

Sanwal Ram and Etc. Vs. Additional District Magistrate, Sri Ganganagar and ors. Etc.

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Court : Rajasthan

Decided On : Oct-15-1981

Reported in : AIR1982Raj139

Judge : M.C. Jain, J.

Acts : Rajasthan Imposition fo Ceiling on Agricultural Holdings Act, 1973 - Sections 15, 15(1) and 15(2); Rajasthan Imposition fo Ceiling on Agricultural Holdings (Amendment) Act, 1979 - Sections 23(6); [Constitution of India](#) - Articles 14, 31A, 31B, 31C, 166(2) and 245

Appeal No. : Civil Writ Petn. Nos. 481 and 1257 of 1980

Appellant : Sanwal Ram and Etc.

Respondent : Additional District Magistrate, Sri Ganganagar and ors. Etc.

Advocate for Def. : M.L. Garg,; B.L. Purohit,; D.S. Shishodia, Govt. Adv

Advocate for Pet/Ap. : H.M. Pareekh and; S.N. Sharma, Advs.; M.L. Garg,;

Disposition : Petitions dismissed

Judgement :

ORDER

1. A number of writ petitions have been filed challenging the validity of Section 15 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Act No. 11 of 1973) (hereinafter referred to as 'the Act'). Arguments have been heard in the above two writ petitions. The above two writ petitions raise some common questions, so I think it convenient to dispose them of by this order.

2. In S. B. Civil Writ Petition No. 481 of 1980 filed by Sanwalram, the Sub-Divisional Officer, Raisinghnagar by his order dated July 23, 1971 (Ex. 1) decided his ceiling case holding that he has no land in the excess of the ceiling area. The petitioner Sanwalram's case was decided under Chapter III-B of the Rajasthan Tenancy Act (hereinafter referred to as 'the old Ceiling Law') and the proceedings were also taken against the petitioner Sanwalram under the Act and the Authorised Officer (Ceiling) Raisinghnagar by his order, dated July 11, 1975 (Exhibit 2) dropped the proceedings of ceiling holding that the petitioner or his major son Indraj has no land in excess of the ceiling area. Sanwalram's case under the old Ceiling Law was reopened and the Deputy Secretary Revenue (Ceiling) by his order dated June 6, 1979 (Ex. 3/2) directed the Additional Collector, Sri Ganganagar under Section 15 (2) of the Act to re-open his case and decide his case afresh in the light of that order in accordance with law after giving him an opportunity of hearing. His ceiling case under the Act was also ordered to be reopened by the Special Secretary (Revenue) under Section 15 (1) of the Act by his order dated 14-7-1977 Exhibit 3/1 whereby he directed the Additional Collector, Sri Ganganagar to reopen the case of the petitioner under the Ceiling Act and decide the case afresh in accordance with the provisions of the Act

3. In S. B. Civil Writ Petition No. 1257 of 1980 filed by Smt. Tulsi, the Sub-Divisional Officer (Ceiling), Sri Ganganagar dropped the ceiling proceedings by his order dated September 12, 1972 (Ex. 1) finding that the petitioner Smt. Tulsi holds land less than the ceiling area. Proceedings for reopening of her ceiling case were initiated under Section 15(2) of the Act and the Deputy Secretary Revenue (Ceiling) by his order dated Oct. 25, 1979 directed the Additional Collector, Sri Ganganagar to reopen her ceiling case and dispose of the same in accordance with law after giving her an opportunity of hearing.

4. The petitioners have challenged the validity of the relevant provisions of Section 15 in their respective cases and have sought for quashing of the directions given by the concerned Secretaries to reopen the case.

5. For proper appreciation and adjudication of the points in controversy, which need decision in these writ petitions, it would be proper to advert to the development of ceiling law. Chapter III-B dealing with restrictions on holding of land in excess of the ceiling area and containing the provisions from Sections 30-B to 30-J, was inserted in the Rajasthan Tenancy Act, 1955 with effect from Dec. 15, 1963 by Section 3 of the Rajasthan Act No. 4 of 1960 and later on necessary amendments were made in that Chapter from time to time. The old Ceiling Law was repealed with some exceptions by Section 40 of the Act, which came into force with effect from 1-1-1973.

6. I may read here Section 40 of the Act dealing with repeal and savings. It reads as under:--

'Section 40. Repeal and savings.-- (1) Except as provided in second proviso to Sub-section (1) of Section 4 and in Sub-section (2) of Section 15 of this Act, the provisions of Clause (6-A) of Section 5 and Chapter III-B of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) are hereby repealed except in the Rajasthan Canal Project area wherein such provisions shall stand repealed on the date on which this Act comes into force in that area.

(2) The Rajasthan Imposition of Ceiling on Agricultural Holdings Ordinance, 1973 (Rajasthan Ordinance 1 of 1973) is hereby repealed.

(3) Notwithstanding the repeal of the said Ordinance under Sub-section (2), any thing done or any action taken or any rules made under the said Ordinance shall be deemed to have been done, taken or made under this Act and Section 27 of the Rajasthan General Clauses Act, 1955 (Rajasthan Act 8 of 1955) shall apply to such repeal and re-enactment.' It would appear from the above provision that the provisions of Clause (6-A) of Section 5 and Chapter III-B of the Rajasthan Tenancy Act, 1955 have been repealed except as provided in the second proviso to Sub-section (1) of Section 4 and Sub-section (2) of Section 15 of the Act and

further exception has been made as regards the Rnjasthan Canal Project Area. In that area, the provision shall stand repealed on the date on which the Act comes into force.

7. Section 15 of the Act as it stood when the Act came into force, reads as under :--

'15. Power to re-open cases -- (1) Notwithstanding anything contained in any provision of this Act if the State Government at any time within three years of the publication of the final statement under Section 13, is satisfied that the ceiling area in relation to a person has been determined in contravention of the provisions of this Act, it may direct any officer subordinate to it to reopen a decided case and enquire into it and to determine the ceiling area and the surplus area afresh in accordance with the provisions of this Act.

(2) Notwithstanding anything contained in Section 40, if the State Government, at any time within, three years of the commencement of this Act, is satisfied that the ceiling area in relation to a person as fixed under the law repealed by the said section has been determined in contravention of the provisions of such repealed law, it may direct any officer subordinate to it, to re-open a decided case and enquire into it and to determine the ceiling area and the surplus area afresh in accordance with the provisions of such repealed law.'

8. The said section was amended from time to time. I may refer here only the relevant amendments.

9. Section 15 of the Act was substituted retrospectively by the Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Act, 1976 (Act No. 8 of 1976). Section 15 of the Act, as substituted retrospectively by Act No. 8 of 1976, reads as under:--

'15. Power to re-open cases-- (1) Notwithstanding anything contained in this Act, if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under this Act is in contravention of the provisions of this Act and that such order is prejudicial to the State Government or

that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may, at any time within three years of the date of such final order or within two years of the commencement of the Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Ordinance, 1975, whichever is later, direct any officer subordinate to it to re-open such decided matter and to decide it afresh in accordance with the provisions of this Act.

(2) Without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under the provisions repealed by Section 40 is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may, at any time within five years of the commencement of this Act, direct any officer subordinate to it to re-open such decided matter and to decide it afresh in accordance with such repealed provisions:

Provided that no final order by the Board in the matter referred to in Sub-section (1) or in Sub-section (2) shall be directed to be reopened and decided afresh under the sub-sections unless the State Government is satisfied that such order is required to be re-opened on account of the discovery of new and important matter or evidence which has since come to its notice or due to some mistake or error apparent on the face of the record'

Section 15 of the Act was further substituted by the Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Act, 1978 (Act No. 6 of 1978) which came into force on April 8, 1978. A further amendment was made by Act No. 17 of 1978 in Sub-section (1) of Section 15 of the Act whereby in the second proviso to Sub-section (1), the expression 'three years of the commencement of the Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Ordinance, 1975' was substituted by the expression 'that 31st day of Dec., 1978'. Then came the last amendment. By Section 2 of the Rajasthan Imposition of Ceiling on

Agricultural Holdings (Amendment and Validation) Act, 1979 (Act No. 6 of 1979) Section 15 of the Act was retrospectively substituted for the two periods; (1) from the 1st day of Jan. 1973 to the 7th day of Apr. 1978 and (2) from the 8th day of Apr., 1978 to the 13th day of Aug., 1978 and by subsection (2) of Section 2, the second proviso to Sub-section (1) and Sub-section (2) of Section 15 of the principal Act were substituted and provisions for the validation was made in Section 3 of that Act. Sections 2 and 3 of that Act read as under:--

'2. Amendment of Section 15, Rajasthan Act 11 of 1973.-- (1) Section 15 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Rajasthan Act 11 of 1973), hereinafter referred to as the principal Act,--

(a) in relation to the period from the 1st day of January, 1973 to the 7th day of April, 1978 shall be deemed to have been substituted by the following, namely:--

15. Power to re-open cases-- (1) Notwithstanding anything contained in this Act, if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under this Act is in contravention of the provisions of this Act and that such order is prejudicial to the State Government or that on account of the discovery of the new and important matter or evidence which has since come to its notice, such order is required to be reopened, it may, at any time within four years of the date of such final order or within three years from the 15th day of August, 1975 whichever is later, direct any officer subordinate to it to reopen such decided matter and to decide it afresh in accordance with the provisions of this Act.

(2) Without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under the provisions repealed by Section 40, is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may, at any time within six years of the commencement of this Act, direct any officer subordinate to it to re-open such decided matter and to decide it

afresh in accordance with such repealed provisions:

Provided that no final order passed by the Board in the matter referred to in Sub-section (1) or in Sub-section (2) shall be directed to be re-opened and decided afresh under the said sub-sections unless the State Government is satisfied that such order is required to be re-opened on account of the discovery of new and important matter or evidence which has since come to its notice or due to some mistake or error apparent on the face of the record.'

(b) in relation to the period from the 8th day of Apr., 1978 to the 13th day of Aug., 1978 shall be deemed to have been substituted by the following namely;

'15. Power to reopen cases.--- (1) Notwithstanding anything contained in this Act, if the State Government after calling for the record or otherwise is satisfied that any final order passed in any matter arising under this Act is in contravention of the provisions of this Act and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may direct any officer subordinate to it to reopen such decided matter and to decide it afresh in accordance with the provisions of this Act:

Provided that no such direction shall be issued unless a notice to show cause against the proposed action has been served upon the person concerned;

Provided further that no notice referred to in the foregoing proviso shall be issued after the expiry of four years from the date of the final order sought to be re-opened or after the expiry of three years from the 15th day of August, 1975, whichever is later.

(2) Without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy, Act, 1955 (Rajasthan Act 3 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under the provisions repealed by Section 40, is in contravention of such repealed provisions and that such order is prejudicial to the State

Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may direct any officer subordinate to it to re-open such decided matter and to decide it afresh in accordance with such repealed provisions:

Provided that no such direction shall be issued unless a notice to show cause against the proposed action has been served up on the person concerned:

Provided further that no notice referred to in the foregoing proviso shall be issued after the expiry of six years of the commencement of this Act :

Provided that no final order passed by the Board in the matter referred to in Sub-section (1) or in Sub-section (2) shall be directed to be re-opened and decided afresh under the said sub-sections unless the State Government is satisfied that such order is required to be reopened on account of the discovery of new and important matter or evidence which has since come to its notice or due to some mistake or error apparent on the face of the record.'

(2) In Section 15 of the principal Act,--

(a) the second proviso to Sub-section (1) shall be substituted by the following, namely:--Provided further that no notice referred to

foregoing proviso shall be issued after the expiry of five years from the date of the final order sought to be re-opened or after the expiry of the 30th day of June, 1979, whichever is later;

(b) the second proviso to Sub-section (2) shall be substituted by the following, namely--

Provided further that no notice referred to hi the foregoing proviso shall be issued after the expiry of seven years from the date of the final order sought to be re-opened or after the expiry of 30th day of June, 1979, whichever is later.

3. Validation.-- Notwithstanding any order, judgment or decree of any Court, tribunal or authority, all things done, actions taken, directions issued and orders passed in consonance with the provisions of Clauses (a) and (b)of Sub-section (1)

of Section 2 of this Act shall be deemed to have validly done, taken, issued or passed under the provisions of the said clauses.'

10. It may be stated here that the Rajasthan Tenancy Act, 1955 was placed in the Ninth Schedule of the Constitution at serial No. 55, by the Constitution (Seventeenth Amendment) Act, 1974. The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Rajasthan Act No. 11 of 1973) was placed in the Ninth Schedule at serial No. 79 by the Constitution (Thirty-fourth Amendment) Act, 1974 and the Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Act, 1976 (Rajasthan Act No. 8 of 1976) was placed at serial No. 164 by the Constitution (Fortieth Amendment) Act, 1976. The Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment and Validation) Act, 1979 (Rajasthan Act No. 6 of 1979) had received the assent of the President on the 7th day of Apr., 1979. Act No. 17 of 1978 had received the assent of the President on the 11th day of Nov., 1978 but the Act No. 6 of 1978 had received only the assent of the Governor on 8th of Apr., 1978 and not of the President. Section 15 as it originally stood was amended either retrospectively or prospectively with a view to extend the time or with a view to introduce some more grounds for re-opening the concluded cases or for revising the existing grounds. I shall be adverting to necessary changes and amendments that were made in Section 15 of the Act, while dealing with the contentions relating to those amendments.

11. Mr. Pareekh, learned counsel for Sanwalram, vehemently urged that under Section 15 (1) as well as 15 (2) of the Act (whatever provision was in force at the relevant time), the State Government has been conferred with a power to re-open the decided cases. Section 15 (1) confers such a power to re-open cases decided under the Act and Section 15 (2) confers such a power to re-open cases decided under the old Ceiling Law. The State Government on being satisfied as to the existence of the conditions, circumstances or grounds mentioned in Sub-sections (1) and (2) of Section 15 of the Act is empowered to direct any officer subordinate to it to re-open decided matters and to decide afresh in accordance with the provisions of the Act or in accordance with the repealed provisions as the case may be. Such a power or function under Section 15 of the Act is a judicial power

and a judicial function inasmuch as the finality of the orders would come to an end and proceedings would be taken afresh. The orders already passed and which have become final would necessarily stand set aside, if a direction is given as contemplated in Sub-sections (1) or (2) of Section 15 of the Act. He submitted that the power of issuance of direction under subsections (1) and (2) of Section 15 of the Act can only be exercised by the State Government from the 8th day of April, 1978 only after service of the notice to show cause against the proposed action and before the 8th day of April, 1978 there was no such provision in Section 15 of the Act. The introduction of such a provision in Sub-sections (1) and (2) of Section 15 of the Act with effect from the 8th day of Apr., 1978 will not make any difference for the simple reason that no such direction even prior to the 8th day of Apr., 1978 could be issued without giving reasonable opportunity of hearing in the matter, which is essentially judicial in character. Mr. Pareekh maintained that the authorities empowered to decide the ceiling matters under the old Ceiling Law are the Revenue Courts and the ceiling matter is a judicial matter. So the entire ceiling proceedings are judicial proceedings. Mr. Pareekh pointed out that a lis relating to ceiling matters arises between the Government on the one hand and the landholder on the other and such a lis is determined by the authorities on whom power has been conferred. Both the parties are duly represented before the authorities and a right of appeal is given even to the State Government. The authorities are required to determine the questions of fact and questions of law that may arise before them while determining the ceiling matters and they are required to construe and interpret the provisions of law and apply the same to the given facts. So such proceedings are nothing short of judicial proceedings. He referred to the relevant provisions of the Rajasthan Tenancy Act, 1955 and the Rajasthan Land Revenue Act, 1956. On the above premises, Shri Pareekh contended that Sub-sections (1) and (2) of Section 15 are bad for the reason that the State Government has been conferred with judicial powers and conferment of such power on the State Government is violative of the principle of separation of powers, which according to Mr. Pareekh is an essential feature of the Constitution. He further submitted that by enacting Section 15 of the Act, the legislature has in effect nullified the final and binding orders concluding and decided the matters.

12. Mr. Shishodia, the learned Government Advocate assisted by Mr. Rajesh Balia, Deputy Government Advocate refuted the above submissions of Mr. Pareekh and emphatically and boldly asserted that the power or function of the State Government under Section 15 of the Act is purely administrative. It has to satisfy itself as to the existence of given conditions and then issue direction to the subordinate officer to re-open the case and decide it afresh. Prior to the Act No. 6 of 1978, there was no provision for giving any notice to show cause for the proposed action. The introduction of such a provision will not make any difference as the satisfaction can be reached after giving opportunity to the person concerned against the proposed action. He emphasised that no substantive rights and obligations are required to be determined by the competent authorities in the ceiling matters. As the rights have already been created under the statute in favour of the State Government that surplus land shall vest in the State Government and that obligations of the land-holders arise under the statute to surrender their surplus land. Thus, the ceiling proceedings are simply quantification proceedings and competent authorities are only required to determine surplus land of the land-holders, which stood vested in the State Government. Mr. Shishodia submitted that when such is the nature of ceiling proceedings in which no adjudication of any right and liability is involved, though the forum may have trappings of a Court, they cannot be designated or termed as judicial proceedings. Alternatively, it was urged by him that the actual ceiling proceedings in which quantification of surplus land is required to be made may be a quasi-judicial proceedings but any action up to the stage of issuance of direction under Section 15 (1) and (2) is only administrative in nature. According to him, the power conferred or function assigned to the State Government under Section 15 of the Act is neither judicial nor quasi-judicial in nature, but purely administrative in character. He submitted that even if it is found that the power or function of the State Government is essentially judicial or quasi-judicial still the Legislature is competent to confer such a power on the State Government and the doctrine of separation of powers cannot be invoked for such a doctrine is not embodied in the Constitution. Besides that, the State Government is conferred with a power to re-open the cases in certain circumstances, conferment of such a power does not mean nullification of the final orders passed in the ceiling cases. Such a provision of reopening has been introduced with a

view to achieve the object, which the ceiling law aimed at, to give effect to the legislative policy to secure possession of as much surplus land as possible and distribute the same to the landless. The Legislature being conscious of the fact that the land-holders may defeat the provision of law and get an order in contravention of the provision of law by collusion, misrepresentation, concealment, fraud or by other impermissible means or there may be legal or factual mistakes committed by the authorities or relevant evidence may be ignored by them or may not be brought to their notice, has enacted provision for reopening and conferred that power on the State Government. Both the sides referred to some case law and treatises in support of their respective contentions to which, I shall presently advert at the appropriate place.

13. In view of the above submissions of the learned counsel for the parties, the first question that emerges for consideration is as to what is the nature of the power or function of the State Government under Section 15 of the Act i.e. whether it is judicial, administrative or quasi-judicial. For determining this question, it will also be essential to examine and consider the nature of the ceiling proceedings but before adverting to that, I may refer here to the meanings of some connotations and expressions from the Black's Law Dictionary (Fifth Edition) and to the views and thoughts of the celebrated Authors on Administrative Law. The following expressions connote as under (Per Black's Law Dictionary, 5th Edition)--

'Administrative: Connotes of or pertains to administration, especially management, as by managing or conducting, directing, or superintending, the execution, application or conduct of persons or things.

Particularly, having the character of executive or ministerial action. In this sense, administrative functions or acts are distinguished from such as are judicial.'

'Administrative Acts: Those acts which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body or such as are devolved upon it by the organic law of its existence-- Ex parte McDonough, 27 Cal. App 2d 155 : 80 P 2d 485, 487.'

'Administrative agency : A governmental body charged with administering and implementing particular legislation.'

'Judicial, belonging to the office of a judge, as judicial authority. Relating to or connected with the administration of justice; as a judicial officer. Having the character of judgment or proceeding from a Court of justice; as a judicial writ, a judicial determination. Involving the exercise of judgment or discretion; as distinguished from ministerial.

Of or pertaining or appropriate to the administration of justice, or Courts of justice, or a judge thereof, or the proceedings therein; as judicial power, judicial proceedings. State v. Freitag, 53 Idaho 726 : 27 P 2d 68.'

'Judicial act. An act which involves exercise of discretion or judgment. It is also defined as an act by Court or magistrate touching rights of parties or property brought before it or him by voluntary appearance, or by prior action of ministerial officers. An act by member of judicial department in construing law or applying it to a particular state of facts.

An act of administrative board if it goes to determine some right, protection of which is peculiar office of Courts.

An act which imposes burdens or confers privileges according to finding of some person or body whether a general rule is applicable or according to discretionary judgment as to propriety-- An act which undertakes to determine a question of right or obligation or of property as foundation on which it proceeds. The action of judge in trying a cause and rendering a decision.

'Judicial action. An adjudication upon rights of parties who in general appear or are brought before tribunal by notice or process, and upon whose claims some decision or judgment is rendered. Action of a Court upon a cause by hearing it, and determining what shall be adjudged or decreed between the parties, and with which is the right of the case.'

'Judicial function. The exercise of the judicial faculty or office. The capacity to act in the specific way which appertains to the judicial power, as one of the powers of

Government. The term is used to describe generally those modes of action which appertain to the judiciary as a department of organized government, and through and by means of which it accomplishes its purposes and exercises its peculiar powers.'

'Judicial power. The authority exercised by that department of government which is charged with declaration of what law is and its construction. The authority vested in Courts and judges, as distinguished from the executive and legislative power. Courts have general powers to decide and pronounce a judgment and carry it into effect between two persons and parties who bring a case before it for decision; and also such specific powers as contempt powers, power to control admission and disbarment of attorneys, power to adopt rules of Courts, etc.

A power involving exercise of judgment and discretion in determination of questions of right in specific cases affecting interests of person or property, as distinguished from ministerial power Involving no discretion. Inherent authority not only to decide, but to make binding orders or judgments-Fewel v. Fewal, 23 Cal 2d 431 : 144 P 2d 592, 594. Power to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before Court for decision. Power that adjudicates upon and protects the rights and interests of persons or property, and to that end declares, construes and applies the law.'

'Judicial Proceedings. Any proceeding wherein judicial action is invoked and taken. Mannix v. Portland Telegram, 144 Or 172 : 23 P 2d 138. And proceeding to obtain such remedy as the law allows. Any step taken in a Court of justice in the prosecution or defence of an action. A general term for proceedings relating to, practiced in, or proceeding from, a Court of justice, or the course prescribed to be taken in various cases lot the determination of a controversy or for legal redress or relief. A proceeding in a legally constituted Court. A proceeding wherein there are parties, who have opportunity to be heard, and wherein the tribunal proceeds either to a determination of facts upon evidence or of law upon proved or conceded facts.'

14. De Smith in his book 'Judicial Review of Administrative Action (Fourth Edition)' has given certain tests for identifying the judicial functions. The tests considered

by him are :--

(1) Conclusiveness.

(2) Trappings and procedure.

(3) Interpretation and declaration. He has also considered the question as to whether proceedings are judicial or not with reference to absolute privilege. At p. 80, he stated that 'the closer a statutory body resembles a Court *stricto sensu*, the more likely is it that that body will be held to act in a judicial capacity. But it must not be assumed that because a body closely resembles a Court, each and every one of its functions will be characterised as judicial. In short, the answer to the question whether a body is acting in a judicial capacity when performing a particular function does not necessarily depend upon the degree in which the body's general characteristics resemble those of an ordinary Court, although the degree of resemblance may be a major factor influencing a decision that the function in question is judicial.' At p. 84, he states :--

'Nevertheless, functions may become re-viewable as 'judicial' because of statutory interpretation of a procedure bearing a superficial resemblance to a *lis inter partes*.

A Minister acting as confirming authority must act judicially in accordance with the rules of natural justice from the moment when objections are lodged against the local authority's order, although his functions have been characterised as 'purely administrative' before objections have been lodged or if he himself is the initiating authority.'

At p. 85, he further states as under :--

'(3) Interpretation and declaration.-- A typical *lis inter partes* culminates in a decision by a tribunal resolving any disputed questions of law or fact; the legal issues are determined by reference to principles and rules already in being. A tribunal or other deciding body is therefore likely to be held to be acting in a judicial capacity when, after investigation and deliberation, it determines an issue conclusively by the application of a pre-existing legal rule or another objective legal standard to the facts found by it. That interpreting, declaring and applying the

law are characteristic hallmarks of the judicial function is too elementary a proposition to call for authoritative support'

At p. 89, he has given his conclusions and has stated that judicial acts may be identified by reference to their formal, procedural or substantive characteristics, or by a combination of any of them. An act may be judicial because it declares and interprets pre-existing rights or because it changes those rights provided that the power to change them is not unfettered. He concluded by stating that terminological and conceptual problems may appear to be overwhelming. However, to an increasing extent Courts exercising powers of judicial review in administrative law are abandoning servitude to their own concepts and asserting mastery over them.

15. In B. Hood Phillips' Constitutional and Administrative Law (Sixth Edition), Chap. 30 deals with Administrative Jurisdiction. It is stated that 'Administrative jurisdiction' or 'Administrative justice' is a name given to various ways of deciding disputes outside the ordinary Courts. He expressed that the ordinary Courts are appropriate for the decision of purely legal rights; but in many of the kinds of cases of which we are speaking, the question of issue is not one of purely legal rights but a conflict between private and public interests, bound up in a greater or lesser degree with ministerial policy as outlined by Statute. Where Parliament does not consider the ordinary Courts suitable for the decision of such dispute, especially at first instance, it prescribes one of three other methods of deciding them : (i) special (or administrative) tribunal, (ii) ministerial decision after statutory inquiry, (iii) ministerial decision, in which the Minister uses his discretion without any prescribed procedure. With respect to second method, it is stated that before a decision is made by a Minister or by a public authority, which affects the rights of citizen, an inquiry must be held at which those whose interests are concerned may state their objections to the action proposed before a final decision is made.

16. W.A. Wynes in his Legislative, Executive and Judicial Powers in Australia (Third Edition) in Chapter 10 deals with the Judicial Power of Commonwealth and has stated at p. 556 as under :--

' 'Judicial Power' may be broadly defined as the power to examine questions submitted for determination with a view to the pronouncement of an authoritative decision as to rights and liabilities of one or more parties. No inclusive and exclusive definition of the concept has been formulated and under the changing conditions of modern government it is doubtful whether a complete definition is possible.' and at p. 565 as under :--

'The truth is that no inclusive and exclusive definition of 'judicial power' can be formulated. Each case must be determined upon its own facts and circumstances, but it is here submitted that a difference between judicial power and other powers and functions of government is that the former does generally involve the application of pre-existing rule, some ascertainment of rights or liabilities according to some standard, whether that standard be a principle of law, an absolute standard, or only a standard commonly applied by Courts of law in the performance of their ordinary functions -- in other words, judicial power is exercised whenever the tribunal concerned is not entitled to exercise an absolute discretion or apply an absolutely subjective standard in its determination.'

17. M.P. Jain and S.N. Jain, in their book 'Principles of Administrative Law' (Third Edition) at p. 135 have considered the nature of the function when the matter arises between Administrative Authority and an individual. They stated that much depends upon the nature of the function and its impact on the individual concerned. If the authority has to base its decision on facts determined by it, and the decision of the authority is going to affect the individual adversely, the trend of the Courts generally is to hold it a quasi-judicial decision. At p. 149 they state that if the authority is exercising review power, this may be an important factor in characterising its function as quasi-judicial by the Courts. It is further stated that where there are only two parties i.e. a dispute between the administration and the individual, the power of review is likely to be held quasi-judicial.

18. In Gullapalli Nageshwara Rao v. Andhra Pradesh State Road Transport Corporation, AIR 1959 SC 308 the question arose as to what is the nature of the act performed by the State Government under Section 68-D (2) of the Motor Vehicles Act. Under Section 68-C, the scheme to run Road Transport Service to

the exclusion of the private operators is required to be proposed by the Transport Undertaking and any person affected by the scheme published under Section 68-C was given a right to file objections within 30 days from the date of publication, before the State Government under Sub-section (1) of Section 68-D. In Sub-section (2) of Section 68-D, the State Government was given the power to approve or modify the scheme after considering the objections and after giving an opportunity to the objector or his representative or representative of Transport Undertaking to be heard in the matter. Their Lordships of the Supreme Court considered the observations in *Province of Bombay v. Khushaldas*, AIR 1950 SC 222, *In re, Banwarilal Roy*, (1944) 48 Cal WN 766; *Nagendranath Bora v. Commr. of Hills Division and Appeals, Assam*, AIR 1958 SC 398 and *Express Newspapers Ltd. v. Union of India*, AIR 1958 SC 578 and stated that whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder and they clearly expressed the view that if an authority is called upon to decide respective rights of contesting parties OF to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially. Their Lordships of the Supreme Court considered Section 68-C and Section 68-D and observed that there is a proposal and an opposition and the third party, the State Government is to decide that lis and prima facie it must do so judicially and the Court held that this is an obvious case where the Act imposes a duty on the State Government to decide the act judicially in approving or modifying the scheme proposed by the Transport Undertaking. When an argument was advanced that the Government discharge an administrative duty in approving the scheme in the public interest and no rights of parties are involved in the process, their Lordships stated that there is some plausibility and attraction in the argument but they cannot accept either the premises or the conclusions. In para 24 of the report, it was held that the order of the State Government under Section 68-D is a judicial act and In the end of para 32 the inquiry conducted by the State Government was designated as a quasi-judicial inquiry. When the argument was hinted that the rules of business will not govern the quasi-judicial function entrusted to the State Government, it was observed that there is a fallacy in the argument. The concept of a quasi-judicial act implies that the Act is not wholly judicial; it describes only a duty cast on me

executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power.

19. In *Harinagar Sugar Mills Ltd. v. Shyam Sunder, Jhunjhunwala*, AIR 1961 SC 1669, their Lordships considered the nature of the proceedings by way of appeal before the Central Government under Section 111(3) of the Companies Act. Their Lordships observed as under (at p. 1676):--

'But the proceedings before the Central Government have all the trappings of a judicial tribunal. Pleadings have to be filed, evidence in support of the case of each party has to be furnished and the disputes have to be decided according to law after considering the representations made by the parties. If it be granted that the Central Government exercises judicial power of the State to adjudicate upon rights of the parties in civil matters when there is a lis between the contesting parties, the conclusion is inevitable that it acts as a tribunal and not as an executive body.'

20. Another case, which has been relied by Mr. Pareekh is *Parduman Singh v. State of Punjab*, AIR 1958 Punj 63. In this case, the question was as to what is the nature of the act to be performed by the custodian, evacuee property in cancellation of an allotment. The learned Judges considered the requisites or essential characteristics of a judicial decision or act and what the judicial approach postulates. It was observed that subsections (1) and (2) of Section 26 provide for hearing of the parties concerned. The propriety of cancellation of an allotment has to be considered by the Custodian under Section 26 (1) not according to expediency, policy, executive instructions or dictates of a Minister but according to Sub-rule (6) of Rule 14. That sub-rule provides the circumstances under which an allotment may be cancelled. As regards the power of review under Sub-section (2) of Section 26, it was observed that the term 'review' means a judicial re-examination of the case in certain specified and prescribed circumstances and judicial opinion tends to the view that the power of review under Section 26 (2) is in the nature of judicial power. This only supports the view that the power of review under that provision must necessarily be of the same nature and character as the proceeding or decision sought to be reviewed. The Custodian exercising the power of review under Section 26 (2) is a judicial or quasi-judicial authority.

21. I may refer here to the case of *Gurcharan Singh v. Prithi Singh*, AIR 1974 SC 223. In that case the question arose with regard to the determination of permissible and surplus areas of the land-owner, who failed to reserve or select his permissible area within time under the Punjab Security of Land Tenures Act, the transferee-appellants had notice of the proceedings and participated in the same, but at the stage of exercise of the powers by the Collector under Section 5-B, while determining as to which surplus land is to be taken possession of, their Lordships observed that the Collector has to act judicially.

He is bound to give notice to the land-owner, and the transferees from him, if known. Thereafter, he has to hear the parties who appear and to take into consideration their representations and then pass such order as may be just. In so exercising his discretion, the Collector may, subject to the adjustment of equities on both sides, include the transferred area in the permissible area or the surplus area of the land-owner. He may consider the wishes of the land-owner to the extent they are consistent with the equities of the case.

22. The learned Government Advocate referred to the observations made in para 5, in *Province of Bombay's case* (AIR 1950 SC 222) (*supra*) in which Kania, C. J. refrained from entering into discussion about the distinction between judicial and quasi-judicial functions as that discussion was not useful in that case. However, it was observed in that case that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. In para 47 of the report of Mahajan, J., as he then was in his dissenting judgment concluded that the position and the duties of the Government under the Bombay Land Acquisition Ordinance are such that it satisfies both the tests. It is a body of persons having legal authority to determine questions affecting the rights of subjects and its duty is to act judicially. It cannot arrive at its determination on a mental process of its own.

23. Das, J., in his concurring judgment concluded the matter as under (para 173):--

'What are the principles to be deduced from the two lines of cases I have referred to? The principles, as I apprehend them, are: (i) that if a statute empowers an

authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a *lis* and *prima facie*, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.'

24. Mr. Shishodia drew the analogy from the provisions of re-assessment under the Income-tax Act and reliance was placed by him, in support of his contention that the power under Section 15 of the Act is purely administrative, on *S. Narayanappa v. Commr. of Income-tax*, AIR 1967 SC 523 and *Sonia Bhatia v. State of U. P.*, AIR 1981 SC 1274. In *S. Narayanappa's* case (*supra*) it was observed that the proceedings for assessment or re-assessment under Section 34 (1) (a) of the Income-tax Act start with the issue of a notice and it is only after the service of the notice that the assessee becomes a party to these proceedings. The earlier stage of the proceeding for recording the reasons by the Income-tax Officer and for obtaining the sanction of the Commissioner are administrative in character and are not quasi-judicial. In *Sonia Bhatia's* case (AIR 1981 SC 1274) (*supra*), their Lordships of the Supreme Court observed that moreover, the object of the Income-tax Act as also the present Act (U. P. Imposition of Ceiling on Land Holdings Act, 1967) seems to be more or less identical Whereas the object of the Income-tax Act in enacting Section 16 (3) (b) is to circumvent and prevent a growing tendency on the part of assesseees to avoid or reduce tax liability by means of settlements In the instant case also, the avowed object of Sub-section (6) of Section 5 of the Act is to prevent the large land-holders from evading the ceiling law by executing transfers, instruments or gift so as to reduce their surplus area.

25. It is submitted by the learned Government Advocate that the provisions of Section 15 of the Act are akin to re-assessment provisions under the Income-tax Act inasmuch as the ceiling limit is fixed under the Ceiling Act and similarly tax liability is fixed under the Income-tax Act. There is a duty cast under both the laws to file returns voluntarily and in case returns are not voluntarily filed, the authorities can call for the returns under both the laws. When the returns are filed, the assessment of tax liability or quantification of surplus land is made under the respective laws and if the returns are not filed, best judgment assessment is made under the Income-tax Law and after collecting necessary information, surplus land can be determined by the authorised officer, under the ceiling law. Under the Income-tax Law, if the Income-tax Officer has reason to believe that income has escaped assessment, he has power to re-assess, if the conditions of relevant provisions are satisfied. Similarly, if the conditions of Sub-sections (1) and (2) of Section 15 of the Act are satisfied, the State Government is conferred with the power to direct the reopening of the case, so by analogy, the action of the State Government is administrative in nature. It may be that after opening of the case, the function of the authority to whom the direction has been given to re-open the case, may be a judicial or quasi-judicial function, till then, the power of the State Government is administrative as it has simply to satisfy as to the existence of the conditions mentioned in the provisions of Section 15 of the Act

26. At first sight, the argument appears to be plausible and the analogy appears to be appealing but in the very nature of things, on a little deeper probe or study, the argument will not stand scrutiny. In the re-assessment proceedings the matter rests in the domain of one's reasonable belief. The Income-tax Officer before commencement of the re-assessment proceedings has to form a belief himself though rationally that the income has escaped assessment but the State Government while acting under Section 15, either Sub-section (1) or Sub-section (2) before giving direction has to satisfy as to the existence of the given conditions and this satisfaction has to be reached after giving show cause notice against the proposed action to the concerned person and concerned person has to be heard in the matter after enforcement of the Act No. 6 of 1978. Prior to the Act No. 6 of 1978, though there was no provision for issuing such a notice, still having regard to the principle of natural justice; *audi alteram partem*, no such direction could be

given without giving an opportunity of hearing to the person concerned. Besides giving an opportunity of hearing to the person concerned, satisfaction has to be reached by the State Government objectively as to the existence of the conditions necessitating the re-opening of the case. To my mind, this is the basic distinction between the nature of the two provisions namely : (1) re-opening provisions under the Ceiling Law, and (2) re-assessment provisions under the Income-tax Law. The argument has been advanced on the basis of the observations made by Hon'ble the Supreme Court in Sonia Bhaiia's case (AIR 1981 SC 1274) (supra). Their Lordships in that case were considering the meaning and connotation of the expression 'adequate consideration' occurring under the Ceiling Law and in that connection considered the matter in the light of Income-tax Law wherein the meaning of this expression has been considered. In that connection, their Lordships drew analogy between Section 16 (3) of the Income-tax Act and Sub-section (6) of Section 5 of the Ceiling Act. In my opinion, that analogy is not of any help in the present case. I shall be presently considering the nature of the power conferred or function assigned to the State Government under Section 15. But here, I have only pointed out that no analogy can be drawn from the re-assessment provisions of the Income-tax Act. Although, ex facie they appear to be similar and identical and the object may also appear to be identical but still their nature is different.

27. Learned Government Advocate drew my attention to the observations made in paras 17, 27, 28 and 29 of the Full Bench decision in Banshidhar v. State, AIR 1977 Raj 46 and submitted that under the provisions of Ceiling Law, the land-holders are under a duty to surrender their surplus land and the State has acquired a corresponding right to enforce that liability and the rights of the State are perfected and cannot be called inchoate right. Without the investigation and adjudication, there could be no quantification of the ceiling area. So the proceedings are in the nature of investigation for the purposes of computation of the excess land or surplus land of the land-holders. It has been so considered on the basis of the above F. B. decision (in para 21) in Sajjan Singh v State of Rajasthan, 1979 WLN (UC) 32. The argument has been advanced to show that the power or function is not judicial inasmuch as, there is no adjudication of rights and the liabilities as the same has already been laid down under the law and

simply investigation is made for quantification.

28. It has to be seen in the light of the views expressed by the Authors on Administrative Law and in the light of the principles enunciated in the case law dealt with above as to what is the nature of power conferred or function assigned to the State Government under Section 15 of the Act. For determination of the above question, it would be essential to scan the relevant provisions of the old Ceiling Law and the new Ceiling Law. The substantive provisions under the old Ceiling Law are contained in Chap. III-B of the Tenancy Act and the State Government framed the Rajasthan Tenancy (Fixation of Land) Government Rules, 1963. The rules laid down the procedure for giving effect to the provisions under Chap. III-B, The Sub-Divisional Officer has been empowered to decide the ceiling matters. Declarations are required to be given by the landholders and tenants under Rule 9 and even otherwise, the Sub-Divisional Officer has the power to issue notice requiring the landholders and tenants to furnish a declaration. The declarations are required to be checked by the Tehsildar and the Tehsildar is required to make summary inquiry regarding the number of the members of the declarant's family and regarding the accuracy in the entries of declarations and he is required to submit his report. In case of those landholders and tenants from whom declaration have not been received, the Tehsildar is required to prepare the statement of their holding. Under Rule 14 the Sub-Divisional Officer, after receipt of the report of the Tehsildar or the statement prepared by the Tehsildar in case of those land-holders and tenants, who have not submitted their declaration, is required to issue notice to the land-holders and tenants to appear before him if they wish to be heard and after giving them hearing if they appear and after making such inquiry, if any, as he may deem it fit to make, he may proceed to determine the ceiling area. The order of Sub-Divisional Officer is appealable to the revenue appellate authority, thereafter the matter can be agitated before the Board of Revenue by way of Revision, It is an admitted case of the parties that the State Government is represented in the ceiling matters.

29. The Revenue Courts and the Board of Revenue have been created and established under the Rajasthan Land Revenue Act, 1956. Under the Rajasthan Tenancy Act, Section 2 (35) defines the expressions Revenue Court to mean a

Court or an officer having jurisdiction to entertain the suits or other proceedings relating to the agricultural tenancy, profits and other matters connected with the land or any right or any interest in the land, wherein, such Court or officer is required to act judicially; it shall include the Board and every member thereof, a revenue appellate authority and a Collector and a Sub-Divisional Officer and an Assistant Collector and a Tehsildar or any other officer while so acting.

30. The Rajasthan Land Revenue Act makes a provision for controlling powers under Section 23, which lays down that the control of all non-judicial matters connected with the revenue in the State other than matters connected with settlement is vested in the State Government and the control of all judicial matters and of all matters connected with settlement is vested in the Board. Under Sub-section (2) of Section 23, the expression judicial matter has been defined to mean a proceeding in which a revenue Court or officer has to determine the rights and liabilities of the parties thereto and the proceeding and orders as well as appeals, revisions and reference in the cases specified in the First Schedule shall be deemed to be judicial matters for the purposes of this Act.

31. Under the Act, the authority to determine the ceiling area has been conferred on the Authorised Officer. In the Act, there are similar provisions regarding the furnishing of returns by persons-holding land in excess of the ceiling area and further power has been given to the Authorised Officer under Section 11 to collect the information in respect of all persons who have not furnished the returns or when return furnished is incomplete or incorrect. Section 12 of the Act empowers the Authorised Officer to prepare the draft statement in respect of each person holding land in excess of the ceiling area, after making such inquiry as he deems fit. The draft statement is required to be served on the person concerned and on all interested persons and a notice is to be given for calling objections to the draft statement. Under Sub-section (3) of Section 12, the Authorised Officer is required to consider any objection after giving the objector a reasonable opportunity of being heard and has to decide the objections by an order in writing. After disposal of the objections, necessary alterations have to be made in the draft statement in the light of the orders passed on the objections and then he shall declare the ceiling area applicable to the person concerned and the surplus land held by him.

He is required to prepare final statement and he shall cause a copy of the same served on the person concerned and shall cause it to be published. From the date of service of the final statement, the surplus land shall vest absolutely in the State Government and the surplus land shall be deemed to have been acquired by the State Government. The right of appeal is conferred to the State Government as well as to any person aggrieved by the decision or any order of the Authorised Officer. A right of second appeal has been conferred under Section 23. Under Sub-section (6) of Section 23, the decision or the order of the Authorised Officer has been made final subject to the decision in appeal and it is further provided that it shall not be called in question by any Civil or Revenue Court. Section 36 created a bar of jurisdiction of Civil Courts. Section 36 provided that no Civil or Revenue Court shall have jurisdiction to decide or deal with any question or matter which is by or under this Act required to be decided or dealt with by the authorised officer or any other authority.

32. The old Ceiling Law as well as the Act contained penal provisions. Under subsection (3) of Section 30-E of the Tenancy Act, intentional failure to make a report or to surrender the land as required by Sub-section (2) has been made punishable with a fine of Rs. 1,000/- and under the Act, Chapter 7 makes the provisions for punishment, penalty and procedure from Sections 24 to 29. Failure to furnish returns or furnishing false returns or making false declaration or acquisition of land in excess of the ceiling area or contravention of any lawful order, have been made penal and cognizance of the offence can be taken on a complaint in writing made by the authorised officer or any officer empowered by him by any special order. Sections 31 and 32 empowered the Authorised Officer to obtain any information from any Court or any authority or from any person.

33. It would appear from the narration of the provisions of the old Ceiling Law as well as of the Act that the proceedings begin either by submission of declaration under the old Ceiling Law or furnishing of returns under the Act. The declaration and returns as the case may be, are checked and verified and under the old Ceiling Law a summary inquiry can be conducted by the Tehsildar as to the accuracy or inaccuracy of the entries and as to the number of members of the family of the declarant and where declaration is not submitted, the Tehsildar may

prepare the statement of holdings of those persons, who have not submitted the declaration. The Sub-Divisional Officer is required to inform to the land-holders and tenants that the Tehsildar's report has been received and an opportunity of hearing is given to them and if they do not avail of this opportunity, then the Sub-Divisional Officer may determine the ceiling area on the basis of the Tehsildar's report and after making further inquiry. It may be stated that till the receipt of the report of the Tehsildar, the function of the Sub-Divisional Officer appears to be administrative and executive in nature. Even when the landholders and the tenants do not wish to be heard, the Sub-Divisional Officer is free to determine the ceiling area on the basis of the Tehsildar's report. This action too can be termed as administrative but when the notices are issued to the land-holders and tenants and opportunity of hearing is given to them and they are heard and under Rule 14 the Sub-Divisional Officer is bound to give them hearing, then these proceedings, in my opinion, cannot be designated simply as administrative in character. The function is quasi-judicial and not strictly judicial. The function prior to the giving of an opportunity of hearing can hardly be said to be judicial. Even viewed in the light of the definition of the expression 'Revenue Court' under the Tenancy Act and the definition of expression 'Judicial matter' under Section 23 of the Rajasthan Land Revenue Act, up to the receipt of the Tehsildar's report, the matter cannot be said to be judicial. It is true that the Sub-Divisional Officer may be a Revenue Court but in the definition of the expression 'Revenue Court', it is an essential element that the Court or Officer should have jurisdiction to entertain any proceedings connected with any right or any interest in the land wherein such Court or officer is required to act judicially. In a simple case of quantification in which no objections are filed and no questions are to be determined, the officer is not required to act judicially. In such a case, he is only an administrative officer. It is true that under Section 23 of the Rajasthan Land Revenue Act, a ceiling matter can be considered to be a judicial matter as its control is vested in the Board but where no rights or liabilities are required to be determined and a case is a case of simple quantification, such a ceiling matter cannot be considered to be a judicial matter as the essential requirement for a proceeding to be a judicial matter is that the Revenue Court or officer has to determine the rights and liabilities of the parties thereto. It may be stated that the ceiling matters are not specified in the First

Schedule of the Land Revenue Act, which enumerates the judicial matters. So by reference to the matters stated in the First Schedule, the ceiling matter cannot be considered to be a judicial matter but when the land-holders and tenants are heard and the Sub-Divisional Officer is called upon to decide the objections or the claims of the land-holders and the tenants, which may pertain to claim of exemption of certain land from ceiling or of recognition of certain transfers or of inclusion or exclusion of certain persons as members of the family or question relating to construction and interpretation to be placed on the provisions of law or the application of law to the given facts, then the Sub-Divisional Officer is required to act judicially, and the matter can be considered as a judicial matter, although in the strict sense of the term, or in the traditional sense the function cannot be considered as judicial. It cannot be said having regard to the nature of the power conferred on the Sub-Divisional Officer that the Sub-Divisional Officer is a Court *stricto sensu*. While deciding the claims and objections of the land-holders and tenants, it has simply trappings of the Court. The rules of evidence and procedure as are observed by the Courts, need not be observed by the Sub-Divisional Officer, though their duty is to act judicially. While determining the claims and objections, in my opinion, the function is quasi-judicial in character.

34. What is stated in respect of the provisions of the old Ceiling Law, is true with regard to the provisions of the Act as well. After furnishing the returns, the returns have to be verified and the additional particulars can be called. The Authorised Officer is empowered to make an inquiry and then prepare a draft statement. In case, the returns are not filed despite the notice, he is empowered to obtain necessary information by himself or through any other agency. Objections are invited after serving the draft statement and those objections have to be heard and decided and thereafter final statement is to be prepared. The powers and function up to the stage of service of the draft statement appear to be administrative in nature but when the objections are filed, for disposal of the objections the function ceases to be administrative and partakes the character of judicial function. In the wider and larger sense of the term, the power or the function can be said to be judicial, but in the narrower or stricter and conventional sense, the authority empowered to determine the ceiling area not being a Court and not being required to discharge its function like a Court so their function cannot be said to be judicial.

Considering the position as to how the matters originate either before the Sub-Divisional Officer or the Authorised Officer and considering the position, as to how, they proceed after origination of the proceedings, it cannot be said that they function like a Court in the conventional sense strictly. Strictly judicial proceedings are confined to Courts where there is *lis inter partes* and where the settled rules of procedure and evidence are followed and where the rights and liabilities of the contesting parties are adjudicated in accordance with the pre-existing law, and the application of law to the facts found. In *Express Newspapers Ltd.'s case* (ATR 1958 SC 578) (*supra*) while considering the function of the Wage Board, Bhagwati, J., observed that the function performed by the Wage Board would be quasi-judicial in character. Under the old Ceiling Law as well as the new Ceiling Law, while hearing the land-holders and tenants, the competent authority has to act judicially and the function performed by it would be quasi-judicial in character.

35- In *G. Nageswara Rao's case* (AIR 1959 SC 308) (*supra*) their Lordships of the Supreme Court have found the existence of three criteria in the function of the State Govt. namely : (i) the body of persons must have legal authority; (ii) the authority should be given to determine questions affecting the rights of subjects and (iii) they should have a duty to act judicially. In that case, they found that there is a proposal and an opposition so there is a *lis* and the third party, the State Government is to decide that *Us* and *prima facie* it must do so judicially and the enquiry made by the State Government was characterised as quasi-judicial inquiry. In the ceiling matter as well at the stage of hearing, the three criteria apply and the enquiry conducted by the competent authority can be characterised as a quasi-judicial inquiry. There is the power to call for information from any person vested in the competent authority and the same can be noted upon but strictly speaking no such power is vested in the judicial authority and the judicial authority is required to proceed only on legal evidence. Thus, from what I have discussed above the function of the competent authority under the old Ceiling Law as well as the Act is neither administrative in character nor judicial in character but they are quasi-judicial in character though up to a certain stage they are administrative in nature.

36. This is equally true of the provision contained in Section 15 of the Act. The State Government is clothed with the power or authority to reopen the decided cases, which had become final. This power implies that the final orders shall stand set aside and the matter would be reopened. Such an exercise of power would mean that the rights of the parties may be affected. Ultimately, after reopening, the result may or may not be different but still the finality of the orders would come to an end and this by itself may affect their rights. So the nature of power is such, which may affect the rights of the parties. Besides that as already stated that power is to be exercised by the State Government on being satisfied of the conditions mentioned in the provision. Such a satisfaction has to be reached objectively only after hearing the person concerned, whose rights may be affected. No power can be exercised in one's own discretion or application of subjective standard. It can only be exercised if the conditions contemplated in the provision are fulfilled. It may be pointed out here that in my opinion, the power under Section 15 of the Act is akin to the power of review with this difference that the authority itself, under Section 15 of the Act, does not decide the matter but directs the matter to be disposed of afresh by any subordinate officer. The power of reopening can be equated to the power of review as the grounds are similar to review to some extent as contained in Order 47, Rule 1, C. P. C. There is the ground of discovery of new evidence. There is also a ground of error apparent on the face of the record in the case of an order of the Board of Revenue and some times, such an error may amount to an action in contravention of law. Thus, the power of reviewing the final and binding order is a judicial act, and such a power, as is conferred under Sub-sections (1) and (2) of Section 15 of the Act that may be in force from time to time, cannot be considered to be an administrative power. It is a quasi-judicial function, which is performed by the State Government. The power under Section 15 is of the same nature and character as the proceedings before the competent authority under the relevant law as stated in Pardu man Singh case (AIR 1958 Punj 63) (supra), cited by Shri Parekh, counsel for the petitioners. I have already considered that the analogy of the provisions of reassessment contained in the Income-tax Law cannot be drawn. When the whole setting of the provisions of the relevant Ceiling Law is such that the proceedings therein strictly speaking are not judicial and the functions performed can only assume quasi-

judicial character. In Black's Law Dictionary, the meaning of quasi-judicial act is given as a judicial act performed by one, not a Judge. A quasi-judicial act may also be one where a duty is cast on the executive authority to conform to norms of judicial procedure in performing some act in exercise of its executive power.

37. The learned Government Advocate pressed into service the observations made in para 38 of the decision in *Sk. Bafatulla Mukhtear v. State of West Bengal*, AIR 1973 Cal 148 and submitted that when the quasi-judicial function is vested in the executive, it remains and continues to be an executive power of the Government. These observations have been made while examining the powers under the rules of business of the Government. As the executive power of the Government may spread to quasi-judicial functions as well, so these observations have been made in that light, but while determining the nature of the function, it has to be found as to whether it is executive in nature, or judicial or quasi-judicial in nature. So, for determination of the nature of the functions under Section 15, the observations made in para 38 cannot properly be pressed into service.

38. I, therefore, hold that the power conferred or function assigned to the State Government under Section 15 (1) or 15 (2) of the Act is neither administrative as contended by the learned Government Advocate nor judicial as contended by the learned counsel for the petitioners but it is quasi-judicial in character.

39. Having found that the power or function of the State Government under Section 15 (1) or under Section 15 (2) of the Act is quasi-judicial in character, the two contentions advanced by Mr. Parekh do not arise for consideration at all. The two contentions proceeded on the premises that the function of the State Government under both the Sub-sections of Section 15 is judicial. However, the contentions may be considered assuming that the function of the State Government under Section 15 of the Act is judicial. It is urged that separation of powers is the basic feature of the Constitution and con-ferment of judicial power on the State Government is clear violation of the basic feature. According to Mr. Parekh, there are three organs of the Indian Republic 'the executive, the legislature and the judiciary'. Each of the three organs is required to function in its own sphere and one organ cannot encroach upon the other organs. Reliance has

been placed by Mr. Parekh in support of his contentions on the Division Bench decisions of the Patna High Court in *Bankey Singh v. Jhingan Singh*, AIR 1952 Pat 166 and reference may be made to the decision in *Basanta Chandra Ghose v. Emperor*, AIR 1944 FC 86 and in *Smt. Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299 and *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality*, AIR 1970 SC 192. The contention of Mr. Parekh, in my opinion, does not merit acceptance. By Sec. 15 of the Act, the power for reopening the decided cases has been conferred on the State Government, if certain conditions are fulfilled. It is not such a provision whereby, the legislature can be said to have undone the final orders passed in the ceiling cases. In *Bankeysingh's case* (AIR 1952 Pat 166) (supra), Section 3 of the Barahiya Tal Lands (Declaration of Possession) Act, was held to be void and ultra vires the State Legislature because by this provision, the decision of the Court was reversed. It was observed in that case that the Constitution defines and de-limits the power of the Legislature and the executive and although the existence of the judiciary is assumed and recognized under the Constitution and even establishment of additional Courts provided for, its powers have not been defined. But it is well settled that when a department is created by the Constitution for the exercise of judicial authority, the Constitution contemplates the whole judicial power to be exercised by the judicial department alone with such exceptions only as the Constitution itself may make. In this very case, it is considered that the Legislature has power to reopen past controversies and make laws, even retrospectively or repeal a Statute or modify it, or even to pass a validating Act.

40. In *Shri Prithvi Cotton Mills Ltd.'s case* (AIR 1970 SC 192) (supra), it has been held that mere declaration is not sufficient that the decision of the Court shall not bind for that tantamounts to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. It was observed that a Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances, i.e. by law the basis of the decision can be changed but the decision cannot be changed.

41. In *Basanta Chandra's case* (AIR 1944 FC 86) (supra), it was held that a direction under Section 10 (2) is not legislative but a judicial one and direction to the effect that such a proceeding is discharged is clearly a judicial act and not the enactment of law. It is a direct disposal of cases by the Legislature itself.

42. In *Smt. Indira Nehru Gandhi's case* (AIR 1975 SC 2299) (supra), it was observed that neither of the three organs can take over the function of the other. This is the basic structure or scheme of the system of the Government of the Republic laid down in the Constitution. Clause (4) of Article 329A as introduced by the Constitution 39th Amendment Act of 1975 was held to be unconstitutional. These cases are clearly distinguishable. In enacting Section 15 of the Act, the object appears to be to reopen the decided cases in order to fulfill the object of Ceiling Law to take possession of the surplus land and distribute the same to the landless persons and for that it may be essential to reopen the cases on account of the fact that the computation or quantification of the land might not have been properly done and the land that should have been available to the Government was not made available. Section 15 provides a remedy and forum for determining the question of reopening and there does not appear anything to be unconstitutional in conferment of that power on the State Government.

43. In *Associated Cement Companies Ltd. v. P.N. Sharma*, AIR 1965 SC 1595, the (appellate jurisdiction was conferred on the State Government under Rule 6 (6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952. For exercising this jurisdiction, it was held that the State Government is a tribunal under? Article 136(1) of the Constitution. In that case, it was observed that judicial function and judicial powers are one of the essential attributes of a sovereign State, and on consideration of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State by appropriate measures, to transfer apart of its judicial power and functions to Tribunals by entrusting to them the task of adjudicating upon special matters and disputes between the parties. It is really possible or even expedient to attempt to describe exhaustively the features which are common to the Tribunals and the Courts and features, which are distinct and separate. The basic and fundamental feature, which is common to both the Courts and the Tribunals is that they discharge judicial function and exercise judicial power, which

inherently rests in sovereign State. The main and the basic test, however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a Statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6 (5) and Rule 6 (6) is a part of the State's judicial power, it has to be held that it is a Tribunal within the meaning of Article 136(1).

44. In *Harinagar Sugar Mills Ltd.'s case* (AIR 1961 SC 1669) (supra), the appellate power was vested in the Central Government under Section 111 of the Companies Act, 1956, which was a judicial power of the State to adjudicate upon rights of the parties in civil matters when there is a lis between the contesting parties. It was observed that the conclusion is inevitable that it acts as a Tribunal and not as an executive body.

45. In *Chandra Mohan v. State of U. P.*, AIR 1966 SC 1987, it was observed that the Indian Constitution does not accept the strict doctrine of separation of powers.

46. The question of strict or rigid separation of power has been examined in *Associated Cement Companies Ltd.'s case* (AIR 1965 SC 1595) (supra). It has been observed that there is no rigidity involved in the Indian Constitution, as under Section 71 as well as the other provisions of Chap. III of Australian Constitution. It has been observed in para 30 that such authorities or bodies are Tribunals because the judicial power of State has been statutorily transferred to them. In that case more appropriate expression to use would be that the powers which they exercise are quasi-judicial in character and Tribunals appointed under such a scheme of rigid separation of powers cannot be held to discharge the same judicial function as the Courts. Thus, assuming that the power conferred on the State Government is a judicial power, it is within competence of the State Legislature to confer such a power on the State Government and there is no violation of any basic feature of the Constitution, as the Constitution does not embody the theory of separation of powers with rigidity.

47. The other limb of the argument may also be considered here. The argument proceeds that by enacting Section 15, the decisions rendered in the ceiling cases

have been nullified and finality has been destroyed. While dealing with the earlier contention, I have already expressed that by enacting Section 15 of the Act, the provision in the nature of reviewing and re-opening has been provided for. When the old ceiling law has been repealed, then even in the matters decided under the old ceiling law, a provision could be kept in the Act for re-opening the old matters decided under the repealed law. It is true that so far as the Act is concerned, there is a provision contained in Section 23 (6) of the Act that the decision or order of the authorised officer is final subject to appeal and the same shall not be called in question by any civil or revenue Court. It may be stated that this provision will not override Section 15 (1). This section contained a provision for re-opening. The two provisions have to be harmoniously construed so as to operate within their spheres independently. The legislature was well aware of what is enacted in Sub-section (6) of Section 23, while enacting Section 15 (1), which begins with non obstante clause, so Section 15 overrides the other provisions of the Act including Sub-section (6) of Section 23. So far as Sub-section (2) of Section 15 is concerned, it may be stated that this provision is resorted to without prejudice to any other remedy that may be available under the Rajasthan Tenancy Act. When the legislature is competent to enact such a provision, then the argument that finality of the orders will be destroyed, is untenable. There is no finality dehors the provisions of law. When the legislature is competent to legislate and provided for re-opening of cases, the question of finality does not arise. Mr. Parekh referred to a decision of the Board of Revenue for Rajasthan v. Rao Baldev Singh, AIR 1968 SC 898. This decision has no application to the facts of the present case. That was a case where exclusive jurisdiction was conferred on the Jagir Commissioner and the jurisdiction of Civil Courts or Revenue Courts was barred under Section 46. Section 47 made a provision that the Jagir Act shall have the overriding effect. In the light of these provisions, the question was examined as to whether the finality of the order of the Jagir Commissioner can be disturbed. It was held that exclusive jurisdiction is conferred upon the Jagir Commissioner to decide the question as to whether any property of the Jagirdar is of the nature of Khudkasht and the decision of the Jagir Commissioner on this question is final and cannot be challenged collaterally in a civil or revenue Court. It was also observed that neither the land-records officer nor any other revenue Courts have jurisdiction to inquire

into the question whether the property claimed by the Jagirdar is khudkasht within the meaning of Section 23 of the Act. The position in the present case is absolutely different. Here in the Act itself a provision has been made for re-opening. The finality provision will have to be read subject to the provision for re-opening the decided cases under the old ceiling law as well as under the Act.

48. In *Nandlal v. State of Haryana*, AIR 1980 SC 2097, it was observed that the Court could call in aid the well known canons of interpretation and even where the provisions of a statute appeared to be mutually inconsistent there were several well known rules of interpretation to guide the Court in giving a proper meaning to the provisions of a statute, such as the rule of harmonious construction, the rule that special shall prevail over the general. The law should be so interpreted so as to give effect to the legislative intent rather than frustrate it. Thus, in the enactment of Section 15 of the Act, there is neither nullification of the decisions or the orders of the competent authorities nor the argument based on the consideration of the finality can be sustained.

49. On behalf of the petitioners, it is next contended that the provision contained in Sections 15 (1) and 15 (2) of the Act is violative of Article 14 of the Constitution. These provisions are such, which confer arbitrary power on the State Government to reopen the decided cases. The State Government can pick and choose the cases it likes and there is no provision for examination of all the decided cases and then to find out as to which cases can legitimately fall in the category of the cases, which are liable to be re-opened. The conferment of the power on the State Government is also arbitrary on the ground that the State Government, which is a party in a ceiling matter, has been made a Judge in its own cause and further the provisions are violative of Article 14 on the ground that varying limitations have been prescribed for different periods and classification made in the orders passed by the Board of Revenue and the orders passed by the other authorities is discriminatory inasmuch as this classification has no nexus with the object sought to be achieved.

50. It was pointed out by the learned counsel for the petitioners as well as learned intervenes that the Act No. 6 of 1979 is not saved by the protective umbrella of

putting the Act and Act No. 8 of 1976 in the Ninth Schedule under Article 31B of the Constitution. Act No. 6 of 1979 has not been placed in the Ninth Schedule, as the provisions contained in Sections 15 (1) and 15 (2) of the Act are open to challenge on the ground that the provisions are violative of Article 14 of the Constitution. Reliance was placed on the decision of the Supreme Court in *Prag Ice and Oil Mills v. Union of India*, AIR 1978 SC 1296.

51. Mr. S.N. Sharma also urged that Article 31A is not attracted because Act No. 6 of 1979 is not a law providing for acquisition by the State of an estate or of any rights therein or extinguishment or modification of any such rights. Reference was made to a decision of this Court in *S. B. Civil Writ Petition No. 570 of 1978, Sajjansingh v. State of Rajasthan*, decided on Jan. 20, 1979 (1979 WLN (UC) 32). In support of the contention that classification is unreasonable and arbitrary, reliance has been placed on the *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75 and in *re, Special Courts Bill, 1978* : AIR 1979 SC 478 (sub-para 7 of para 73), *Ramkishana Dalmia v. Justice S. R. Tendolkar*, AIR 1958 SC 538, *Raghunandan Prasad Mohan Lal v. Income-tax Appellate Tribunal*, AIR 1970 All 620 (FB) and *Thakur Madhosingh v. State of Rajasthan*, AIR 1954 Raj 197.

52. Learned Government Advocate did not refute the submission that the amending Act or Acts, which have not been placed in the ninth Schedule are open to challenge on the ground of being violative of any fundamental rights, as has been laid down in *Prag Ice and Oil Mills'* case (AIR 1978 SC 1296) *supra*). He, however, submitted that the original Act and amending Act No. 8 of 1976 have been placed under the ninth schedule so those Acts or any of the provisions thereof are not open to challenge on the ground that the Acts or the provisions thereof are inconsistent with or take away or abridge any rights conferred by Article 14 of the Constitution, The provisions are immune from the attack that they are ultra vires of Article 14 of the Constitution. The principal Act contained Section 15, which empowered the State Government to reopen the cases under the new ceiling law as well under the old ceiling law. The amending Act No. 8 of 1976 effected amendment in Section 15 with retrospective effect. A look to the provision contained in Section 15 as amended by Act No. 8 of 1976 would reveal that the power to reopen cases is conferred on the State Government, if the conditions

stated therein are satisfied and different time limits have been prescribed. Sub-section (2) of Section 15 contains a proviso dealing with the conditions when the order of the Board of Revenue can be re-opened. Thus, conferment of powers on the State Government to re-open the cases in which the State Government is a party and the conferment of power on the State Government to reopen, cases, if the requisite conditions are satisfied and classification made between the orders of the Board and order of the other authorities under Sub-section (2) of Section 15 of the Act are not open to attack. This three pronged attack based on Article 14 of the Constitution would not be available to the petitioners. On the basis of these three grounds, Act No. 6 of 1979 is not open to challenge as in that Act. provisions essentially remain the same. Apart from show cause notice provision, what has been laid down by Act No. 6 of 1979 is that time has been extended within which the State Government may re-open cases under Section 15 (1) or 15 (2) as may be in force during the relevant period. Thus, it may be stated that Act No. 6 of 1979 has not substantially altered the essential features of the Act No. 8 of 1976, so the provisions of Section 15 (1) and 15 (2) under Act No. 6 of 1979 would also be saved from the attack of Article 14 of the Constitution on the above three grounds. As regards the attack on the ground of providing varying periods of limitation in Clauses (a) and (b) of Sub-section (1) of Section 2 and in Clauses (a) and (b) of Sub-section (2) of Section 2 of the Act No. 6 of 1979, it may be stated that it does not suffer from the vice of unreasonable and discriminatory classification. Clauses (a) and (b) of Sub-section (1) of Section 2 of the Act No, 6 of 1979 substitute Section 15 with retrospective effect for two different periods. Clause (a) relates to the period from 1-1-73 to 7-4-1978 and Clause (b) relates to the period from 8-4-1978 to 13-8-1978. As the object of the ceiling law could not be achieved and the cases were not available for re-opening, time was extend. Thus, during the period from 1-1-1973 to 8-4-1978, the cases under the New Ceiling Law could be re-opened within 4 years of the date of the final order of within 3 years from 15-8-1975 whichever, is later and the cases under the old Ceiling Law could be re-opened within 6 years from the commencement of the Act and with respect to the period from 8-4-1978 to 13-8-1978, the cases under the new ceiling law as well as under the old Ceiling Law could be re-opened but a time limit has been fixed within which notice to show cause could be issued The

limitation instead of being set on the basis of the date of order or commencement of the Act, has been set on the basis of issuance of notice though direction for reopening can be given at any time thereafter. But show cause notices are required to be issued within the time prescribed under the second proviso to Sub-section (1) or Sub-section (2) of Section 15 of the Act as were in force during the period from 8-4-1978 to 13-8-1978 and under the new Ceiling Law notices could be issued within 4 years from the date of final order or within 3 years from 15-8-1975 and under the old Ceiling Law, the notice could be issued within 6 years of the commencement of the Act and after this period, the time limit in the second proviso to both Sub-sections (1) and (2) of Section 15 of the principal Act, has been extended. Under the new Ceiling Law, notice could be issued within 5 years from the date of final order or up to 30-6-1979, whichever is later, and under the old Ceiling Law, the notice could be issued within 7 years from the date of final order or Up to 30-6-1979, whichever is later. Thus, the limitation has been prescribed in relation to the different periods but in different periods, the limitation prescribed under the new Ceiling Law as well under the old Ceiling Law is uniform and in prescribing a different limitation during the different periods under the new Ceiling Law and under the old Ceiling Law, the object appears to be, to make it possible to find out cases in which the provision of re-opening can be attracted so that the goal or object of the legislation can be achieved by making available the surplus land to be distributed to the landless.

53. Mere reference may be made to the decision of the Supreme Court in *S. C. Prasher v. Vasant Sen Dwarkadas*, AIR 1963 SC 1356. In that case, an amendment was made in S 34 of the Income-tax Act, 1922 by the amending Act of 1959. The Parliament gave power to issue a notice at any time in all those cases, in which the period of eight years under the principal Act as it stood prior to 1956 amendment had expired. It was observed that 'the subsequent changes in the period of limitation do not take away an immunity, which has been reached under the law as it was previously. In this sense, statutes of limitation have been picturesquely described as 'statutes of repose'. But it is somewhat inapt to describe Section 34 with its many amendments and validating sections as a 'section of repose'. Under that section, there is no repose till the tax is paid or the tax cannot be collected. What the law does by prescribing certain periods of time

for action is to create a bar against its own officers administering the law. It tries to trim between recovery of tax and the possibility of harassment to an innocent person and fixes a duration for action from these two points of views. These periods are occasionally re-adjusted to cover some cases which would otherwise be left out and hence these amendments. An assessment can be said to become final and conclusive if no action can touch it but where the language of the Statute clearly re-opens closed transactions, there can be no finality. The prescribed periods cannot be raised to the level of those periods of limitation, which confer not only immunity but also give titles by the passage of time. Under the scheme of the Income-tax Act, a liability to pay tax is incurred when according to Finance Act in force the amount of income, profits or gains is above the exempted limit. That liability to the State is independent of any consideration of time, and in the absence of any provision restricting action by a time-limit, it can be enforced at any time what the law does is to prevent harassment of assessees to the end of time by prescribing a limit of time for its own officers to take action. This limit of time is binding upon the officers, but the liability under the charging section can only be said to be unenforceable after the expiry of the period under the law as it stands. In other words, though the liability to pay tax remains, it cannot be enforced by the officers administering the tax laws. If the disability is removed or according to a new law, a new time limit is created retrospectively there is no reason why the liability should not be treated as still enforceable. The law does not deal with concluded claims or their revival but with the enforcement of a liability to the State which though existing remained to be enforced.'

54. The above principle applies on all fours to the provisions contained in Sections 15(1) and 15 (2) of the Act with regard to extending the time within which the action is to be taken. Thus, limitation has been extended from time to time with a view to find out surplus land after considering the correct ceiling area of the holders of the land. Action of the authorities can be tested in the light of the law existing during the relevant period. Thus, in the application of law, there is no discrimination and in prescribing different limitations during different periods on varying basis there does not appear to be any violation of Article 14 of the Constitution.

As in providing these limitations, there is an object to be achieved as stated above. Prescribing different limitations on different basis during the different periods with a particular object in view, is within the competence of the legislature and such provisions do not in any way impinge upon Article 14 and cannot be said to suffer from the vice of discrimination. In the original Act, under Sub-sections (1) and (2) of Section 15, the time limit was three years from the date of publication of the final statement under the new Ceiling Law or from the date of commencement of the Act for the matters under the old Ceiling Law. But this limitation continued to be extended and w. e. f. 8-4-1978, the time limit has been prescribed for issuance of notice and not for issuance of direction to re-open the cases.

55. Learned Government Advocate further submitted that apart from Article 31B, the Ceiling Law whether the old or new, including Section 15, is saved by Articles 31A and 31C. In *Nand Lal v. State of Haryana*, AIR 1980 SC 2097, the applicability of Article 31A was considered with respect to Haryana Ceiling on Land Holdings Act. It was observed that the Principal Act with all the amendments made therein, which essentially is meant for imposition of ceiling on agricultural holdings and acquisition and distribution of the surplus area to landless and weaker sections of the society, is in substance and reality an enactment dealing with agrarian reform and squarely falls within Article 31A of the Constitution and as such will enjoy the immunity from the attack on the ground of inconsistency with or abridgement of any of the fundamental rights guaranteed by Articles 14, 19 and 31.

56. Reference may also be made to *Ambika Prasad v. State of U. P.*, AIR 1980 SC 1762. In that case, some of the provisions of the U. P. Imposition of Ceiling on Land Holdings Act were under challenge on the ground of being violative of Articles 14 and 19. Krishna Iyer, J., speaking for the Court with reference to Article 31A observed that the comprehensive vocabulary of that purposeful provision obviously catches within its protective net the present Act and broadly speaking the antiseptic effect of that Article is sufficient to immunise the Act against invalidation to the extent stated therein, and it was also observed that the proposition, therefore, is invulnerable that Article 31A repulses all invasion on ceiling legislation.

57. Amending Act No. 6 of 1979 has received the assent of the President and so Article 31A would immunise the provisions of that Act. The Ceiling Law has been enacted in order to carry out the legislative policy of securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The Act contains a declaration in Section 41 to the effect as contemplated under Article 31C. Thus, the Act gets immunity from the challenge on the basis of Articles 14 and 19 under Article 31C. It is true as contended by Mr. Sharma that in Sajjansingh's case (1979 WLN (UC) 32) (supra), it has been held that Section 15 (2) as amended by the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1978 is not a law providing for acquisition of property. The question was considered in the light of the amending Act independent of the Parent Act, but if the provisions of the amending Act if read as part of the Parent Act then the provisions would become the part of the law providing for acquisition of property. It may be stated that, the 1978 amendment Act did not receive the assent of the President whereas Act No. 6 of 1979 has received the assent of the President so Articles 31A and 31C will be attracted. Even if, Section 2 of Act No. 6 of 1979 is not considered to be a law providing for acquisition of property still amendment in S, 15 of the Act or substitution of Section 15 in different periods, would be read in the Act and Article 31C of the Constitution read with Section 41 of the Act would immunise Section 15 as well. As the object behind Section 15 is to maximise the surplus land, the professed goal of the legislation is to maximise surplus lands for working out distributive justice and rural development and Section 15 is only a remedial provision for maximising the surplus lands.

58. Thus, the validity of Section 15 of the Act as was in force from time to time and is now in force, is not open to attack on the ground of Article 14, in view of what I have considered above in the light of Articles 31A, 31B and 31C and it is also not open to attack on the ground of providing of varying periods of limitation.

59. Although, it is not necessary to consider further the remaining three grounds of attack, still as elaborate arguments were advanced so I consider it proper to deal with them as well.

60. As regards, the argument that the State Govt. is conferred arbitrary power to re-open the cases without providing any guidelines or machinery to scan and scrutinise the decided cases, suffice it to state that Section 15 provides clear guidelines for the State Government to exercise its power to re-open the decided cases. The State Government can exercise the power only when the conditions set out in the provisions exist and satisfaction is reached about their existence. It is not a conferment of a power, which may be exercised in any manner, the State Government likes. If the State Government exercises its power beyond the consideration of the conditions, then it would be an abuse of power or exercise of power with extraneous consideration, then such a exercise of powers can be struck down in the individual cases. But conferment of powers cannot be said in be arbitrary untrammelled, uuguided and unregulated. It js true that there is no provision as to how the decided cases are to be scrutinised but this is the matter to be considered by the administrative authorities on the administrative side. If any matter comes to the notice of the State Government either by way of report from the subordinate officers or authorities under the Act or it comes to the notice of the State Government otherwise, then, the State Government is required to exercise its powers under Section 15 after satisfying itself that there has been contravention of the provision of law and the order passed is prejudicial to the interest of the State Government or there are other conditions as provided under the law requiring reopening of the decided matters. Thus, the power conferred on the State Government cannot be said to be arbitrary, unbridled and it is reasonable to expect from the State Government that it would exercise its power reasonably, fairly and objectively in the light of the provisions contained in Section 15 of the Act. In *Pannalal Binjraj v. Union of India*, AIR 1957 SC 397, it was observed that (at p. 408)--

'It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income-tax and the Central Board of Revenue who act on the information supplied to them by the Income-tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. (Vide *Mata-jog Dobey v. H. C. Bhari*, 1955-2 SCR 925 at p, 932 : (fS) AIR 1956 SC 44, at p. 48) (J). There is moreover a presumption that public

officials will discharge their duties honestly and in accordance with the rules of law. (Vide *People of the State of New York v. John E. Van DC Carr, etc.*, (1905) 199 US 552: 50 Law Ed 305 (K)). It has also been observed by this Court in *A. Thangal Kunju Musaliar v. Venkatachalam Potti*, (1955) 2 SCR 1196 : ((S) AIR 1956 SC 246) (L) with reference to the possibility of discrimination between assesseees in the matter of the reference of their cases to the Income-tax Investigation Commission that

'It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done 'not with an evil eye end unequal hand' and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory.' ' In *re The Kerala Education Bill*. 1957, AIR 1958 SC 956 it has been observed that it has been laid down in more decisions than one, namely that discretionary power is not necessarily a discriminatory power and the abuse of power by the Government will not be lightly assumed.

61. As regards the ground that the conferment of power on the State Government is unreasonable and unfair and so violative of Article 14 of the Constitution as the State Government is made a judge in its own cause, I shall be examining the question, while dealing it with the argument of the learned counsel for the petitioners that the conferment of such a power is violative of the principles of natural justice.

62. As regards the objection that there is a discriminatory classification, of the orders of the Board of Revenue and of the other authorities for re-opening the cases under the old and the new Ceiling Law, under Section 15 of the Act, it may be stated, that so far as the re-opening of the final orders passed by the Board is concerned either under Sub-section (1) or Sub-section (2) of Section 15 of the Act for the different periods and for both the Sub-sections, conditions are the same. However, one condition is added in the case of final order of the Board, for re-opening that they are liable to be re-opened if any mistake or error apparent on the face of record of the case is found. The contravention of law may at times amount to mistake or error apparent on the face of the record. In case of the final order of

the Board of Revenue, in my opinion, the grounds available for re-opening are given in the relevant provisos to Sub-section (2) of Section 15. The Board of Revenue being the highest authority under the law, then its orders can only be re-opened when there is a discovery of new matter or evidence or there is some mistake or error apparent on the face of record. The classification made between orders of the Board of Revenue and the other authorities appears to be based on this criteria that the Board is the highest authority under the Act and it decides the matter after hearing both the sides judicially. Unless some mistake or error apparent is crept or some new matter or evidence has come to light, its order should not be re-opened. I am unable to agree with the contention of the learned Government Advocate that with these two conditions given in the proviso, the other conditions laid down for re-opening either in Sub-section (1) or Sub-section (2) are further required to be satisfied in the case of the orders of the Board. It does not stand to reason that some additional ground would be provided for re-opening the orders of the Board. If the proviso is so read, it would certainly mean that the order of the Board is liable to be re-opened on the ground of some mistake or error apparent on the face of the record but the order of the other authorities is not liable to be re-opened on this ground which will give rise to the vice of discrimination, or arbitrary classification. Viewed in the light as above, I do not find that the classification made between the orders of the Board and of the other authorities is arbitrary and unreasonable. I need not deal with the cases cited by the learned counsel for the petitioners on the point that the classification to be valid under Article 14 of the Constitution has to be reasonable having nexus with the object sought to be achieved. In this regard, the principles are well settled and it would all depend on the facts and provisions of law in each case, as to whether the classification made in the law is reasonable or arbitrary.

63. The learned counsel appearing on behalf of the petitioners and the learned counsel as intervenes, with all emphasis at their command, urged that the State Government Which is a party in the Ceiling matter has been conferred the power to re-open the decided cases and thus, has been made a judge in its own cause and so, the action of the State Government under Section 15 (1) and/or 15 (2) of the Act violates the accepted principle of natural justice that no one shall be a judge in his own cause. Under the equality clause of Article 14 of the Constitution

also, conferment of such a power is unfair and unreasonable as unequal treatment is meted out to the parties to the lis by conferment of the power on one of the parties. Strong reliance has been placed on G. Nageswara Rao's first case (AIR 1959 SC 308) (*supra*).

64. The learned Government Advocate on the other hand submitted that the rules of natural justice are subject to statutory provisions. When the power has been conferred on the State Government, the principles of natural justice are excluded and further there would be no breach of right to equality enshrined in Article 14 if inherent judicial or quasi-judicial function of the sovereign is conferred on the State Government. It was urged that the decision of the authority would not be vitiated unless the authority decided the matter has some personal or pecuniary bias and the decision would not be rendered void only on the basis of an official bias. Reliance was placed on number of decisions of the Supreme Court and the Division Bench decision of this Court in support of the above contention and the first case of G. Nageswara Rao *supra* was distinguished.

65. As regards the challenge on the ground of breach of equality clause, it may be stated that I have not been referred to any authority laying down that the conferment of such a power on the State Government, which is a party to the concluded and decided lis is hit by Article 14 of the Constitution and is liable to be struck down. I have already found that the nature of the function of the State Government under Section 15 of the Act is quasi-judicial in character and such a function can legitimately be assigned to the State Government under a statute. In such a provision open to attack simply on the ground that the State Government is a party to all [he ceiling matters, which are required to be re-opened? In order to execute the legislative policy and achieve the object of law, in my opinion, the provision can be enacted by conferring power on the State Government to re-open the decided cases. The existence of the given conditions is an important limitation on the power of the State Government. Even when the State Government is interested in execution of the legislative policy and is a party to the lis, still it is required to act within the framework of the provision and cannot act arbitrarily or with extraneous considerations. That being so, conferment of the power on the State Government to reopen cases, in my opinion, would not be violative of Article

14 of the Constitution on the ground that a party to lis has been conferred with such a power. The Act does not authorise the State Government to act in derogation of the principle of natural justice. Undoubtedly, it is true that human agency should proceed to act in an impartial and unbiased manner. Although, the human agency being the agency of the Government may have an interest in carrying out and implementation of the declared policy in the form of legislation.

66. I may take up here the first case of *G. Nageswara Rao*, (AIR 1959 SC 308) (supra) around which much argument has been advanced. In that case, a scheme for nationalisation of Motor Transport was published by the State Transport Undertaking and the State Government invited objections to the scheme. The petitioners filed their objections, the Secretary to the Transport Department gave a personal hearing to the objections and heard the representations made on behalf of the State Transport Undertaking. Thereafter the entire material was placed before the Chief Minister, who approved the scheme. The constitutional validity of the scheme was challenged under Article 32 of the Constitution and one of the objections was that the person who heard the objection was the same who had initiated the scheme. He was, therefore, biased in favour of the scheme. The Court held that the hearing given by the Secretary offends the principle of natural justice. It may be pointed out that the Transport Department functioned as a statutory authority under the Act and the Secretary who received the objections and heard the parties and recorded the entire proceedings was the Head of the Department. The scheme was initiated by the State Transport Undertaking, which was defined to mean the Road Transport Department'. Therefore, the Road Transport Department was functioning as a statutory authority. As the Secretary was the Head of the Department, and for that the State Transport Undertaking, so it was held that the hearing given by the Secretary, Transport Department, offends the principle of natural justice, that the authority empowered to decide the dispute between the opposing parties must be one without bias, and the proceeding and the hearing given in violation of that principle are bad.

67. In the second case of *G. Nageswara Rao v. State of Andhra Pradesh*, AIR 1959 SC 1376, it has been held that the Secretary of a department in its head i.e., he is part of the department. There is an essential distinction between the

functions of a Secretary and a Minister; the former is a part of the department and the latter is only primarily responsible for the disposal of the business pertaining to that department. It was observed that the Chief Minister is not part of the department constituted as a statutory undertaking under the Act. The argument that the hearing given by the Chief Minister offends the principle of natural justice was repelled. In the first case, what appears to have been laid down is that when any official initiates or formulates or takes leading part in the initiation or in the formulation of the policy or has identified himself with the department's policy; then if the power of hearing is conferred on such an 'official' it will offend the principle of natural justice. H.M. Seervai, in its Constitutional Law of India (Second Edition) Vol. II at p. 924, after considering both the cases of G. Nageswara Rao concluded the matter stating that the point to note is that when quasi-judicial functions are imposed on the executive who are free to initiate policies and implement them within the limits permitted by law, the doctrine that no one can be a judge in his own cause cannot apply in its full rigour. All that can be required is that there should not be pecuniary, proprietary or personal bias; that the person who is to judge has not closed his mind on the issues he has to decide, or has not been so, deeply involved in the issues to be decided (e.g. by being the author of the scheme to which objections are to be considered) as to lead to the conclusion that he is unlikely to keep an open mind.

68. The case of A.K. Kraipak v. Union of India, AIR 1970 SC 150, relied upon by Mr. Parekh has no application. That was a case of personal bias and for that what was considered, was reasonable likelihood of bias. One Naqishbund was a member of the Selection Board and he was one of the persons to be considered for selection and on that basis it was observed that it must have had its own impact on the decision of the Selection Board, particularly, when the claims of his rivals were considered at every stage of his participation in the deliberations of the Selection Board, there was a conflict between his interest and duty.

69. The matter is to be viewed in the light of the subsequent decisions of the Supreme Court cited by the learned Government Advocate.

70. In the Ahmedabad Municipal Corporation v. Ramanlal Govindram, AIR 1975 SC 1187, the provisions of Section 437-A (1) as inserted in Gujarat by Gujarat Act No. 19 of 1964 were held not unreasonable on the ground that the Commissioner is a Judge in his own cause. It was observed in para 23 as under :--

'The conclusion of the High Court that the provision in Section 437-A (1) is unreasonable because the Municipal Commissioner is in substance a party to the dispute is unacceptable. The conferment of power on the Municipal Commissioner as an Administrative Officer to take proceedings for eviction cannot be struck down as unreasonable on the ground that he is a Judge in his own cause. He is the highest officer of the Corporation. The Corporation acts through these officers. There is no personal interest of the Municipal Commissioner in evicting these persons. The Corporation represents public interest. The Municipal Commissioner acts in public duty in aid of public interest. The Municipal Commissioner will apply his mind to the facts and circumstances of a given case as to whether there should be an order for eviction. If the Municipal Commissioner will wrongly exercise his power the action will be corrected in appeal.'

71. In H.C. Narayanappa v. State of Mysore, AIR 1960 SC 1073, the provisions of Section 68-D of the Motor Vehicles Act, 1939 were under consideration and it was held that if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, the decision will not be liable to be called in question, merely because he is limb of the Government.

72. In T.S. Mudaliar v. State of Tamil Nadu, AIR 1973 SC 974, their Lordships followed the decision in J. Y. Kondala Rao v. Andhra Pradesh State Road Transport Corporation, AIR 1961 SC 82 and observed that although the Secretary to the Government, Home Department was a member of the Committee to prepare a scheme of road transport and published it in his capacity as Secretary for Industries, he cannot be said to be so biased as to disqualify him from hearing

objections under Section 68-D.

73. A Division Bench decision of this Court in Chandra Bhan v. State of Rajasthan, AIR 1961 Raj 168 followed the decision of the Supreme Court in J. Y. Kondala Rao's case (AIR 1961 SC 82) (supra) and explained the first case of G. Nageswara Rao (AIR 1959 SC 308) and it was held that the provisions of Section 68-D are not ultra vires the Constitution in so far as the Government authorises itself to hear objections in a matter in which the Government is interested. It may be pointed out that in the present cases, the Deputy Secretary or the Special Secretary, as the case may be, has issued the directions and nothing has been shown that they had any bias whatsoever, except that they are limbs of the Government and on that basis, it can only be said that they had departmental or official bias but nothing would turn on it, as they are required to act judicially, while performing the statutory function of the Government under Section 15 (1) and/or Section 15 (2) of the Act. Thus, the order of the Deputy Secretary or the Special Secretary, as the case may be, are not void on the ground that the State Government is made a Judge in its own cause.

74. The learned counsel for the petitioners further contended that the power under Section 15 of the Act is conferred on the State Government; the concerned Secretaries are not the State Government and the power could not be delegated to the Secretaries, who have passed the orders in the present cases. The delegation of the power to the Secretaries under the Rules of Business will be inconsistent with Section 15 of the Act

75. Mr. S. N. Sharma, learned counsel for the petitioner Smt. Tulsi also contended that the Rules of Business framed under Article 166(2) and (3) and the Standing Orders made thereunder in order to have statutory force must be published but the same have not been published, so they cannot have the force of law. He also advanced a contention that the State Government acts as a Tribunal in discharging the function entrusted to it under Section 15, that being so, it cannot be governed by Rules of Business for these Rules of Business cannot be applied to a Tribunal. Under Article 323B of the Constitution, the law could be enacted by the appropriate legislature for constitution of a Tribunal and only such law, when

enacted would apply to the Tribunal and not the Rules of Business. This contention has no merit and is stated simply to be rejected. Article 323B confers power on the appropriate legislature to make law to provide for adjudication or trial by Tribunal of any disputes, complaint or offence with respect to any of the matters specified in clause (2). The provision of Article 323B is an enabling provision and till the law as contemplated under that Article is enacted, the matters would be governed by these laws, which have application to the different matters. No law as contemplated in Article 323B has been enacted with regard to the Land Reforms as is provided under Sub- clause (d) of Clause (2) of Article 323B or the Ceiling on Agricultural Lands, In the absence of such law, the reopening of the ceiling cases would be governed by the provisions of Section 15 of the Act and the State Government will function in accordance with the Rules of Business framed under Article 166(2) and (3) of the Constitution. Thus, in the last contention, there is absolutely no force.

76. The other two contentions, relating to the exercise of the power by the Deputy Secretary or the Special Secretary, and publication of the Rules of Business and the Standing Orders issued under the Rules of Business, are also devoid of any, merit. Rules of Business are framed for the official use and the Standing Orders are issued under the relevant rules for the conduct of business of the Government. It is true that they have statutory force of law. For having statutory force of law, it is not necessary that they should be published in the Official Gazette. In *Management of the Advance Insurance Co. Ltd. v. Gurudasmal, Supdt. of Police*, AIR 1969 Delhi 330, in para 36, it was observed that 'the Rules of Business made under Article 166 of the Constitution would be statutory rules. Judicial notice would have been taken of the same. They are not a fact, which has to be proved by primary evidence'. In that case, on the basis of an affidavit, it was held that the Chief Minister was authorised and Rules of Business were not produced before the stage of arguments and it was only subsequently that an offer to produce a copy of the rules was made.

77. In *Chandra Bhan's case* (AIR 1961 Raj 168) (supra), a great deal of attack was levelled at the rule on the ground that the Rules of Business framed by the Governor being of a confidential character, the public will not be able to know on

what authority the appointment of the officer has been made and the rules are capable of being changed from time to time. It was observed that it would have been better if in Rule 7 itself, it had been clearly specified that the Legal Remembrancer to the Government was authorised to hear and dispose of the objections presented under Section 68-D of the Act. However, it was held that the validity of rules as it stands cannot be challenged on these grounds. It was further observed that 'under Article 166(3) of the Constitution, the Governor is authorised to frame the Rules of Business and it is of course open to him to change the Rules at his discretion in order to suit the convenience of the administration. If the authority of any particular appointment made by the operation of the Rules of Business is challenged on the ground that the appointment is not in accordance with these Rules, the Government may by notification satisfy the public demand to that effect; but normally the presumption is that when an appointment is made under the Rules, it must be in accordance with the Rules of Business framed by the Government'.

78. An argument was advanced in that case that there should have been previous publication of the particular rule under the Rules of Business framed by the Governor under which, the appointment has been made as required by Section 133 (2) of the Motor Vehicles Act, which provides that all rules made under the Act should be published in the Official Gazette and should unless some later date is appointed, come into force on the date of such publication. This argument was disposed of by stating that there is an apparent fallacy in it because Sec. 133 applies to publication of the rules under the Motor Vehicles Act and it has nothing to do with the publication of the Rules of Business framed by the Governor under Article 166(3) of the Constitution. Thus, the publication of Rules of Business and publication of Standing Orders issued thereunder in the Official Gazette is not necessary in order that they may have the force of law. They are the rules for the internal management of the conduct of business of the Government and there would a presumption regarding the due and the valid performance of the function by the Government unless the validity of the act of the Government or the officer of the Government is challenged. In that eventuality, it will be for the Government to satisfy that it has acted under the Act in accordance with the Rules of Business. Part II of the Rules of Business deals with the allocation and disposal of the

business and Part IV deals with the departmental disposal of the business. Under Rule 4, it is provided that the business of the Government will be transacted in the Secretariat Departments specified in the First Schedule and it is classified and distributed in those departments as laid down therein. Rule 7 embodies the doctrine of collective responsibility of the Council of Ministers. Under Rule 9, it is provided that the Minister in charge of a department shall be responsible for the disposal of the business pertaining to that department without prejudice to the provisions of Rule 7. Rule 21, which is most relevant, provides that the disposal of business relating to items common to all departments shall ordinarily be made in the manners specified in Appendix 'B' and for the disposal of the business relating to other items, the Minister in charge or the Minister of the State in charge, as the case may be may by means of Standing Orders, give such directions as he thinks fit. This rule is subjected to other rules. The case of the State is that the Minister in-charge from time to time has issued Standing Orders conferring powers under the Act either on the Special Secretary or the Revenue Secretary or the Deputy Secretary. The relevant Standing Orders are No. F. 10 (1) Rev./Gr. II/76dt. Jan. 2, 1976 and No. F. 10 (1) Rev./Gr. II/ 76 dt May 31, 1978 issued by the Revenue Minister under Rule 21. By the first order, the Special Secretary was empowered to dispose of all the matters under the Act and by the second order, the Deputy Secretary was empowered to dispose of all the matters under the Act Under the first order, cases, in which no direction for reopening is given, are required to be brought to the notice of the Minister whereas in the second order, all matters are required to be brought to the notice of the Minister. In Sanwalram's case, the Special Secretary passed an order on Sept. 14. 1977 by virtue of the authority conferred on him by the First Standing Order and the Deputy Secretary, Revenue, passed an order dated June 6, 1979 under Section 15 (2) of the Act under the Second Standing Order. Similarly, in Smt. Tulsi's case, the Deputy Secretary, Revenue passed an order on Oct. 25, 1979 under Section 15 (2) of the Act by virtue of the authority under the Second Standing Order. They have been conferred with the power of disposal of the matters arising under the Act. Bringing the matters to the notice of the Minister does not mean that the power of disposal vested in [he concerned Secretaries is in any way affected. Thus, under the Standing Orders the business of the State Government has been allocated to the

concerned Secretaries and as such the order passed or action taken by them are the orders or action of the State Government and there would be no question of delegation of powers by the State Government in favour of the concerned Secretaries.

79. In G. Nageswara Rao's first case (AIR 1959 SC 308) (*supra*), it was observed that the State Government means the Governor and the executive power of the State Government vests in the Governor. It is exercised by him directly or by officers sub-ordinate to him in accordance with the provision of the Constitution. In that case, the Chief Minister in-charge of Transport Department, had made an order directing the Secretary to Government, Home Department to hear the objections filed against the proposed scheme of the State Transport Undertaking. I need not deal with the argument of divided hearing as was advanced in that case and the contention relating to the violation of principles of natural justice as raised in that case has already been considered by me. Reference may be made here to the decision of the Supreme Court in *A. Sanjeevi V. State of Madras*, AIR 1970 SC 1102, it was observed as under (at p. 1106) :--

'The Minister is not expected to burden himself with the day to day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the Government. When a civil servant takes a decision, he does not do it as delegate of his Minister. He does it on behalf of the Government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of Government business either generally or as regards any specific case. Subject to that overall power, the officers designated by the 'Rules' or the Standing Orders, can take decisions on behalf of the Government. These officers are the limbs of the Government and not its delegates.'

80. Thus, there is no room for argument that there has been any delegation of power on the concerned Secretaries. By virtue of Standing Orders, what has been brought about is, allocation of business of the State Government to be performed by the concerned Secretaries and they, in that capacity, discharged the statutory

function of the Government. I have already found that the function is quasi-judicial in nature. Even if it be taken that the function is essentially judicial in nature, still such a judicial function can be conferred by a statute on the State Government and it could be discharged by an authority to whom that function is allocated to be performed or discharged under the Standing Orders.

81. It is next argued by Mr. Parekh, learned counsel for the petitioner that in Sanwalram's case, the determination of the ceiling area was made firstly under the old Ceiling Law and thereafter, under the Act. After determination under the Act, the determination made under the old Ceiling Law could not be reopened. In connection with this argument reference is required to be made to the relevant provisions of the Act. Section 4 (1) of the Act makes provision for the ceiling area and second proviso to Sub-section (1) of Section 4 lays down that if the ceiling area applicable to any person or family in accordance with Section 4 exceeds the ceiling area applicable to such person or family according to the repealed law, in that case, the ceiling area applicable to such person or family will be the same as was under the provisions of such law. It would appear from the proviso that if the ceiling area under the old Ceiling Law is less, then, that would be considered to be the ceiling area of that person or family and if the ceiling area under the Act is less, his case would be governed by the provisions of the Act. Section 40 which has been reproduced above, clearly saves the second proviso to Sub-section (1) of Section 4 and Sub-section (2) of Section 15 of the Act. In view of this saving, the case decided under the old Ceiling Law can still be reopened under Sub-section (2) of Section 15 and there is no bar that when once cases have been disposed of under the Act, then the cases disposed of under the old Ceiling Law are not liable to be reopened under Sub-section (2) of Section 15 of the Act. The provision contained in Sub-section (1) and Sub-section (2) of Section 15 are independent of each other and the cases decided under the old Ceiling Law or under the Act, both are liable to be reopened under Section 15 of the Act. On comparative determination of the ceiling areas under the old Ceiling Law and the Act, it is found that the ceiling area determined under the old Ceiling Law is excessive, then the matter, if brought to the notice of the State Government can be reopened under Section 15 (2) of the Act. Thus, the aforesaid argument of Mr. Parekh is not tenable. 82. Mr. S.N. Sharma also submitted that the provision of Section 15 (1)

and 15 (2) as embodied in Clauses (a) and (b) of Sub-section (1) of Section 2 of Act No. 6 of 1979 were only for the limited period and after the expiry of 18th day of Aug., 1978, the provision stood repealed and thereafter, there remained no Section 15 in force, except the second provisos as substituted in Sub-sections (1) and (2) of Section 15 of the Principal Act, by Sub-section (2) of Section 2 of Act No. 6 of 1979, but the second provisos as substituted could not be effective. Argument appears to be fallacious and illogical. The provisions of Sections 15 (1) and 15 (2) cannot be said to have been repealed after 13-8-1978 and it cannot be said that they do not survive after sub-stitution by clauses (a) and (b) of Sub-section (1) of Section 2 of Act No. 6 of 1979. The methodology adopted by the Legislature appears to be that for two periods as mentioned in clauses (a) and (b), the relevant provisions of Section 15 have been substituted. The substitution is only for a limited period. Such limited substitution would not mean that after the expiry of the period, the provisions of Section 15 as a whole stands effaced. The parent provision of Section 15 as was in force prior to the enforcement of Act No. 6 of 1979 shall continue to remain in force and in that provision, the second provisos to subsections (1) and (2) of Section 15 shall stand substituted w.e.f. 7-4-1979. The argument of repeal, in my opinion, is misconceived.

83. On behalf of the State, the learned Government Advocate raised an objection that the validity of Section 3 of Act No. 6 of 1979 has not been challenged and notwithstanding any infirmity in any action taken, direction issued, and order passed in consonance with Clauses (a) and (b) of Sub-sections (1) and (2) of Section 2, then such actions, directions, orders shall be deemed to be valid under Section 3. Such actions have been validated by Section 3. This argument does not arise for consideration at all, as the petitioners have challenged the validity of the provisions of Section 15 (1) and 15 (2) of the Act as were in force from time to time as well. They have not simply challenged the actions taken, directions issued or orders passed or things done. To the extent, the orders of the concerned Secretaries are challenged on the ground of principle of natural justice or on the ground of delegation of powers in their favour and if there may be any infirmity in them, then, it can be said that their orders have been validated and they are not open to challenge on the above grounds. But, I found that the orders passed by the concerned Secretaries are valid and do not suffer from any infirmity on the

grounds of attack made against them. So the objection is disposed of accordingly.

84. No other point has been pressed before me.

85. In the light of my above conclusions, on the various submissions made on behalf of the petitioners, these writ petitions deserve to be dismissed.

86. Accordingly, the writ petitions are dismissed with no order as to costs.

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