwal: I have not.

Shri Raghunath Singh: Then you do not have any actual experience.

Shri Aggarwal: I am prepared to employ B.Sc's in agriculture, highly qualified persons who know everything about agriculture and give them proper assistants.

Shri Raghunath Singh: So, the stand of the Swantantra Party is a policy of *laissez faire*.

Shri Aggarwal: No. We want that the peasantry should have a minimum holding, they should have better means of livelihood. We have the welfare State idea introduced in England and America. Perhaps there is more State interference in some matters in America than even in England. But it is that kind of State interference which gives to the people more than it gets from them. As a matter of fact, even our Shastras have said that it is like the Sun's rays taking water from dirty places and giving it back to the people in the form of rain. It is that kind of a function that the State has to perform. If we take money by way of taxation from the people we must give them greater benefits than they are enjoying at present. Therefore, if we give them a minimum holding, if we provide them with a minimum standard of living by giving them back what we get from them rather than pocket it ourselves, we can be proud of having done something. The kind of socialistic pattern that we are introducing or that we believe in is not the kind of socialistic pattern that exists in those countries. Take, for instance,.....

Chairman: We are not concerned with all that.

Shri Kasliwal: How many acres of land do you possess?

Shri Aggarwal: I possess about 3 acres of land in two villages. Here is another very important point. The consolidation law provides for consolidating one man's holding in one area Formerly, my land was in four blocks. Even after consolidation, it is in four blocks. The only difference is that my best lands have been put into other people's shares and worst land has been given me because I could not be present when the evaluation was made.

Shri Kappen: You say that the pressure on land must be reduced. If so, people like you, lawyers, who earn money by the legal profession, should not be allowed to invest money on land because land should not become a source of investment. If the land is given to the tiller, will it not reduce the pressure on land?

Shri Aggarwal: My conception of a tiller is different from that of an old tiller. My conception of a tiller is not the same tiller with the wooden

plough, with the same old *kurta* and *dhothi*, half famished, not doing anything most of the time. My idea of a tiller is that of Sir Ganga Ram, who by his initiative, by his knowledge, by his capacity, spent money on land and converted sand into gold. That is my conception of a tiller. The old days of the tiller are gone. If we want to modernise the country, as Shri Jawaharlal has himself been saying, we must modernise our peasantry.

Shri Kappen: According to you, the tiller of the land is not the person who actually tills it.

Shri Aggarwal: According to my view of looking at things, nobody in the wide world tills the land. It is the tractor or the machinery that tills the land; not man. A man is required only to press a button. We are going to modernise agriculture.

Shri A. V. Raghavan: You have said that production has gone down because large areas of land are lying fallow. Is it because that land is resumed by the Government under the Act?

Shri Aggarwal: Government has prescribed a certain maximum ceiling on land. Suppose a person possesses hundred acres of land and the ceiling is 30 acres. He can keep 30 acres that is reserved for him. But if he does not reserve the 30 acres prescribed by law, the whole of the land is declared surplus.

Shri A. V. Raghavan: Has any land been resumed yet?

Shri Aggarwal: That land is held at the disposal of the State.

Chairman: Your complaint is that the surplus land has not been distributed?

Shri Aggarwal: It cannot be distributed. Firstly, there is nobody to cultivate it. They do not find tenants for it.

Chairman: There are people who can cultivate them.

Shri Aggarwal: They will not come forward. I know of two reports on agriculture, one only recently under the present Government and the other, during the British days, called the Linlithgow Committee of 1929.

Chairman: That is old story.

Shri Aggarwal: Both of them were unanimous in their conclusions. Further, very recently, only a few months back, I read it in the newspapers that the greatest bane of our peasantry is that it has no desire to improve its status. That is the greatest trouble.

Shri S. D. Patil: Since you do not believe in ceiling and the so-called land reforms, what is your suggestion for boosting agricultural production? When there is such vast idle human power available, would you suggest mechanisation of agriculture?

Shri Aggarwal: I may invite your attention to one law on increase of wealth in growing country. It is an old law, called Petty's law, which says that the wealth of a country increases as the country passes from primary to tertiary industries. It is generally admitted that the greatest difficulty in our country of the peasantry is that there is too much of pressure of population on land. The low standard of living is due to a big population depending on a small area of land. The low standard of living leads to still greater increase in population, and that greater increase in population leads to a still further fall in the sandard of living. This is a vicious circle.

Shri S. D. Patil: Have you ever read anything about land reforms in Japan where land is distributed on an intensive scale?

Shri Aggarwal: Even if you distribute the land, there are many tillers who may not take interest in land.

At the same time, there are others who, strictly speaking, may not be tillers but who have the time, energy and money to get a better return from land. So, what I say is that nobody can arrogate to himself the function of distributing land. I am opposed on principles and on ideology to any kind of distribution or doling out land by the State to the people. What we call nationalisation nowadays is not really nationalisation. It is either governmentalisation or, perhaps in my State, Kaironisation.

Shri Kappen: How does the definition affect you? Under the Punjab Security of Land Tenure Act, land is already an "estate" and so protected. How does the present amendment affect you?

Shri Aggarwal: Firstly, inasmuch as the Seventeenth Amendment confers constitutional validity to all the present legislations which have so far been enacted, it affects my state. Secondly, the latter part of the amendment brings within the scope of the word "estate" all kinds of land with which the rural population has anything to do. Any immovable property, house, hearth, home, everything is brought under the definition. Please read the last two lines of the definition.

Shri Kappen: Under the existing Act also all the land is "estate".

Shri Aggarwal: Not all the land. Formerly, it was only agricultural land or land utilised for purposes subservient to agriculture. Now, even the hearth and home, every bit of immovable property with which any cultivator either as a tenant or as a labourer or landlord has anything to do, everything somes into the hands of one man, the State, to dole out in whatever way it likes to whomsoever it likes. Naturally, we will dole out only to our own kith and kin. I will have the same weakness which most of my brethren have to dole out to my own people first and then to others.

Chairman: Anyhow, you are not depending on land. So, you need not have any worry on this score. You can dispose of your land.

Shri Aggarwal: That is exactly what I am saying. If there is a free market for land, it will, I guarantee you, produce ten times more than what it does now. Give me the power.

Chairman: So, you are opposed to land reforms because you are not getting a higher price for your land?

Shri Aggarwal: No, no. Not for that reason.

Chairman: In any case, you are not growing anything personally even now.

Shri Aggarwal: Because my hands are tied. I cannot evict my tenants nor can I sell my land because nobody is prepared to buy land unless vacant possession is given, as a result of which the productivity of land has gone down very much. Land reforms means making two blades of grass grow where one grows before.

(The witness then withdrew).

The Committee then adjourned.

GMGIPD—LSI—2081 (B) L.S.—20-3-64—900.