Vora Saiyedbhai Kadarbhai (a Partnership Firm) Vs. Saiyed Intajam Hussen Sedumiya and ors.

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Court : Gujarat

Decided On : Dec-17-1980

Reported in : (1981)22GLR596

Judge : S.H. Sheth and; G.T. Nanavali, JJ.

Appellant : Vora Saiyedbhai Kadarbhai (a Partnership Firm)

Respondent : Saiyed Intajam Hussen Sedumiya and ors.

Judgement :

S.H. Sheth, J.

1. This petition raises a number of questions of law of wide importance under The Gujarat Rural Debtors Relief Act 1976, which came into force on 15th August 1976. The Act wiped off the debts of certain categories of 'debtors' and scaled those of certain other categories Respondents Nos. 1 and 2 claimed to be 'marginal farmers' or 'small farmers' within the meaning of those expressions assigned to them under the Act and applied to the Debt Settlement Officer for extinguishment of the debt which they owed to the petitioner. It is alleged that respondents Nos. 1 and 2 sold off survey No. 368 on 12th August 1977 that is to say, after the Act came into force. On 14th December 1978, the Debt Settlement Officer held that respondents Nos. 1 and 2 were 'small farmers' on the appointed day within the meaning of that expression assigned to it under the Act and therefore, were 'debtors' within the meaning of the Act. After having considered the merits of the case, he declared that the entire debt which respondents Nos. 1 and 2 owed to the petitioner was extinguished. As a consequence of the declaration which he made, he ordered the petitioner to deliver possession of the land which was mortgaged by respondents Nos. 1 and 2 to the petitioner. It is not in dispute that the land which was mortgaged by respondents Nos. 1 and 2 to the petitioner was, under agreement between the parties, built upon by the petitioner. The question arose as to what would happen to he building which the petitioner has constructed upon the land in question. The Debt Settlement Officer directed the petitioner to apply to the Civil Court for compensation if it was permissible for him to do so.

2. The petitioner appealed to the Appellate Authority against that order. On 19th July 1979, the Appellate Officer dismissed the appeal. It is that order which is challenged in this writ petition.

3. Mr. N.R. Oza who appears on behalf of the petitioner has raised before us several contentions. They are as follows:

(1) The Act enacted by the President in pursuance of the power conferred upon him under the Gujarat State Legislature (Delegation of Powers) Act, 1976 was beyond the legislative competence of the State Legislature.

(2) At the time when the impugned Act was enacted by the President, the State of Gujarat was under President's Rule and the President could not have enacted the impugned Act without consulting the Consultative Committee of Parliament. Inasmuch as the President did not do so, the impugned Act was not a valid piece of legislation.

(3) Section 14 of the impugned Act is violative of Articles 19(1)(f), 19(1)(g) and 31 of the Constitution and is not saved by the Forty Second Amendment. In case it is held that Forty Second Amendment saves it, Forty Second Amendment itself is ultra vires Article 368 of the Constitution.

(4) Section 14 is not protected by Forty-fourth Amendment. If it is held that it is saved by 44th Amendment. Forty-fourth Amendment is ultra vires Article 368.

(5) Section 14, in any case, violates Article 300A.

(6) Section 14, upon its true interpretation, is confined to properties which are agricultural lands and does not extend to the other types of immovable properties.

(7) Neither on the date when respondents Nos. 1 and 2 made an application for adjustment of their debts nor on date of the decision of the Debt Settlement Officer, respondents No. 1 and 2 were 'marginal farmers' or 'small farmers'. Therefore their application was not maintainable.

(8) The transaction between the petitioner and respondents No. 1 and 2 by virtue of which respondents No. 1 and 2 became petitioner's 'debtors' was a transaction of usufructuary mortgage. Therefore, respondents No. 1 and 2 had no personal liability to pay the debt. Therefore, they were not 'debtors' within the meaning of that expression given in the Act.

(9) The land in question was not situated in a 'rural area'. Therefore, the impugned Act did not apply to it.

4. We now turn to the first contention which has been raised by Mr. Oza on behalf of the petitioner. Mr. Oza has contended that the Legislature of the Gujarat State did not have competence to enact the impugned Act and that, therefore, the President in exercise of the powers conferred upon him by Parliament under Gujarat State Legislature (Delegation of Powers) Act, 1976 also did not have competence to enact the impugned Act. He has invited our attention to two entries, in the State List in the Seventh Schedule to the Constitution. They are Entries 30 and 18. Entry 30 reads as follows:

Money-lending and money-lenders; relief of agricultural indebtedness.

Entry 18 reads as follows:

Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement end agricultural loans; colonization.

Mr. Oza has argued that the impugned Act grants relief not only in respect of agricultural indebtedness but also in respect of indebtedness of persons who have nothing to do with agriculture. So far as Entry 18 is concerned, it relates to land. Its amplification shows that rights in and over land, land tenures including the relation of landlord and tenant, the collection of rents, transfer and alienation of agricultural land, land improvement, agricultural loans and colonization are all included within the broad concept of 'land'. It is not necessary for us to examine whether the impugned Act falls either under Entry 18 or under Entry 30, firstly because irrespective of whether it falls either under Entry 18 or Entry 30, it could have been enacted by the State Legislature and, therefore, by the President when the State was under the President's Rule. Secondly, relief of agricultural indebtedness, is wide enough to extend its arms to secured debts as well as unsecured debts. Merely because a debtor has incurred debt, repayment of which is secured by a transaction in an immovable property, may be the land, it does not necessarily mean that the impugned legislation falls under Entry 18. Thirdly, as we shall presently show, the Supreme Court has held that legislation relating to relief of indebtedness falls under Entry 30. On account of these reasons, it is not necessary for us to deal at length with the connotation and amplitude of Entry 18 in the State List.

5. It is however, necessary to record the arguments which Mr. Oza has advanced on behalf of the petitioner.

According to him, the very fact that 'relief of agricultural indebtedness' has been separately specified in Entry 30 in the State List means that relief of indebtedness in general dose not fall within the amplitude of the expression 'money-lending and money-lenders'. If it was the intention of the Founding Fathers that the expression 'money-lending and money-lenders' should have such a wide and all embracing connotation, it was unnecessary for them to specify the relief of agricultural indebtedness as a separate subject in Entry 30 in the State List. According to Mr. Oza, since separate specification of 'relief of agricultural indebtedness' in Entry 30 shows that it is not one of the matters falling within the expression 'money-lending and money-lenders', there is no reason to believe that relief of non-agricultural indebtedness forms a part of the expression 'money-lending and money-lenders'. The argument which Mr. Oza has raised has some substance. We are bound by the decision of the Supreme Court in this behalf. However, on a plain reading of Entry 30 in the State List, it appears to us that separate specification of 'relief of agricultural indebtedness' in that Entry means that relief of agricultural indebtedness does not fail within the amplitude of 'money-lending and money-lenders'. Since relief of agricultural indebtedness does not fall within the amplitude of the expression 'money lending and money-lenders', there is no reason to believe that relief of non-agricultural indebtedness falls within the amplitude of 'money-lending and money-lenders'.

6. Looking at it from a different angle, it appears to us that the Founding Fathers specified two distinct subjects in Entry 30. One subject was 'money-lending and money-lenders' and another subject was 'relief of agricultural indebtedness' and conferred upon the State Legislature competence to make a law relating to 'money-lending and money-lenders' as well as 'relief of agricultural indebtedness' but did not confer upon it the competence to make a law in regard to 'relief of non-agricultural indebtedness'. If the Founding Fathers had thought of conferring upon the State Legislature competence to make a law relating to relief of indebtedness of all-agriculturists as well as non-agriculturists-nothing would have been easier for them then to say 'relief of indebtedness' instead of saying 'relief of agricultural indebtedness' as they did. Entry 30, therefore, produces before us a two-fold picture, one of which relates to 'money-lending and money-lenders' and another relates to 'relief of agricultural indebtedness'. The very fact that so far as relief of indebtedness is concerned, it has been confined to agriculturists suggests that state legislature does not have the legislative competence to enact a law relating to relief of indebtedness of non-agriculturists.

7. The learned Advocate-General who appears on behalf of the State of Gujarat has argued that the expression 'money-lending and money-lenders' is very wide and comprehensive and that it by itself embraces within its sweep 'relief of indebtedness'. According to him, it was unnecessary for the Founding Fathers independently to specify the 'relief of agricultural indebtedness' in Entry 30 in the Slate List. Proceeding further, he has argued that merely because the Founding Fathers have out of the abundant caution specified the 'relief of agricultural indebtedness' as an independent subject in Entry 30 of the State List, it does not mean that the expression 'money-lending and money-lenders' will not take within its sweep 'relief of indebtedness'. We are not impressed by the argument which the learned Advocate-General has raised before us.

8. Next argument which the learned Advocate-General has raised is that the word 'agricultural' in the expression 'relief of agricultural in debtedness' is synonymous with or equivalent to 'rural'. In other words, he wants us to read 'relief of agricultural indebtedness' as 'relief of rural indebtedness'. He has tried to fortify this argument of his by stating that rural society in India consists principally of agriculturists and is dominated by agriculture. According to him, therefore, 'agriculture, indebtedness' means 'rural indebtedness'.

9. The two arguments raised by the learned Advocate-General do not appeal to us. We say so because we cannot attribute to the Founding Fathers an intention to repeat something which they have already said. A statute never uses superfluous words to which no useful and exclusive meaning can be assigned in the context of that statute. If that is true of a statute, it is equally true of the Constitution - the fundamental law of the land. It is difficult to imagine that the Constitution which lays down basic norms of life and enshrines basic moral values will use tautological language or will go on repeating what it has said elsewhere, That is the reason why the first argument raised by the learned Advocate-General does not appeal to us.

10. The second argument also does not appeal to us because if the Founding Fathers had meant to confer upon the State Legislature competence to make a law relating to the 'relief of indebtedness' of all, it could as well have said 'relief of indebtedners.' If they had meant to confer competence upon the State Legislature to make a law relating to 'relief of rural indebtedness', they could have as well said so. The very fact that they did not use the word 'rural' in place of 'agricultural' and the fact that they did not remove the word 'agricultural' from the expression 'relief of agricultural indebtedness' in Entry 30 clearly show that what they had in mind was that the State Legislature would be able to make a law relating only to 'relief of agricultural indebtedness'. It cannot be gainsaid that rural society in India is predominantly engaged in agriculture and is dominated -by agriculture. However, rural society does not consist merely of agriculturists. There are different types of non-agriculturists, as for example businessmen, public-servants, private employees, self-employed persons following other vocations such as barbers, carpenters, blacksmithe, tailors and so on. In our opinion, 'agricultural indebtedness' means indebted ness of those who are engaged in agriculture and for whom agriculture is their principal source of livelihood. Agriculture, as we understand it, is tillage of soil and all operations connected therewith. 'Agricultural indebtedness' does not, in our opinion, mean indebtedness arising out of debt incurred in connection with agricultural operations only. Acceptance of the later concept will mean that an agriculturist may be an agricultural debtor in so far as he has incurred debts for the purpose of his agricultural activities such as tillage of soil, purchase of a plough, purchase of a pair of bullocks, purchase of seeds or sinking of an irrigation well and may also be a non-agricultural debtor in so far as he has incurred debts for other absolutely non-agricultural purposes such as marriage of his children, construction of a house other then a farm house or purchase of cloth. Therefore, irrespective of the purpose for which debt has been incurred, a debt is an agricultural debt if it has been incurred by a person who earns his livelihood from agriculture.

11. So far as we are concerned, it appears clear to us that Entry 30 brings into bold relief two separate subjects: one is 'money-lending and money-lenders' and second is 'relief of agricultural indebtedness' and confers upon the State Legislature competence to make a law relating to 'money-lending and moneylenders' and 'relief of agricultural indebtedness' as distinguished from 'relief of indebtedness' or 'relief of rural indebtedness'.

12. The argument which Mr. Oza has raised is, therefore, not with-out any substance. It has relevance in the instant case in this way. Section 3 of the impugned Act discharges or scales down the debts of 'marginal farmers', 'rural labourers', 'rural artisans' and 'small fanners'. They are also included within the definition of 'debtor' given in Section 2(d). It defines 'debtor' in the following terms:

debtor' means a marginal farmer, a small farmer, a rural labourer or a rural artisan, who on the appointed day is in debt.

'Marginal farmer' has been defined by Section 2(g) in the following terms:

marginal fanner' means a person.

(i) who holds land in any of the villages specified in column 3 of the Schedule not exceeding,

(a) the extent of land specified against such village in column 4 of the Schedule, if such person does not belong to a Scheduled Tribe;

(b) twice the extent of land so specified, if such person belongs to a Scheduled Tribe, and

(ii) who earns his livelihood principally by cultivating such land.

'Land' has been defined by Section 2(f) in the following terms 'Land' means land which is used or capable of being used for the purpose of agriculture and includes the sites of farm buildings appurtenant to such land.' 'Agriculture' has been defined by Section 2(a) as follows: 'Agriculture' includes horticulture, the raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or part thereof for the

grazing of his cattle, the use of any land, whether or not an appendage, to rice or paddy land, for the purpose of rabmanure, dairy farming, poultry farming, breeding of live stock, and the cutting of wood.' Pausing here for a moment, we may observe that a law made by the State Legislature giving the 'marginal farmer' as defined by Section 2(g) read with Section 2(f) and 2(a), relief of indebtedness will certainly fall within the meaning of the expression 'relief of agricultural indebtedness' used in Entry 30 in the State List. A 'small farmer' has been defined by Section 2(p) in the following terms:

small farmer' means a person-

(i) who holds land in any of the villages specified in column 3 of the Schedule not exceeding-

(a) the extent of land specified against such village in column 5 of the Schedule, if such person does not belong to a Scheduled Tribe;

(b)twice the extent of land so specified, if such person belongs to a Scheduled Tribe; and

(ii) who earns his livelihood principally by cultivating such land.

No doubt is left in our minds when we read the definition of 'small famer' given in Section 2(p) with the definition of 'land' given in Section 2(f) and the definition of 'agriculture' given in Section 2(a) that any law which a State Legislature enacts for granting 'relief of indebtedness' to 'small farmers' will be a law which will fall within the compass of the expression relief of agricultural indebtedness.'

13. Let us now turn to the two expressions 'rural labourer' and 'rural artisan' which are also included within the definition of 'debtor' 'Rural artisan' has been defined by Section 2(i) in the following terms:

'rural artisan' means a person who, being resident in a rural area, earns his livelihood principally by practising any craft in such area by his own labour or by the labour of the members of his family, and

(i) who either does not hold any land, or

(ii) who holds land to the extent specified in paragraph (a) or, as the case may be, paragraph (b), whichever is applicable, of Sub-Clause (i) of the Clause (g), but who does not earn his livelihood principally by cultivating such land.

The expression 'rural area' used in Section 2(1) has been defined by Section 2(k) in the following terms:

'rural area' means an area which, for the time being, is not within the limits of-

(i) a city constituted under Section 3 of the Bombay Provincial Municipal Corporations Act, 1949, as in force in the State of Gujarat,

(ii) & municipal borough, or a notified area constituted, or deemed to be constituted, under the Gujarat Municipalities Act, 1963;

(iii) a contonment declared as such under the Cantonments Act, 1924.

Definition of 'rural artisan' clearly discloses that he has hardly anything to do with agriculture. He is a person who does not hold any land and who does not earn his livelihood principally by cultivating land if he holds it to the extent specified in paragraph (a) or (b) of Sub-clause (i) of Clause (g) of Section 2. It is difficult to imagine that a person who does not hold any land or a person who does not earn his livelihood principally by cultivating land can be called an 'agriculturist'.

14. Let us now turn to the definition of 'rural labourer'. It is given in Section 2(m).

'rural labourer' means a person who, being resident in a rural area earns his livelihood principally by manual

labour from any of the following occupations, but does not hold any land for any such occupations, namely:

(i) farming including cultivation or tillage of soil or horticultural operations,

(ii) cutting of wood,

(iii) dairy farming,

(iv) poultry farming,

(v) breeding of live stock,

(vi) any operation performed on a farm as incidental to preparation, transport, delivery or storage, for marketing of any of the products of any of the occupations mentioned in Sub-clauses (i), (ii), (iii), (iv) and (v).

We have no doubt in our minds that 'debtors' falling under the category specified in Section 2(m)(i) Section 2(m)(v) and 2(in)(vi) can be termed as 'agriculturists and any relief of indebtedness granted to them will fall within the meaning of 'relief of agricultural indebtedness'. We have looked at the meaning of 'agriculture' given in The Oxford English Dictionary, Vol. 1, 1970 Edition. The following are the meaning assigned to it.

The science and art of cultivating the soil; including the allied pursuits of gathering in the crops and rearing live stock; tillage, husbandry, fanning (in the widest sense),

It is clear, therefore, that 'breeding of live stock' is a part of 'agriculture'. Therefore, in our opinion, whereas a 'marginal farmer', a 'small farmer', a 'rural labourer' engaged in farming including cultivation or tillage of soil, horticultural operations, breeding of live stock and operations described in Section 2 (m)(vi) will be an 'agriculturists'; the rest are unlikely to belong to the class of 'agriculturists. Wood-cutters can hardly be termed as 'agriculturists'. Those who are engaged only in dairy farming poultry farming arc not agriculturists. Therefore, if we are left to our own in deciding whether the State Legislature was competent to make the impugned law under Entry 30, we would have said that whereas it was competent to make a law relating to the relief of indebtedness of marginal farmers, small farmers and rural labourers engaged in farming including cultivation or tillage of soil, or horticultural operations, breeding of live stock, and operations described in Section 2(m)(vi) it was not competent to make the impugned law under Entry 10 in relation to rural artisans defined in Section 2(1) and rural labourers who were engaged only in cutting of wood, dairy farming and poultry farming. Relief of indebtedness to such persons can be given only by Parliament by making a law under Entry 97 in the Union List in the Seventh Schedule to the Constitution.

15. However, the matter is no longer open to debate because a similar law made by Maharashtra Legislature has been upheld by the Supreme Court in Fatehchand Himmatlal and Ors. etc. v. State of Maharashtra : [1977]2SCR828 . In that decision, the legislative competence of the Maharashtra Legislature to enact Maharashtra Debt Relief Act, 1975, was challenged. It was contended that it did not fall within the sweep of Entry 30 in the State List. Before we make a detailed reference to the decision of the Supreme Court, it is necessary to have a brief look at the Maharashtra Act. Section 2(f) of the Maharashtra Debt Relief Act, 1975 defines 'debtor' in the following terms:

'debtor' means a marginal farmer, rural artisan, or rural labourer whose total income from all sources did not exceed two thousand and four hundred rupees during the year immediately before the 1st day of August 5975 and a worker whose total income from all sources did not exceed, if living in an urban area, six thousand rupees during the year immediately before the said date, and if living elsewhere, four thousand and eight hundred rupees during that year.

This definition makes it clear that four categories of persons were included in the definition of 'debtor'. 'Marginal farmer' who is one of them has been defined by Section 2(h) as follows:

'marginal farmer' means an agriculturist who holds land measuring not more then one hectare of unirrigated

land and; includes an agriculturist who cultivates as a tenant or share cropper land measuring not more then one hectare of unirrigaled land.

'Rural artisan' has been defined by Section 2(k) in the following terms:

'rural artisan' means a person who principally earns his livelihood in a rural area by practising any craft either by his own labour or with the help of labour of the members of his family but does not include an artisan who resides in an urban area.

'Rural labourer' has been defined by Section 2(1) in the following terms:

'rural labourer' means a person who-

(i) does not hold any land in a rural area,

(ii) may or may not have any homestead therein, and

(iii) earns his livelihood principally by manual labour but does not include any such labourer residing in an urban area and a rural artisan,'

'Small farmer' has been defined by Section 2(m) in the following terms:

'small farmer' means an agriculturist who holds land measuring more then one hectare of unirrigated land but less then two hectares of such land and who cultivates personally such land and includes an agriculturist who cultivates as a tenant or a share cropper land measuring more then one hectare of unirrigated land but not more then two hectares of such land.

These four definitions given clearly show that whereas a 'marginal farmer' and a 'small farmer' as defined by the Maharashtra Act fall within the category of agriculturists, a 'rural artisan' and a 'rural labourer' will not fall under that category. Therefore, ordinarily, any law relating to 'relief of indebtedness' for them will not be a law within the meaning of the expression 'relief of agricultural indebtedness' used in Entry 30 in the State List. Yet, the Supreme Court in Fatehchand's case (supra) has upheld the validity of that law and held that the Legislature could make it under Entry 30 in the State List. Paragraph 54 of the report is the only material paragraph for this purpose. In the subsequent paragraphs, the Supreme Court has dealt with the question of repugnancy between the Gold Control Act, a parliamentary statute, and the Maharashtra Debt Relief Act, 1975. We are not concerned with that question in this case. The Supreme Court has made the following observations with reference to Entry 30.

Entry 30 in List II is money-lending and money-lenders, relief of agricultural indebtedness, if commonsense and common English are components of constitutional construction, relief against loans by scaling down, discharging, reducing interest and principal, and staying the realisation of debts will, among other things, fall squarely within the topic. And that, in a country of hereditary indebtedness on a colossal scale. It is commonplace to state that legislative heads must receive large and liberal meanings and the sweep of the sense of the rubrics must embrace the widest range. Even incidental and cognate matters come within their purview. The whole gamut of money-lending and debtliquidation is thus within the State's legislative competence. The reference to the Rajahmundry Electricity case : [1954]1SCR779 , is of no relevance. Nor is the absence of the expression 'relief in Entry 30, List II, of any moment when relief from money-lenders is eloquently implicit in the topic. Sometimes, arguments have only stated to be rejected.

It is clear that the Supreme Court has upheld the legislative competence of the Maharashtra law under Entry 30. It is true that the distinction made by Mr. Oza in the instant case was not made in the case before the Supreme Court. However, we are bound by the decision of the Supreme Court. In paragraph 56 of the report, 'this is what has been stated: 'Without fear of contradiction, we may assert that Act. 246(3) read with Entry 30 in List II, empowers the State to make the impugned law.' Since the Supreme Court has upheld the validity of

the Maharashtra Act under Entry 30 in the State List, even though it, inter alia, gives relief of indebtedness to-non-agriculutrists, we must hold that the impugned Act was within the legislative competence of Gujarat State Legislature and, therefore, within the legislative competence of the President during the President's Rule by virtue of the Gujarat State Legislature (Delegation of Powers) Act, 1976.

16. The next decision to which oar attention has been invited by Mr. Oza is in Pathumma and Ors. v. State of Kerala and Ors. : [1978]2SCR537 . In that case, Kerala Agriculturists Debt Relief Act, 1970, was challenged, inter alia, on the ground that it was not within the legislative competence of Kerala State Legislature So make that law. Paragraph 4 of the report shows that the Supreme Court has relied upon its earlier decision in Fatehchand's case (supra) in which the constitutionality of the Maharashtra Debt Relief Act. 1975, has been upheld even though it contains similar provisions. In paragraph 38 of the report, the Supreme Court has referred to the object of that Act. Its object is to remove poverty by eradicating rural indebtedness. In paragraph 57 of the report, it has been observed that the Kerala Act provides for the relief of indebted agriculturists in the State of Kerala. It was. therefore, within the legislative competence of the Kerala State Legislature. From the discussion in paragraph 57, it appears to us that the Kerala law relates to relief of indebtedness of the agriculturists. Therefore, the Supreme Court held that it fell within the purview of Entry 30 in the State List. In this connection, we may refer to the pertinent observation made in paragraph 58 of the report in which it is stated that the subject-matter of Entry 30 is not confined only to subsisting indebtedness but covers the necessity of providing relief to those agriculturists who have lost their immovable properties by Court sales in execution of toe decrees against them and have been rendered destitute. Referring to such agriculturists it has been observed that it makes no difference to an agriculturist merely because he has lost his immovable property. Proceeding further, the Supreme Court has observed that there is nothing in Entry 30 in the State List to show that the relief contemplated by it must necessarily relate to any subsisting indebtedness and cannot cover the question of relief to those who have lest the means of their livelihood because of the delay in providing them legislative relief. This decision does not clinch the issue which has been raised by Mr. Oza before us because it appears to us from the report that Kerala Act was enacted to grant relief to the agriculturists from indebtedness.

17. The learned Advocate General has invited our attention to the decision of the Andhra Pradesh High Court in Krishna Murthy and Ors. v. Govt of Andhra Pradesh : AIR1979AP85 . In that case, the constitutionality of Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1977, was challenged. It appears from that decision that the legislative competence of the Andhra Pradesh State Legislature to enact that law was challenged under Articles 14 and 19 of the Constitution. Since there was no constitutional challenge under Entry 30 in the State List, it is not necessary to refer to that decision in details at this stage.

18. Mr. G.A. Pandit who appears on behalf of debtors in some cases has invited our attention to the decision of the Madhya Pradesh High Court in Ramkrishan Agarwal and Anr. v. The Collector, Jabalpur and Ors. : AIR1977MP21 . In that case, the constitutionality of Madhya Pradesh Gramin Rin Vimukti Tathe Rin Sthagan Adhiniyam, 1975, was challenged under Entry 30 in the State List. In the context of Entry 30, the argument which was raised in that case was that the expression 'agricultural' indebtedness refers to debts incurred in connection with agriculture only so that, in every case, it will be a matter for trial whether the debt in incurred in connection with agriculture exclusively. That argument was negatived by Madhya Pradesh High Court, While doing so, the High Court observed that Entry 30 must be read as a whole so that the word 'agricultural' must be interpreted to harmonise it with 'money lending and money-lenders'. In their opinion, the framers of the Constitution have, by Entry 30, empowered the State Legislative to relieve agriculturists of their indebtedness. It means, according to them, that relief to agriculturists must be the true import of the expression. Irrespective of whether the indebtedness is agricultural or non-agricultural, all debts will fall within the scope of this Entry, if they are incurred by an agriculturist, whether in connection with agriculture or Otherwise. The view expressed by the Madhya Pradesh High Court is consistent with what we have stated in this decision. However, the question which has been raised by Mr. Oza before us remains unanswered by the decision. Does a debt incurred by a non-agriculturist fall within the scope and ambit of Entry 30 in the

State List? In light of the decision of the Supreme Court in Fatehchand's case (supra) with which we must respectfully agree, we turn down the first contention which has been raised by Mr. Oza on behalf of the petitioner.

19. The second contention which Mr. Oza has raised relates to the omission on the part of the President, during the President's Rule, to consult the Consultative Committee before enacting the impugned Act. So far as the factual situation is concerned, our attention has been invited by Mr. Oza to reasons for the enactment of the impugned Act. In regard to non-consultation, this is what has been stated in the reasons: 'In view of the urgency of the matter it is rot practicable to consult the Consultative Committee of Parliament on Gujarat Legislation. The measure is accordingly being enacted without reference to the Consultative Committee'. This paragraph clearly shows that the President had not consulted the Consultative Committee before enacting the impugned law. In the affidavit-in-reply riled on behalf of the State of Gujarat, it has been stated on this subject as follows:

With regard lo the comments made by the petitioner in this regard their there was no urgency with the name and it was practicable and possible to consult the Consultative Committee of Parliament on Gujarat Legislation, I submit that it is the prerogative of the President under the powers conferred on him under Article 35(1)(a) to decide whether it is expedient and proper to enact a law at a particular time and the opinion formed by the President is immune from challenge.

This reply to the contention raised by the petitioner is no reply at all. We shall presently show that the President was under a statutory obligation to consult the Consultative Committee before making any law for the State which was under President's Rule. Whether to comply with such a statutory obligation cannot be a matter of his prerogative and cannot be beyond challenge. Two absolute propositions stated on behalf of the State of Gujarat are, therefore, without any substance. In a democratic society which our Constitution brings into existence it is the will of the people matters. If the Parliament, therefore, requires that President before making a law for a State which is under President's Rule, shall consult the Consultative Committee, he must do so. It cannot be said that even though the Parliament casts upon him a statutory obligation to consult the Consultative Committee, he may or may not consult the Committee because it is a matter of his prerogative. No provision in the Constitution conferring such a prerogative upon the President has been pointed out to us. All legislative bodies, including the President, must act within the four corners of the Constitution.

20. Article 357(1)(a) provides in this behalf as under:

Where by a Proclamation issued under Clause (1) of Article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent.

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf.

Sub-clause (a) of Clause (1) of Article 357 provides for conferment of two kinds of power by Parliament upon the President: (1) power of the Legislature of the State to make laws, (ii) to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf. It cannot be gainsaid that Parliament can confer upon the President unconditionally the power of the Legislature of the State to make laws when a Proclamation of Emergency has been issued under Clause (1) of Article 356. If the Parliament can unconditionally confer power upon the President to make a law for the State under President's Rule, Parliament can also confer conditional power upon the President to do so or can qualify it.

21. Bearing this proposition in mind, let us now turn to the Gujarat State Legislature (Delegation of Powers) Act, 1976. Sub-section (1) of Section 3 provided as follows:

The power of the Legislature of the Slate of Gujarat to make laws, which has been declared by the proclamation to be exercisable by or under the authority of Parliament, is hereby conferred on the President.

Sub-section (2) of sec, 3 provided as under:

'In the exercise of the said power, the President may, from time to time, whether Parliament is or is not in session, enact, as a President's Act, a Bill containing such provisions as he considers necessary:

Provided that before enacting any such Act, the President shall, whenever he considers it practicable to do so, consult a Committee constituted for the purpose, consisting of thirty-four members of the House of the People nominated by the Speaker and seventeen members of the Council of States nominated by the Chairman.

It is clear, therefore, that if the President considers it practicable to consult the Consultative Committee, it is his obligation to do so before he makes a law for the State under President's Rule. The power to make law under President's Rule which was conferred by Parliament upon the President under Section 3 is, therefore, a qualified power. The condition precedent to the exercise of the Legislative power was ordinarily required to be satisfied before the President could make any law for the State during the President's Rule.

22. Mr. Oza has argued that the expression 'whenever he considers it practicable to do so' used in Sub-section (2) of Section 3 required the President to state reasons why, he thought, it was not practicable to consult the Consultative Committee whenever he did not consult the Consultative Committee. In the instant case, no reasons have been shown. Mr. Oza has argued that the use of the word 'consider' Jays down the test of objectivity. It does not lay down the test of subjective satisfaction. If, according to him, the word 'consider' lays down the test of subjective satisfaction, it will be rendered infructuous. Secondly, it has been argued by Mr. Oza that it is a safeguard which cannot be done away with except for valid reasons. He has invited our attention to two decisions to which it is not necessary to refer. It cannot be gainsaid that the word 'consider' means 'scrutinise-'. In our opinion, it was necessary for the State Government to show why the President did not think it necessary to consult the Consultative Committee befor he enacted the impugned law.

23. However, what is the effect of non-consultation in a case of the type? We do not think omission on the part of the President to consult the Consultative Committee as required by Section 3 was an illigality which required the impugned Jaw void ab initio. The requirement of consulting the Consulative Committee was nothing more then the requirement to be in touch with the democratic opinion obtaining in the State because in a democratic society no law which does not express the will of the people can be enacted. When the State is under President's Rule, it is reflected by the Member of the Consultative Committee. However, it is also reflected by the Parliament. Therefore, if the President fails to consult the Consultative Committee and enacts a law which is ultimately placed before the Parliament, then the requirement of enacting a law in consonance with public will is satisfied. Sub-section (3) of Section 3 of the Gujarat State Legislature (Delegation of Powers) Act, 1976, required that 'Every Act enacted by the President under Sub-section (2) shall, as soon as may be after enactment, be laid before each House of Parliament.' In the instant case, the impugned law was placed before the Parliament and the Parliament approved it. Thereafter the impugned law was amended by Gujarat State Legislature by Act 29 of 1977. It is clear, therefore, that the democratic requirement of consulting the people's representatives laid down by Section 3(2) was satisfied when Parliament consisting of the elected representatives of the people of the country approved it under Sub-section (3) of Section 3. In our opinion, therefore, omission on the part of the President to consult the Consultative Committee as required by Sub-section (2) of Section 3 was only an irregularity which was cured when the Parliament approved it under Sub-section (3) of Section 3 of the Gujarat State Legislature (Delegation of Powers) Act, 1976. The second contention which Mr. Oza has raised, therefore, is without any substance and is rejected.

24. The third contention which Mr. Oza has raised, is that Section 14 of the Act violates Articles 19(1)(f), 19(1)(g) and 31 of the Constitution and is not saved by Forty-second Amendment to the Constitution. According to him, if Forty-second Constitutional Amendment saves it, that amendment is ultra vires Article 368 of the

Constitution. It is not necessary to examine the latter part of this contention because we are examining the constitutional validity of Section 14 in light of Articles 19(1)(f), 19(1)(g) and 31. When the impugned Act was enacted, Article 19(1)(f) and Article 31 were on the statute book. In first Appeal No. 1072 of 1978 and others decided by a Division Bench of this Court on the 1st October 1979, Rajiv Ramanlal and Ors. v. Ashok Mill Ltd. 1979 (2)-XX (2) G.L.R. 464; it has been held that the constitutional validity of an impugned provision can be tested on the anvil of Article 19(1)(f) and Article 31 if the impugned provision was enacted at the time when those Articles were on the statute book. There is no doubt or dispute about the fact that Article 19(1)(f) and Article 31 were on the statute book on 15th August 1976 when Section 14 was enacted. Article 19(1)(f) conferred the following fundamental right upon the citizens: 'to acquire, hold and dispose of property'. Article 19(1)(g) confers the following fundamental right upon the citizens of the country: 'to practise any profession, or to carry on any occupation, trade or business'. Upon these fundamental rights, under Clauses (5) and 6 of Article 19, reasonsable restrictions could be imposed' in the interests of the general public'. Article 31(1) provided as under: 'No person shall be deprived of his property save by authority of law'.

25. We first proceed to examine the contention raised by Mr. Oza under Article 31. The impugned Act indeed deprives the creditors of their property. It is also not in dispute before us that moneys advanced by the creditors to the debtors are the property. The impugned law is the authority for depriving the creditors of their moneys. Mr. Oza has, however, relied upon Clause (2) of Article 31 which, inter alia, provided as under:

No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise then in cash.

Clause (2) of Article 31 applied to cases of compulsory acquisition or requisition of property. Clause (2) has to be read with Clause (2A) of Article 31. Clause (2A) circumscribed the scope of Clause (2) by showing what was compulsory acquisition or requisition of property within the meaning of Clause (2). It provided as follows:

Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithatanding that it deprives any person of his property.

In the instant case, the impugned law deprives the creditors of their property by extinguishing the debts owed by the debtors to them. It does not provide for compulsory acquisition or requisition of the property of the creditors because it does not transfer the ownership or right to possession of any property to the Stale or to a Corporation owned or controlled by the State. Therefore, what the impugned law does is to provide for extinguishment of the right of the creditors to their moneys by discharging debtors from the obligation to repay them to the creditors and not to compulsorily acquire or requisition any property. Therefore, Clause (2) of Article 31 did not have any application to the instant case.

26. Mr. Oza has, however, tried to vehemently argue that Clause (2) of Article 31 had a necessary link with Clause (1) of Article 31. The argument which Mr. Oza has expressed is not a correct argument. We may in this behalf refer to the decision of the Supreme Court in Madan Mohan Pathek and Anr. v. Union of India and Ors. : (1978)ILLJ406SC . It was a case under the Life Insurance Corporation (Modification of Settlement) Act, 1976. In the context of the contention which was raised under that Act, the first question which arose was whether annual cash bonus payable by Life Insurance Corporation to its employees was 'property' within the meaning of Article 31(1). The second question which arose related to the relationship between Clause (1) of Article 31 and Clause (2) of Article 31. On the first question, the Supreme Court has held that the 'property' cannot have one meaning in Article 19(1)(f), another in Article 31, Clause (1) and a third in Article 31(2). 'Property' must

have the same connotation. In all the three Articles and since these are constitutional provisions intended to secure a fundamental right, they must receive the widest interpretation and must be held to refer to property of every kind. Elucidating the concept of 'property' as expressed in Article 19(1)(f) and Clause (2) of Article 31, the Supreme Court has observed that it comprises every form of property, tangible or intangible, including debts and choses in action, such as unpaid accumulation of wages, pension, cash grant and constitutionally protected Privy Purse. Adverting to the second question which arose in that case, it has been observed by the Supreme Court in paragraph 35 as follows:

The majority view in The State of West Bengal v. Subodh Gopal Bose : [1954]1SCR587 , and Dwaikadas Shrinivas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd. : [1954]1SCR674 , was that Clauses (1) and (2) of Article 31 were not mutually exclusive but they dealt with same topic and the deprivation contemplated in Clause (1) was no other then the compulsory acquisition or taking possession of property referred to in Clause (2) and hence where the deprivation was so substantial as to amount to compulsory acquisition or taking possession. Article 31 was attracted. The introduction of Clause (2A) in Article 31 snapped the link between Clauses (1) and (2) and brought about a dichotomy between these two clause. Thereafter, Clause (2) alone dealt with compulsory acquisition or acquisitioning of property by the State and Clause (1) dealt with deprivation of property in other ways and what should be regarded as compulsory acquisition or requisitioning of property for the purpose of Clause (2) was defined in Clause (2A). It was as if Clause (2A) supplied the dictionary for the meaning of 'compulsory acquisition and requisitioning of property' in Clause (2). Clause (2A) declared that a law shall not be deemed to provide for the compulsory acquisition or requisitioning of property, if it does not provide for the transfer of the ownership or right to possession of the property to the State or to a corporation owned or controlled by the State. It is only where a law provides for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State that it would have to meet the challenge of Clause (2) of Article 31 as a law providing for compulsory acquisition or requisitioning of property. Whenever, therefore, the constitutional validity of a law is challenged on the ground of infraction of Article 31, Clause (2), the question has to be asked whether the law provides for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State.

In paragraph 36 of the report, the Supreme Court has observed as follows:

Now, whilst interpreting Article 31, Clause (2A), it must be remembered that the interpretation we place upon it will determine the scope and ambit of the constitutional guarantee under Clause (2) of Article 31. We must not, therefore, construe Clause (2A) in a narrow pedantic manner nor adopt a doctrinaire or legalistic approach. Our interpretation must be guided by the substance of the matter and not by lex scripta. When Clause (2A) says that in order to attract the applicability of Clause (2) the law must provide for the transfer of ownership of property to the State or to a corporation owned or controlled by the State, it is not necessary that the law should in so many words provide for such transfer. No particular verbal formula need be adopted. It is not a ritualistic mantra which is required to be repeated in the law. What has to be considered is the substance of the law and not its form. The question that is to be asked is : does the law in substance provide for transfer of ownership of property, whatever be the linguistic formula employed? What is the effect of the law : does it bring about transfer of ownership of property? Now, 'transfer of ownership' is also a term of wide import and it comprises every mode by which ownership may be transferred from one person to another. The mode of transfer may vary from one kind of property to another; it would depend on the nature of the property to be transferred. And moreover, the court would have to look to the substance of the transaction in order to determine whether there is transfer of ownership involved in what has been brought about by the law.

27. In State of Gujarat v. Shantilal Mangaldas and Ors. : [1969]3SCR341 the following observations have been made in paragraph 22 of the report. They have a vital bearing on this subject.

The following principles emerge from an analysis of Clauses (2) & (2A) : compulsory acquisition or requisition

may be made for a public purpose alone, and must be made by authority of law. Law which deprives a person of property but does not transfer ownership of the property or right to possession of the property to the State or corporation owned or controlled by the State is not a law for compulsory acquisition or requisition. The law, under the authority of which property is compulsorily acquired or requisitioned, must either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given. If these conditions are fulfilled the validity of the law cannot be questioned on the plea that it does not provide adequate compensation to the owner.

In that case, the Supreme Court was called upon to interpret the Constitution (Fourth Amendment) Act, 1955, in the context of the dispute which arose under the Bombay Town Planning Act, 1955.

28. These two decisions make it clear beyond any doubt that the question of fixing the compensation under Clause (2) of Article 31 arises only if the property is acquired by the State within the meaning of Clause (2A) of Article 31. In the instant case, the debts which were due to the creditors from the debtors have not been transferred to the State or to any corporation owned or controlled by the State. They have been merely extinguished. Therefore, Clause (2) read with Clause (2A) of Article 31 does not come into picture at all.

29. An attempt was made by Mr. Oza to refer to Article 31 A. Article 31A carves out an exception to Articles 14, 19 and 31. It saves laws which may be otherwise invalid under Articles 14, 19 and 31. Article 31A does not come into picture in the present case because the impugned Act is not invalid under Article 31. A part of the third contention raised by Mr. Oza, therefore, fails and is rejected.

30. We now turn to the constitutional challenge which is directed against Section 14 under Article 19(1)(f) and Article 19(1)(g). In fact, the challenge is directed not only against Section 14 but against Sections 3 and 14. The learned Advocates appearing for the creditors in other petitions have intervened in this case. Arguments were raised from amongst the intervenes by Mr. P.N. Dave and Mr. A.K. Mankad. They directed the challenge under Articles 19(1)(f) and 19(1)(g) against Sections 3 and 14 and also directed it under Article 14. We shall also answer in this judgment what was contended by the interveners. Article 19(1)(f) conferred upon every citizen the light to acquire, hold and dispose of property. Article 19(1)(g) confers upon every citizen the right, inter alia, to carry on business. Article 19(1)(f) as held by the Supreme Court in Madan Mohan Pathek's case (supra) applied to moneys. 'Money', it has been held in that case, is 'property'. It also cannot be gainsaid that to lend moneys, to earn interest and to recover principal and interest is business. It is true that non-institutional money-lending business is heavily looked down upon. Money-lending by itself is not a nefarious business activity merely because we have got not only in this country but in the world at large the system of institutional credit. It is only when money-lending is used as an instrument to squeeze a poor man and to exploit him that it becomes an undesirable activity. It is difficult to say that every non institutional credit in the shape of money-lending amounts to a nefarious business activity, We have no doubt in our minds that, barring the undesirable threads which have entered into the system of non-institutional credit, money-lending must be regarded as a business. It has been regarded as business by the Supreme Court in Fatehcliand's (supra). Bearing in mind, therefore, that money was 'property' within the meaning of Article 19(1)(f) and money-lending is 'business' within the meaning of Article 19(1)(g), let us now try to find out what has been done by the impugned Act. It is necessary to analyse the scheme of the Act in that behalf. Section 3 provides as follows:

Save as otherwise expressly presided in this Act and on and from the appointed day.-

(a) every debt outstanding against a debtor who is marginal farmer or rural labourer, or who is a rural artisan whose income does not exceed rupees 2,400 per year, shall be deemed to be wholly discharged;

(b) every debt outstanding against a debtor who is a small framer, or who is a rural artisan whose income exceeds rupees 2,400 per year but does not exceed rupees 4,800 per year, shall-

(i) in a case where any amount equal to or exceeding twice the amount of the principal has already been paid

by, or recovered from, such debtor before the appointed day, be deemed to be wholly discharged;

(ii) in any other case, be deemed to be reduced to one-half of the recognised debt;

Provided that the amount which remains to be paid by the debtor shall not exceed twice the amount of the principal.

Explanation 1.-For the purpose of this sub-section as well as Sub-section (3) of Section 8, 'income per year', in relation to a rural artisan, shall mean the average annual income of such artisan for the three years immediately preceding the appointed day....

It is not necessary to reproduce Explanation 2 to Sub-section (1) of Section 3. It is not material for the purpose of the present case. Sub-section (2) of Section 3 provides as follows:

Notwithatanding anything contained in the foregoing provisions, in no case shall a debtor be liable to pay to his creditor or creditors under Sub-clause (ii) of Clause (b) of Sub-section (1), an amount exceeding rupees 1, 400 in the aggregate:

Provided, that where the amount payable by the debtor to more then one creditor is so reduced to rupees 1,400, the amount payable to each one of the creditors shall be determined on a pro rata basis, having regard to the amounts or amounts of debts payable to each one of them, subject to the overall limit of rupees 1,400.

Clause (a) of Sub-section (1) of Section 3 clearly shows that the debt owned by every marginal farmer and every rural labourer has been wholly discharged. So far as rural artisan is concerned, income test has been laid down for him. It appears to us that the income test which has been laid down for a rural artisan by Clause (a) has not been applied to marginal farmer or rural labourer. This position becomes clear when we read Clause (b) of Sub-section (1) and Sub-section (2) of Section 3. If the income test was applied to a marginal farmer and a rural labourer, those two categories of debtors would have been mentioned again in Clause (b) in order to give them a different dispensation in these cases in which their income exceeded Rs. 2,400/-. Similarly, the expression 'income per year' has been defined in Explanation 1 to Sub-section (1) only in relation to a 'rural artisan.' It has not been defined in relatior, to a 'marginal farmer' or a 'rural labourer'. If the intension of the Legislature was to apply the income test also to marginal farmers and rural labourers, what has been provided by Explanation 1 in respect of a rural artisan would have been provided in respect of a marginal farmer and a rural labourer also. We, therefore, feel that a 'marginal farmer' and 'a rural labourer' irrespective of their annual income have been wholly discharged from the debts outstanding against them. In the very nature of things, a marginal farmer or a rural labourer, economically down-cast as he is, would not have heavy debts. On account of his poor economic condition, his creditworthiness must be much less. We have reproduced the definitions of 'marginal farmer' and 'rural labourer' and bearing them in mind, we make these observations. A marginal farmer hardily owns two hectares of lands at the maximum. That is what the definition of 'marginal farmer' read with the Schedule to the impugned Act shows. When we turn to Clause (b), we find that a 'rural artisan' whose income exceeds Rs. 2.400/- per year but does not exceed Rs. 4,800/- per year has been given a partial relief in the shape of scaling down of his debt. He is wholly discharged from the obligation to pay his debt if he has already paid his creditor the principle amount and interest equivalent to the principal amount. Similarly, a 'small farmer' is also wholly discharged if he has paid to his creditor the principal amount and interest which is equal in sum to the principal amount. Those small farmers and those rural artisans whose income exceeds Rs. 2,400/- per year but does not exceed Rs. 4,800/- and who do not stand wholly discharged under Section 3(1)(b)(i) get the benefit of the reduction of the recognized debt to half. 'Recognised debt' is not what is shown in the creditors book of accounts against his debtor. It has been defined by Explanation 2 in the following terms:

For the purpose of Clause (b), 'recognised debt', in relation to any debtor, means the amount of the principal together with the amount of simple interest thereon at the rate of six per cent per annum or the rate stipulated between the parties, whichever is less, calculated as outstanding on the appointed day, after

allowing deductions of all sums paid from time to time towards the repayment of the principal or interest, as the case may be.

In simple terms, 'recognised debt' means the principal amount left by a creditor to his debtor and simple interest thereon at the rate of six per cent per annum-the interest not exceeding the amount of principal. Such a recognised debt of every small farmer is reduced to half and such a recognised debt of a rural artisan whose income exceeds Rs. 2,400/- per year but does not exceed Rs. 4,800/-per year is reduced to half. We, therefore, find that whereas marginal farmers and rural labourers have been wholly discharged from the obligation to pay their debts irrespective of their annual incomes, small farmers who are bigger then the marginal farmers and rural artisans and rural artisans have been partial relief. That a small farmer is bigger then a marginal fanner is made clear by the definition of 'small farmer' when it is read with the Schedule to the Act. It is quite clear, therefore, that very few debtors will retain some liability to pay their debts to their creditors adjudicated upon by Debt Settlement Officer. In such cases also, the Legislature has set the upper limit. Sub-section (3) of Section 3 provides that in no case the liability of such debtor shall exceed Rs. 1,400/-. Therefore, though small farmers and rural artisans whose debts do not stand fully discharged under the scheme of Section 3 will not have an outstanding debt liability exceeding Rs. 1,400/-.

31. It was argued by Mr. Dave that Legislature has fixed the ceiling of Rs. 1,400/- arbitrarily. Nothing has been pointed out on behalf of the State of Gujarat how the ceiling of Rs. 1,400/- was fixed. However, if it is necessary to fix the ceiling, it is open to the Legislature to take any figure. An extreme argument was raised on behalf of the petitioner was that a recent debt incurred by a 'small, farmer' or a 'rural artisan' amounting to a lac of rupees will also stand reduced to the sum of Rs. 1,400/-. The logic of the argument cannot be controverted. However, we have to bear in mind the social conditions prevailing in the country. It is difficult to imagine that a 'small farmer' who does not owe even 4 hectares of land as the definition of 'small farmer' read with the Schedule shows and a 'rural artisan' who practises a craft and lives in a rural area on his own manual labour or on the Manual labour of the members of his family will have creditworthiness to incur such huge debts. We do not think any money-lender has lend to them more then Rs. 5,000/- or Rs. 6,000/- at the most. If some money-lender has lent to them a bigger amount, it must be treated as an exception, it is such a debt of Rs. 5,000/-or Rs. 6,000/-which is scaled down to the maximum amount of Rs. 1,400, it being the ceiling. In case of a recent debt incurred by a 'small farmer' or a 'small artisan' belonging to the higher income his, group money leader is found to suffer more then a money-lender who has a more remote or old debt to recover. An old debt ordinarily presupposes that the money-lender has earned quite a good deal of interest thereon with the passage of time.

32. Let us now have a look at some other sections which have bearing on this aspect. We shall refer to Section 4 later. Section 9 which provides for payment of the debt determined by the Debt Settlement Officer lays down that a debt found due by the Debt Settlement Officer shall be paid by the debtor to the creditor in ten equal annual instalments without any interest. Therefore, where the debt of a 'small farmer' or a 'rural artisan' is scaled down Rs. 1.400/-, it is not going to bear interest for the next ten years. Secondly, its recovery has been spread over a period of ten years. It has been made payable in very easy instalments. Added to it is the provision made by Section 10. The liability to pay the scaled down debt in ten annual instalments is also not absolute. Section 10 provides that whenever the State Government suspends or remits the payment of one-half or more of the land-revenue, the payment of whole of the instalment due for that year and the full amount of instalment due for each subsequent year under Section 9 shall be postponed for one year. In other words, if, during a period of ten years, there is a suspension or remission of one-half or more of the land-revenue payable to the State, the annual instalments otherwise payable over a period of ten years under Section 9 become payable over a period of eleven years. If the payment of one-half or more of the land revenue is suspended or remitted more then once during the period of ten years contemplated by Section 9, then, as many years are added for payment of annual instalments under Section 9. Section 10 further provides that in case the State Government suspends or remits less then one-half of the land-revenue during any particular year, one-half of the amount of instalment for that year and full amount during subsequent

year under Section 9 shall be postponed for a period of one year.

33. The analysis of the scheme of debt reduction and its payment which we have made clearly shovs that whilst a large number of debtors are wholly discharged, others afg-tequired to pay only a small amount in a very easy manner. Its payability has been spread over a period of time and may be interrupted by the circumstances contemplated by Section 10. This scheme, in our opinion, takes little difference between these money-lenders whose debts have been fully wiped off and those whose debts have been partially wiped off The latter class is unlikely to recover substantial amount of capital advanced by them to their debtors.

34. We now turn to Section 14 which provides as under:

(1) No creditor shall, after the appointed day, damage, destroy or tamper with any property pledged or mortgaged with him by a debtor or any document connected therewith, or part with, or deal with, the same except as provided in Sub-section (2). (2) Where a certificate of discharge of any debt is granted to a debtor or an order reducing his debt is made under Section 8, every property pledged or mortgaged by such debtor as a security for such debt shall stand released in favour of such debtor and the creditor shall forthwith return such property to the debtor.

So far as Sub-section (1) of Section 14 is concerned, we do not think it is open to any challenge for the simple reason that a money-lender who holds security from his debtor in the shape of movable or immovable property must be prevented from damaging, destroying or tampering with it because upon the discharge of the debt under the Act, he is bound to return the security to his debtor in the same form in which he had received it when he advanced the money to him. Sub-section (2) has been assailed very strongly on behalf of the money-lenders. Sub-section (2) deals with two situations : (i) where a certificate of discharge of any debts has been granted to a debtor or (ii) where an order reducing his debt has been made under Section 8. In both these cases, the movable or immovable property pledged or mortgaged by a debtor as security for the debt must be returned by the creditor 'forthwith' to the debtor. It stands released in favour of such debtor. If the statutory discharge of debt suffers from no constitutional vice, release of the security and its return to the debtor which has been fully discharged can hardly suffer from any constitutional infirmity. It is a mere consequence flowing from the statutory discharge of his debt.

35. So far as the second aspect is concerned, serious arguments have been raised. What has been argued is as follows. In a case where order reducing a debt has been made under Section 8, is it reasonable that the security given by the debtor should be 'forthwith' released in his favour and returned to him even before the scaled down debt has been paid up? We have already seen on the analysis of the scheme of the relevant provisions of the impugned Act that payment of the scaled down debt is spread over a period of ten years which period may become longer if the circumstances specified in Section 10 occur. It has been argued on behalf of the money-lenders that once the security is released and goes back to the debtor, there is no certainty that the debtor shall pay his scaled down debt. Secondly, if he does not pay his scaled down debt, the creditor shall have nothing to fall back upon to realise his dues which have been found payable as a result of adjudication under the impugned Act. It has also been argued on behalf of the money-lenders that there Is no guarantee that a debtor whose debts have been scaled down and to whom the security has been returned shall not idcur fresh debts against that very security. He may encumber the same security by charging it in one form or another with fresh debts.

36. It has been argued that our social experience shows that such debtors, even after they are statutorily discharged from their debts, go on incurring fresh debts and the Legislature goes on passing new laws to discharge them again and again from their indebtedness.

37. In order to relieve the agriculturists of their debts, it has been pointed out to us that Bombay Provincial Legislature first enacted Bombay Agricultural Debtors Relief Act, 1939. Thereafter it enacted Bombay Agricultural Debtors' Relief Act, 1947, and has now enacted the impugned Act. We are not referring to the Deccan Agricultural Relief Act, 1879, which was enacted during the last century. The argument which has

been advanced on behalf of the money-lenders is not without any substance. In the first instance, what a money-lender gets in a case in which there is an order to pay him the scaled down debt is a very small amount of his debt and the repayability of that small amount has been spread over at least a period of ten years. Thirdly, Sub-section (2) of Section 14 renders the repayability of such a sealed down amount spread over such a long period of time, very uncertain and insecure. If the Legislature has thought fit that at least in some cases a part of the debt should be repaid by the debtor to his creditor, that part at least must remain secured until it is repaid. To deprive a small money-lender of his cover of protection after telling him that he is entitled to recover some amount from his debtor, is, in our opinion, no reasonable restriction within the meaning of Article 19(1)(f) and Article 19(1)(g) of the Constitution. If the security remains with the money-lender, he cannot do anything with it because Sub-section (1) of Section 14 requires him not to damage, destroy or tamper with it. Therefore, in our opnion, it is more reasonable to think that the security given by a debtor to his creditor should remain intact in the hands of his creditor until the debtor pays up his scaled down debt. To hold otherwise is to render the adjudicated debt of the creditor insecure and to expose him, for all intents and purposes, to the danger of losing it over a period of time during which it has been made repayable in instalments.

38. The learned Advocate-General, who appears on behalf of the State of Gujarat has argued that the maximum sum of Rs. 1,400/-which a creditor may get in a given case is too small an amount to warrant the retention of security in the hands of the creditor. The argument which the learned Advocate-General has raised is not a sound argument. The question is not whether the amount, which a debtor who is required to pay his creditor after the amount of his debt has been scaled down is small or big. The question is whether to release and return the security 'forthwith' to the creditor in such a case is reasonable when the Legislature has thought that the creditor at least should get some amount from his debtor (indeed in a case where the debt has been scaled down and not discharged). Whether an amount is small or big is a relative question. What small amount is to a petty and helpless money-lender may not be so to an affluent or rich money-lender. To a petty or helpless money-lender who has a few thousands of rupees upon the usufruct of which he lives, it is the only sustaining force of his life. We shall revert to this aspect later when we deal with the challenge against the impugned provisions under Section 14.

39. The learned Advocate-General has advanced two more arguments in support of the validity of Sub-section (2) of Section 14. The first argument raised by him is that a security which is given for a larger amount cannot be retained with the creditor for a smaller amount to which the original debt on being scaled down is reduced. This is not a very sound argument. If the Legislature had provided that the creditor shall return security to the debtor 'forthwith' but that that security shall remain statutorily charged with the payment of the scaled down debt, very probably, no objection could have been raised to that provision. In the instant case what the Legislature has dose is to release the security from the creditor and to return it forthwith to the debtor. Indeed for a smaller amount, a smaller or less valuable security will serve the purpose. However, in the instant case, no provision has been made for a smaller security or even for charging the original security after it is returned to the debtor with a scaled down debt. We are, therefore, unable to uphold the argument raised by the learned Advocate-General that Sub-section (2) of Section 14 imposes a reasonable restriction on the right to hold property and to carry on business.

40. The next argument which he has raised is that a 'small farmer' and a 'rural artisan' who belongs to the higher income-group are more affluent then others. According to him, it is an account of this reason that they are required in certain cases to pay the scaled down debt. It cannot be gainsaid that a 'small farmer' or a rural artisan belonging to a higher income-group is far better off then a marginal farmer or a rural artisan belonging to the lower income-group. But that is riot the test for deciding whether Sub-section (2) of Section 14 is constitutionally valid. The test lies in the creditworthiness of a small farmer or a rural artisan belonging to the higher income group. If he was a creditworthy person, he could have borrowed the amount as an unsecured loan. The very fact that he was required to give security for borrowing the amount clearly shows that he did not have personal creditworthiness. This uncreditwcrthiness coupled with the uncertainty of

repayment spread over a period of ten years or more requires reasonably that the security which he gave for borrowing a loan from his creditor should be retained with the creditor until he has repaid the scaled down debt. As an off-shoot of this argument, the learned Advocate General has tried to reason that no debt who has been adjudged to pay its scaled down debt is required to pay more then Rs. 140/- a year. According lo him, therefore, it cannot be imagined that 'a small farmer' and a 'rural artisan' belonging to the higher income group will not be worth the amount of Rs. 140/- a year. The argument which the learned Advocate-General has raised is more eloquent in an air-conditioned Court-room then in the social life of this country. Once a debtor knows that law has been made discharging him from debt partially or fully and reluming the security to him without any charge thereon in respect of the loan which he borrowed, he is likely to deal with the security in any manner he likes. Is there any guarantee that he will not borrow fresh loans on that security? If he borrows fresh loans and creates fresh indebtedness again, recovery of scaled down debt will again step into serious jeopardy. We have not been shown any provision either in the impugned Act or in any other law which prevents a debtor from incurring fresh debts and falling into indebtedness again.

41. The two arguments which the learned Advocate-General has raised are, therefore, in our opinion unsound and cannot be upheld.

42. So far as the full or partial discharge of the debt without compensation is concerned, it is necessary to bear in mind Section 24 of the impugned Act. It reads. 'It is hereby declared that the provisions of this Act are for giving effect to the policy of the State towards securing the principles specified in Article 46 of the Constitution.' Article 46 which finds place amongst the 'Directive Principles of State Policy' provides are follows:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

It is well settled that norms of reasonable restraint upon a fundamental right can be directly inferred or declared from the directive principle of the State policy. The impugned Act has been enacted in order to implement directive principle of State policy enshrined in Article 46. Secondly, the recent statistics show that 48.13% of people in this country are living below poverty line. Thirdly, it has been held by the Supreme Court to Fatehchand's case (supra) that such a law is a regulatory measure of relief of indebtedness. Amelioratory measures taken by the Legislature in order to make social-economic scene more contentive, just and orderly is reasonable. The policy which the Legislature lays down in such a law cannot be struck down as perverse by the Court. Realism in the Legislature is a component of reasonableness. It has also been stated that it is not iralid to attack such a law on the ground that it deprives the money-lender of the very capital of his business. Existing debts of some classes of indigents alone have been liquidated. If impossible burdens on the debtors are not lifted, social orderliness may be threatened. Disorder may break out if the law does not step in to grant some relief. Even trade will not flourish where social orderliness is not secured. The Supreme Court has, therefore, held that for the purpose of Article 301 restrictions placed by the Maharashtra Debt Relief Act, 1975, are reasonable. The standards of reasonableness for the purpose of Article 301 are not different from the standards of reasonableness under Articles 19(1)(f) and (g). Therefore, except a part of Sub-section (2) of Section 14 of the impugned Act which we are striking down, we must hold that the impugned law imposes reasonable restriction within the meaning of Articles 19(1)(f) and 19(1)(g) upon a citizen's right to hold property and to carry on his business.

43. We may usefully refer to the decision of the Supreme Court in Pathumma's case (supra). A slightly similar provision in Kerala Agriculturists Debt Relief Act, 1970, has been held by the Supreme Court to be valid. A perusal of the report of the decision shows that Section 20 of the Kerala Act inter alia provides that the property of an agriculturist which was sold to the creditor to satisfy the decretal debt shall be ordered to be returned to him (debtor) on his depositing in Court half the amount and the costs of execution and that the balance of the decretal debt shall be payable in ten equal half yearly instalments. So far as the directive

principle laid down in Article 46 is concerned, if the land which the debtor has given to the creditor as security is statutorily charged with the payment of the scaled down debt after it is returned to the debtor by the creditor and if the debtor is statutorily prevented from alienating it or encumbering it with fresh debts, it shall not be defeated. On the contrary, while ensuring the repayment of the scaled down debt, it will make the peasantry more prosperous and free from debts. We find no such provision in the impugned Act.

44. Some of the interveners, in particular Mr. P.N. Dave and Mr. A.K. Mankad, have challenged the material provisions of the impugned Act under Article 14 of the Constitution. Mr. Mankad has raised three contentions in none of which we find any substance. The first contention which he has raised is that the provisions of the impugned Act are discriminating between the mortgagees of the 'debtors' under the impugned Act and the mortgagees of those who are not the 'debtors' under the impugned Act. This is a very unsound argument. The debtors under the provisions of the impugned Act comprising four categories are constituted into a class by itself and it is that class which is sought to be relieved of its indebtedness. They are poor rural agriculturists or poor persons living in the rural areas of the State. A person who is not a 'debtor' under the Act cannot be compared with a person who is a 'debtor' under the Act. Therefore, the classification which the inpungned Act makes is rational and does not suffer from any element of hostility.

45. The second contention which has been raised by Mr. Mankad is that Section 27 saves the debts due to the Government, local authorities and other corporate bodies. To the extent to which Section 27 exempts certain institutional debts from the operation of the impugned Act introduces, in the opinion of Mr. Mankad, an element of hostile discrimination between non-institutional creditors and institutional creditors. The argument which Mr. Mankad has raised is not well-founded. It has been observed by the Supreme Court in Pathumma's case (supra) that the institutional credit ordinarily does not carry with it the element of exploitation or any other undesirable element. In that view of the matter, institutional creditors can be classified in one category and can be distinguished from non-institutional creditors who are grouped by the impugned Act into another category with respect to which the impugned Act has been made.

46. The last argument which Mr. Mankad has raised is that Section 13 confers upon the Appellate Authority only limited power in regard to appeals. According to him, it confers upon the Appellate Officer jurisdiction only to confirm or modify the award and not to annul or reverse it. This argument raised by Mr. Mankad is unsound. Foyer to modify an order includes the power to set aside or annul the order if it is not in accordance with law. We, therefores find that whereas the third argument raised by Mr. Mankad is not sustainable, the first two arguments raised by him suffer from inherent fallacy. Tee Legislature wants to protect weaker sections of our society against exploitation by non-institutional creditors who behave in such manner as they think fit. The impugned provisions of the Act have, therefore, reasonable nexus with the object of relieving weaker sections of our society from the clutches of non-institutional creditors which the impugned Act seeks to achieve.

47. Mr. Dave has argued that the impugned Act does not satisfy the test of rationality under Article 14. Ha has argued that it is wrong to club all mony-lendsrs together and to treat them with one yard-stick. He did not have any sympathy for big money-lenders or unscrupulous money-lenders but he indeed shed tears for three types of money-lenders which he illustrated before us: (i) Widows who are otherwise helpless in life and who have none to maintain, living upon the usufruct of a small capital of a few thousand rupees which they advance to petty debtors, (ii) Small money-lenders who are otherwise helpless in life and who can live only upon the usufruct of a small capital which they have. We are assuming in both these cases that such money-lenders have no other sourcs of income and are unable to do anything else in life, situated as they may be in life, (iii) Small money-lenders who borrow capital from others at a lower rate of interest and who advance at a slightly higher rate, they live upon the difference between the interest which they pay to their lenders and the interest which they recover from their debtors. We are assuming, for the purpose of the illustration, that these three classes of money-lenders do not have an element of exploitation in their money-lending activities. Mr. Dave has argued that the effect of the impugned Act is to discharge the debts of the debtors of such money-lenders with the resultant deprivation of small capital which such money-lenders have. According to

him, it ruins such money-lenders. Before we proceed to examine the argument raised by Mr. Dave, it is necessary to note that such an argument was advanced before the Supreme Court in Fatehchand's case (supra). It appears that the argument relating to money-lenders who borrow moneys from others and lead to the debtors has been negatived by the Supreme Court.

48. It is necessary to cote that, in a society in which we are living, such elements are not a few only are not rare or exceptional. We have amidst us widows who live on the usufruct of small capital which they advance to others and who have no other source of income and who have none else to maintain them. Similarly, we have amidst us a large number of small money-lenders who advance their small capital to others and live on the usufruct of that capital. The effect of the impugned Act is that the advances made by them to the debtors are wiped off with the result that they lose all their capital and means of subsistence. They are reduced to staivation. We say so because we deal with a class of money-lenders who are not able to do anything else in life and who are otherwise helpless. The fate of a small money-lender who borrows moneys from one and advances to a debtor is not different. The advances made by him are wiped off, while he smarts under an irrevocable obligation to pay to his creditors the moneys which he has borrowed. Can it be said that a law which does not deal with and discriminate in favour of such money-lenders is a rational piece of legislation?

49. The history of our society shows that those who are relieved of their debts statutorily go on incurring fresh debts. We have stated in an earlier part of this judgment that three such enactments have come to be enacted within a period of forty years. It appears that, therefore, so far as debtors are concerned, the statutory discharge of his debts furnishes him a fresh opportunity to incur fresh debts. So far as such money-lenders are concerned, total ruin or destruction is spelt for their life-time. They are helpless to do anything else. Once they are deprived of their capital, they live only to die. The result of enacting a law which does not take care of such money-lenders is that whereas on one hand it does not confer upon the debtors an ever-lasting immunity from indebtedness or open for them a perpetual source of prosperity, it reduces to penury and starvation such money-lenders for their life-time. In other words, they are starved to death. Left to ourselves, it is difficult for us to say that a piece of legislation which does not make a distinction between such money-lenders and other money-lenders is a rational piece of legislation. If our hearts bleed for one poor, they must bleed for another poor as well. As between two poor persons, cause of poverty is not at all material. No law has ever tried to trace the cause of poverty while granting relief from indebtedness. In a society it is the poverty which pinches and not its cause. To reduce or to remove the impact of indebtedness on one until he starts reeling under fresh indebtedness and to create life-long penury and destitution for another is distribution of poverty and not relief against exploitation or a measure for social and economic amelioration. Social welfare means creation of new sources of income, opening new avenues for useful economic activity and transformation of the face of the country while allowing those who are prosperous and well-off to retain their moderate prosperity. Social welfare requires persons to be levelled up and not down. Our people want that two unequal lines should not be made equal by cutting down the excessive length of one but that they should be made equal by extending to the full length the line which has short length. We scan different legislations and find in dispair that we have no solution for India's grinding poverty. We have only a latch-key to unlock poverty for all. This is neither equity, justice or fair play which underlie our Constitution nor implementation of the directive principle of State policy laid down in Article 46. A law relating to relief of indebtedness can stand the test of rationality if it discharges the debts of debtors and compensates at least such moneylenders out of public funds or State Treasury. To deprive a widow of his only source of livelihood in life without creating a corresponding source of income for her is not a social welfare measure. To grant a momentary or temporary relief to a debtor while creating a State of starvation or a state of perpetual penury for a widow money-lender can hardly be said to be the implementation of the directive principle of State policy enshrined in Article 46. While legislating upon relief of indebtedness, the legislature should not create fresh pockets of poverty and misery. In our opinion, therefore, a rational law on relief of indebtedness must, on one hand, discharge the debtors of their debts, create fresh or new sources of adequate income for them so that they do not incur fresh debts and, on the other hand, compensate or create sources of income for helpless small moneylenders who have been denuded of their life savings. We

have not the slightest hesitation in saying that whereas the impugned law grants relief to debtors of their indebtedness until they incur fresh debts, it opens an eternal channel of misery and poverty for small money-lenders. Unequal money-lenders have been steamrolled into equality producing poverty and penury amongst the petty and helpless out of them.

50. However, we do not propose to strike down the impugned law on this ground because we are aware of the fact that norms of reasonableness under Article 19(1)(f) as well as under Article 301 are not qualitatively different from the norms of rationality which Article 14 requires to be satisfied. Since the Supreme Court has in Fatehchcmd's case (supra) held the Maharashtra Debt Relief Act, 1976 reasonable, we not only hold that it is reasonable but also hold that it is rational. We, therefore, turn down the constitutional challenge raised by the interveners under Article 14 of the Constitution.

51. Since we have examined the constitutional validity of the impugned Act under Article 19(1)(f) and Article 31, the question whether Forty-second Amendment is ultra vires Article 368 or not does not arise.

52. Since we have examined the constitutional challenge under Article 19(1)(f) and Article 31 to Section 14 of the Act, the fourth contention raised by Mr. Oza also does not survive. The fourth contention raised by him is that Section 14 is not protected by Forty-fourth constitutional Amendment by which Article 19(1)(f) has been deleted. If it is held that it is saved by Forty-fourth constitutional amendment, Forty-fourth Amendment is ultra vires Article 368. This contention in view of what we have stated above does not survive and is therefore rejected.

53. The fifth contention which Mr. Oza has raised is that Section 14 violates Article 300A. It is difficult to imagine how constitutional challenge under Article 300A can be raised. It is a very simple Article which can hardly be pressed into service for challenging any statute. It provides as under: 'No person shall be deprived of his property save by authority of law'. It affords constitutional protection to a right to property which a statute recognizes. If a statute does not recognize a right to property, Article 300A cannot be invoked. Much less, therefore, any provision of the impugned Act can be challenged under Article 300A. The fifth contention raised by Mr. Oza. therefore, is without any substance and is rejected.

54. The next contention which Mr. Oza has raised is that Section 14 upon its true interpretation is confined to properties which are agricultural lands and does not extend to other types of immovable property. The relevance of this argument lies in the discharge of secured debts-debts secured by mortgaging immovable properties or by charging them with it. In that context, it has also been argued that Section 14(2) does not come into play where a land which has been given by a debtor in security to his creditor has, as for example, been built upon by the creditor with the consent of the debtor.

55. Let us now turn to Section 14. We have reproduced it in the foregoing parts of this judgment. Sub-section (1) which uses the expression 'any property' certainly refers to movable as well as immovable property because that expression is used in juxtaposition with the expression 'pledged or mortgaged'. If it covers an immovable property which is pledged by a debtor with his creditor, there is no reason to believe why an immovable property which has been mortgaged by a debtor to his creditor should encompass only agricultural land and no other property. To say that Sub-section (1) deals with movable property and only agricultural immovable property is to read it in a truncated manner. The expression 'property' in the context in which it has been used is wide enough to bring within its sweep all sorts of properties, movable and immovable, agricultural and non-agricultural. It is that very 'property' which is referred to in. Sub-section (2) and has been described as security. We may refer to the definition of the 'debt' given in Section 2(c). It is defined as any liability due from a debtor in cash or in kind, whether secured or unsecured.' There is little justification for holding that a secured debt which is referred to in Section 2(c) means debt secured only by an encumbrance upon agricultural lands. We are, therefore, not impressed by the contention raised by Mr. Oza that Section 14 has no application to cases where debts have been secured by mortgaging non-agricultural immovable properties or charging them with it. In our opinion, it embraces within its sweep all properties,

movable or immovable, agricultural or non-agricultural, which have been charged by the debtors with repayment of moneys which they borrowed from their creditors.

56. So far as the second part of the argument is concerned, it is again divisible in two parts. The learned Advocate-General who appears on behalf of the State has also drawn that distinction. Immovable properties whose character has been transformed by the creditor with the consent of his debtor recorded in the transaction of secured loan itself. The second class consists of immovable properties whose character has been transformed by the creditor with the consent of the debtor recorded in a transaction subsequent to the transaction of secured loan.

57. What happens to such properties when the debt of a debtor is statutorily discharged or scaled down? In our opinion, the use of the expression 'security for such debt' used in Sub-section (2) refers to security which the debtor gave to his creditor and not to the security which has been transformed by the creditor with the consent of his debtor.

58. We may state that such a question is not likely to arise in case of movable properties unless the creditor has sold them away or done away with them before the 'appointed day.' In such a case, remedy is provided by Section 16 of the impugned Act. In case of immovable properties, such a situation is likely to arise more often then not. If a creditor has transformed the character of immovable property given to him as security with the consent of his debtor given at any time before the 'appointed day', it is not returnable within the meaning of Sub-section (2) of Section 14 to the debtor unless such return causes no loss to the creditor. We now illustrate the proposition which we have stated. If a creditor has built with the consent of the debtor a building upon the land which a debtor has mortgaged to him, that property is not returnable to the debtor under Section 14(2) upon the statutory discharge of the debtor's debt. The only remedy which the debtor has is to ask the Debt Settlement Officer to fix the value of the property under Sub-section (1) of Section 16 and to direct the creditor to pay it to him. Return of such a property to the debtor is likely to cause heavy loss to the creditor without any fault on his part. However, if the creditor has dealt with the immovable property and constructed a building thereon without the consent of his debtor, he cannot take advantage of his own fault and subject the debtor to a disability without any fault on the part of the debtor. In such a case, the creditor is bound to return the property to his debtor. In such a case, so far as the building is concerned, the creditor's rights to it shall be govened the ordinary law of the land. He may either remove it and take it away or allow it to go to his debtor. The learned Advocate-General very rightly submitted to us in this context that what the impugned Act extinguishes is a debt and does not extinguish any other contract between the parties. An agreement between the parties, simultaneously arrived at, under which the creditor deals with the property and builds upon it is an agreement which is not affected by the provisions of the impugned Act. Therefore, though the debt for which the security was given by a debtor to his creditor is extinguished, the other terms of the transaction must operate and can be enforced. In other words, where a creditor has dealt with the property given to him in security with the consent of his debtor, that property must be dealt with in terms of the agreement arrived at between the parties in that behalf except in respect of debt which has been statutorily extinguished by the impugned Act. Section 16(1) provides for one of the remedies in such a situation. It is open to the parties to work out any other arrangement in respect of such a property which they may think fit or arrive at a fresh agreement in that behalf.

59. Miss V.P. Shah who appears on behalf of respondents No. 1 and 2 has argued that with the extinguishment of debt, the other terms of the transaction in relation to a secured debt are also extinguished. In other words, if a debtor borrowed the debt upon the security of an immovable property and parted possession with that property to his creditor and permitted his creditor to build upon it, then all those terms of transactions are also extinguished. We are unable to uphold the contention which Miss Shah has raised in that behalf. The submission made by the learned Advocate-General in this behalf is eminently justified and is upheld.

60. We, therefore, reject the first part of the sixth contention raised by Mr. Oza and uphold the latter part of it.

61. The next contention which Mr. Oza has raised is that neither on the date when respondents Nos. 1 and 2 made an application for adjustment of their debt nor on the date of the decision of the Debt Settlement Officer respondents No. 1 and 2 were marginal farmers or small fanners. According to him, therefore, their application was not maintainable. This contention is ex facie unsustainable. Whether a person is a 'small farmer' or a 'marginal fanner' has to be decided with reference to the 'appointed day' as laid down in Section 3(1). The expression ''appointed day' has been defined in Section 2{b) so as to mean the date on which the impugned Act come into force. It is 15th of August 1976. There is no doubt or dispute about the fact that on 15th August 1976, respondents No. 1 and 2 were either small or marginal farmers. Therefore, they were entitled to make She present application. We, therefore, reject the contention raised by Mr. Oza in this behalf.

62. The next contention which he has raised is that the transaction between the petitioner on one hand and respondents No. 1 and 2 on the other hand by virtue of which respondents No. 1 and 2 became the petitioner's debtors was a transaction of usufructuary mortgage. According to him, therefore, respondent No. 1 and 2 had no personal liability to pay the debt. Proceeding further, he has argued that they were therefore not 'debtors' within the meaning of the expression 'debtor' given in the impugned Act. It is true that under Transfer of Property Act, in case of a usufructuary mortgage, the debt attaches to the security and not to the debtor personally. However, we cannot decide this contention with reference to the provisions of Transfer of Property Act. We have got to decide this contention with reference to the provisions of the impugned Act. The definition of 'debt' given in Section 2(c) and the difinition of 'debtor' given in Section 2(d) read with the definitions of 'marginal farmer' in Section 2(g), 'rural artisan' in Section 2(1), 'rural labourer' in Section 2(m) and 'small farmer' in Section 2(p) as well as Section 14 leave no doubt in our minds that even a usufructuary mortgage is affected by the impugned provisions of law. If we take a different view, then provisions of Section 14 would be rendered partially nugatory. If a usufructuary mortgagor is not in a position to make an application for discharge of his debts and for return of his property, then he will be denied the benefit of Section 14 which expressly requires a creditor to return the property to the debtor upon the discharge of his debts. We. therefore, find no substance in the contention which Mr. Oza has raised. It is necessary to remember that Acts, such as Bombay Tenancy and Agricultural-Lands Act, 1948, and the impugned Act are innovations upon the Transfer of Property Act which was enacted during the last century and supplant and supplement many of its provisions. The contention raised by Mr. Oza in that behalf, therefore, is rejected.

63. The last contention which Mr. Oza has raised is that the land in question is not situate in a 'rural area'. According to him, therefore, the impugned Act did not apply to it. 'Rural area' has been defined by Section 2(k) in the following terms:

'Rural area' means an area which, for the time being, is not within the limits of-

(i) a city constituted under Section 3 of the Bombay Provincial Municipal Corporations Act, 1949, as in force in the State of Gujarat;

(ii) a municipal borough, or a notified area constituted or deemed to be constituted, under the Gujarat Municipalities Act, 1963;

(iii) a cantonment declared as such under the Cantonments Act, 1924.

Vijapur within the limits of which the land in question is situated has not been shown to be governed by the Gujarat Municipalities Act. It is governed by Gujarat Panchayats Act. Therefore, it is a 'rural area'.

64. The concept of 'rural area' applies to a 'rural artisan' and a 'rural labourer'. It does not apply to a marginal farmer of a small farmer. Definitions of 'marginal farmer' given in Section 2(g) and 'small fanner' given in Section 2(p) make it abundantly clear, and there is no doubt or dispute about the fact, that respondents No. 1 and 2 were either small farmers or marginal farmers. Therefore, whether the land in question is situate in a rural area or not is not material. It may be stated that, the impugned Act applies to marginal farmers and small farmers holding land in any of the villages specified in Column 3 of the Schedule and not exceeding the

area specified against them. The Schedule to the Act shows that Vijapur is a Taluka. In the first part, 22 villages of Vijapur Taluka have been specified. It does not specify Vijapur itself as a village. In the second part, 'all other villages' have been stated. If Vijapur is a village, it falls under the residuary category described by the expression 'all other villages'. The question, therefore, is whether Vijapur is a village. 'Village' has been defined by Section 2(r) in the following terms:

'village' shall have the meaning assigned to it in the Bombay Land Revenue Code, 1879, as in force in the State of Gujarat.

Section 3(21) of the Bombay Land Revenue Code, 1879, defines village in the following terms:

'village' includes a town or city and all the land belonging to a village, town or city.

The definition of the expression 'village' is so wide that surprisingly it will include with its ambit even the city of Ahmedabad as well with lands situated within the revenue limits of Ahmedabad city. The last contention raised by Mr. Oza is, therefore, without any substance and is rejected.

65. In view of the findings which we have recorded upon the third contention raised by Mr. Oza and the interveners, we declare that the expression 'or an order reducing his debt is made' used in Section 14(2) is ultra vires Article 19(1)(f) and Section 19(1)(g) and is struck down. We declare accordingly. This expression is ex-fade severable from the rest of the section. We, therefore, do not see any need to state the reasons in support of its severability, We issue a writ of mandamus directing the respondents from enforcing the offending part of Section 14(2) which we have struck down. In the instant case, respondents No. 1 and 2 have been fully discharged from their debt. It is not in dispute that the petitioner has built a building upon the land in question with the consent of respondents No. 1 and 2. It is, therefore, not returnable to respondents No. 1 and 2 under Section 14(2). We, therefore, issue a writ of certiorari and quash that part of the impugned award which directs the petitioner to return to respondents No. 1 and 2 the land in question and remand the case to the Debt Settlement Officer, Vijapur, for granting relief to respondents No. 1 and 2 under Section 16(1) of the impugaed Act. We may state that Section 16(1) expressly requires the Debt Settlement Officer to fix the value of the property-in this case land as it was when it was mortgaged to the petitioner. After having determined the value of the land in question, the Debt Settlement Officer shall direct the petitioner to pay the amount to respondents No. 1 and 2. It is needless for us to say that the parties shall be at liberty to arrive at any other arrangement in respect of the land in question. If they do so, the Debt Settlement Officer shall not fix the value of the land in question and close the case. Rule is made partly absolute with no order as to costs.

66. Mr. J.R. Nanavaty who appears on behalf of the State of Gujarat-respondent No. 4-applies for certificate of fitness under Article 133(1) of the Constitution in order to enable the State of Gujarat to appeal against this decision to the Supreme Court. Mr. N.R. Oza who appears on behalf of the petitioner applies far certificate of fitness under Article 133(1) to enable the petitioner to appeal against this decision to the Supreme Court. We have not recorded the final decision in this case. We have remanded the case to the Debt Settlement Officer. Therefore, there is no final order in this case. The terms of Article 133(1) are, therefore, not satisfied. Therefore, though we have decided substantial questions of law in this case, we have no jurisdiction to grant certificate of fitness under Article 133(1). Oral applications made on behalf of both the parties are therefore rejected.

67. On behalf of the State of Gujarat, the learned Advocate-General markes an oral application for issuing certificate of fitness under Article 132 in order to enable the State of Gujarat to appeal against this decision to the Supreme Court. Firstly, we have not recorded any final order in this judgment. Secondly, we have not effectively interpreted any provision of the Constitution. We have applied the principle laid down by the Supreme Court to the provisions of the impugned Act. Since we have not recorded any final order and since no constitutional provision has been affectively interpreted by us. We reject the oral application made by the learned Advocate-General.

68. On behalf of the State of Gujarat, the learned Advocate-General applies for stay for some time of the implementation and operation of our order. In our opinion, there is nothing which requires to be stayed. The only material conclusions which we have recorded against the State of Gujarat are that a part of Sub-section (2) of Section 14 of the impugned Act is ultra vires Article 19(1)(f) and Article 19(i)(g) and that we have interpreted Section 14 (2), So far as the interpretation of Section 14(2) is concerned, we have upheld the arguments which the learned Advocate-General has advanced before us. It is, therefore, not a conclusion recorded really against the State of Gujarat. So far as the declaration made by us that Sub-section (2) of Section 14 in so far as it requires a creditor to return forthwith the property to the debtor even though the debtor has been found under the Act to be liable to pay some amount to the creditor is concerned, balance of convenience requires that we should not stay that part of our judgment. If we do so, in spite of the fact that was have declared that part of Sub-section (2) of Section 14 ultra vires, Debt-Settlement Officers will go on directing the creditors to return the securities to the debtors. Now, pending the decision of the Supreme Court, it is in public interest that the security should remain with the creditor because if the security is returned to the debtor, he may transfer, alienate or otherwise deal with it or may encumber or charge it with fresh debts.

69. In such a case, even if the Supreme Court upholds our decision and a creditor is found entailed to retain the security until the scaled down debt is discharged, he will lose the security and in all probability, the scaled down debt also. If, on the other hand, the security remains with the creditor, it will be safe for being returned ultimately to the debtor when the debt is discharged because under Sub-section (1) of Section 14 he cannot damage it, tamper with it or deal with it. Therefore, purely on balance of convenience, we reject the oral request made by the learned Advocate-General in that behalf.