

Ashish Kumar Roy and ors. Vs. Union of India (Uoi) and ors.

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Court : Kolkata

Decided On : Apr-16-1999

Reported in : AIR1999Cal242,(1999)3CALLT466(HC)

Judge : K.J. Sengupta, J.

Acts : [Constitution of India](#) - Articles 14, 31A, 32, 225, 226, 227 323B(2) and 323(B)(3); ;W.B. Land Reforms and Tenancy Tribunals Act, 1997 - Sections 1, 2(4), 4, 6, 7, 8, 9, 10(3), 11, 16 and 23

Appeal No. : W.P. No. 7110(W) of 1998

Appellant : Ashish Kumar Roy and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Balai Roy, ;Debasish Kar Gupta and ;Monotosh Chakraborty, Advs. (for No. 2), ;Soumendra Chandra Bose, ;Santimoy Panda, ;Jayanta Biswas and ;Mrinmoy Bhattacharje, Advs. (for No. 3) and ;Soumen Das Gu

Advocate for Pet/Ap. : Samaraditya Pal, ;Indira Banerjee, ;Sujoy Mondal and ;B.K. Jain, Advs.

Judgement :

ORDER

K.J. Sengupta, J.

1. In this petition the petitioner being the learned Member of the Bar Association (the respondent No. 3) has challenged the vires of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (hereinafter referred to as the said Act).

2. In the petition it has been alleged amongst other that they being the regular practitioners of this Court are seriously affected as they are having substantial practice in litigations of land laws in the event the said Act comes in operation.

3. In the petition the sum and substance of the challenge as against the Act are given hereunder.

(i) It is not a Tribunal within the meaning of the provision of Article 323-B(1) of Clause (d) as it lacks all the attributes of this Article.

(ii) The jurisdiction, power and authority of the Tribunal as mentioned in Sections 6, 7 and 8 of the Act are ultra vires [Constitution of India](#) as it intends to take away the power of judicial review of the High Court under Articles 226 and 227 of the [Constitution of India](#), as a Court of first instance.

(iii) The provision of transfer of all the pending matters, proceedings, cases and appeals in this Hon' ble Court under Section 9 of the said Act also ultra vires Constitution as it intends to take away jurisdiction and power of this Court under Articles 226 and 227 of the [Constitution of India](#), consequently it hits basic structure of the Constitution.

4. Mr. Samaraditya Pal, learned senior Advocate, appearing for the writ petitioners has amplified in his submission the aforesaid points in the manner as follows:--

A. It is not a Tribunal under Article 323-B of the [Constitution of India](#).

5. He urges the jurisdiction of the Tribunal under Article 323-B(1) must be confined to matters specified in Clause (2) of that Article.

6. In order to qualify to be a Tribunal under Article 323-B(2)(d), it must have jurisdiction in respect of 'land reforms by way of acquisition by the State of any estate as defined in Article 31-A of any rights therein or the extinguishment or modification of any such right or by way of ceiling on agricultural land or in any

other way.'

7. He argues; 'Land Reforms,' in its normal and ordinary significance in the Indian context means restructuring of the land tenure system in respect of agricultural land. The most important feature of land reform is agrarian reform. The Long Title of West Bengal Land Reforms Act, 1955 as originally enacted suggests the definition of land reforms is nothing but agrarian reforms.

8. Mr. Pal has laid emphasis on word 'estate' which is the governing and/or tilting factor of Sub-clause (d) of Clause (2) of Article 323-B. He further submits that the word 'estate' as defined in Article 31-A of [Constitution of India](#) overlaps the words 'land reforms.' Therefore, the meaning of the word 'estate' as defined in Article 31-A is the only criteria to understand and comprehend the meaning of land reforms mentioned in the aforesaid Sub-clause (d). He argues, the word 'estate' as defined in Article 31-A of the [Constitution of India](#) confines to agricultural land since a law under Article 31-A(1)(a) must relate to agrarian reform. In support of his submission he relies on and cites two decisions of the Supreme Court -- one is reported in : [1960]3SCR887 and another is reported in : AIR 1962 SC694 .

9. It would appear from the definition of the word 'estate' in Clause (2) of Article 31-A that the expression of which has a meaning in 'the existing law relating to land tenures' it will have the same meaning. In support of the aforesaid submission he relies on a decision of the Supreme Court reported in : AIR 1962 SC694

10. The point of time for locating the existing law is 26th January, 1950. He has drawn reference in support of his above submission to a decision of the Supreme Court reported in : AIR 1962 SC723 . At that time, i.e., to say on 26th January, 1950 the existing law relating to the land tenures in West Bengal was the Bengal Tenancy Act, 1885. He submits that the Bengal Tenancy Act, 1885 was exclusively confined to agricultural lands and therefore the expression 'estates' in that Act could only relate to agricultural lands. He relies on in this context a decision of this Court reported in (1977) 1 Cal LJ 695.

11. So, the word 'land reform' used in Article 323-B(2)(d) has got restricted meaning and the same cannot be stretched beyond the agrarian reform. He relies

on and cites two decisions of the Supreme Court one is reported in : [1974]1SCR671 and another is : [1989]2SCR687 .

12. He submits the definition of the word 'estate' mentioned in Section 2(h) of the said Act completely deviates from the definition of the word 'estate' as defined in Article 31-A(2) of the Constitution. Similarly, the definition of 'Land Reform' mentioned in Section 2(1) of the said Act is at variance with the meaning of the expression in Article 323-B(2)(d) of the Constitution.

13. He argues that so far as the specified Acts mentioned in the Act are concerned the scope and contents of the same are devoid of any attributes of the definition of the estate qua land reforms as required under Article 323-B(2)(d) of the Constitution. This would be apparent from the definition of the land mentioned in Section 2(7) of the West Bengal Land Reforms Act, 1955. The definition therein would explicitly be clear that the same does not confine to matters of Land Reforms by acquisition of any -- 'estate' as defined in Article 31-A(2). Similarly, another specified Act, The Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 has no nexus with any 'land reform' or any 'estate' as defined in Article 31-A(2). The other two specified Acts mentioned in the aforesaid Act, viz., the West Bengal Acquisition of Homestead for Agricultural Labourers etc. Act, 1975 and the West Bengal Land Holding Revenue Act, 1979 have nothing to do with the agricultural land so also agrarian reform.

14. He argues, the said tribunal at the highest can be termed as an ordinary tribunal constituted by the State legislature in exercise of its legislative powers under Article 245 read with Article 246(3) read with Entry 18 of List II of the 7th Schedule. Since, according to him, the aforesaid tribunal as intended to be set up by the aforesaid Act cannot be said to have been constituted for the reasons and facts and circumstances as above, under the provisions of Article 323B the ratio and/or decision rendered in L. Chandrakumar's case reported in : [1997]228ITR725(SC) has no application, therefore direction regarding approaching the tribunal -- first and thereafter having failed to the Division Bench of the High Court in exercise of writ jurisdiction is not applicable.

B. Mr. Pal submits in his alternative argument even if it is assumed that the said tribunal is validly formed under Article 323B still then the decision rendered in L. Chandrakumar's case prohibiting litigants to approach High Court under Article 226/227 as Court of first instance is not 'law declared' within Article 141 of the Constitution. He has amplified this portion of submission in the manner as follows :--

15. The Supreme Court is a creature of the Constitution.

16. Any declaration of law under Article 141 of the Constitution must be consistent with the provisions of the Constitution and cannot transgress, modify, alter etc. any provision of the Constitution. So the direction given in : (1997)1SCC261 of the said decision that Article 136 will stand modified and no appeal from the decision of a tribunal will directly lie before the Supreme Court under that Article, if construed as law declared, will directly violate Article 136.

17. Similarly, the direction in : (1997)1SCC261 that it will not be open for the litigants to directly approach the High Court will be violative of Article 226 since that Article confers a constitutional right to move the High Court for appropriate writs/directions against any authority and for any purpose. Since it is not 'law declared' it will not have any binding force. These directions should be considered as nothing more than a reiteration of the principle that ordinarily the Supreme Court under Article 136 and the High Courts under Article 226 require the litigants to exhaust the other available remedies. In support of his submission that these directions are not to be read as statutes he relies on two decisions of the Supreme Court reported in : [1971]3SCR9 and : [1985]2SCR72 .

C. Mr. Pal argues on the provision of Section 9 regarding transfer of pending cases in High Court is wholly discriminatory against the litigants who have their cases pending in the High Courts as the litigants whose cases are pending before the subordinate Courts are not to be transferred by the aforesaid Section. This singling out of the High Court cases offends straightway Article 14 of the [Constitution of India](#) besides Section 9 of the said Act affects the writ jurisdiction of the High Court under Articles 226 & 227, so it is unconstitutional.

D. He further argues that the scope and purport for setting up of the said Act is to take away the jurisdiction of this Civil Courts without having any appropriate replacement as the tribunal only will be acting as a reviewing bodies. This tribunal would be functioning as reviewing bodies would be deduced from the principle decided in the cases by the Supreme Court and reported in (1994) 3 SCC 375, : (1995)1SCC332 ; : (1998)2SCC394 and : (1993)1ILLJ626SC .

18. The removal of the Civil Courts in the justice delivery system of the State with regard to land matters is also arbitrary and unreasonable violative of Article 14 of the [Constitution of India](#).

E. His argument is also that the provisions mentioned in Sections 6 and 10(3) are totally inconsistent with each other and makes the 1997 Act unworkable violating Article 14 of the Constitution.

F. His further argument is that the provision of Section 23 is patently unconstitutional as it purports to delegate adjudicatory functions on any officer of the State Government and allow ex parte collection of materials to be treated as evidence.

19. Mr. Soumendra Chandra Bose, the learned Senior Advocate, appearing for Bar Association High Court, Calcutta besides adopting the argument of Mr. Pal has supplemented in support of challenge that the provision of Section 9 of the Tribunal Act is discriminatory and the same is also unconstitutional because it purports to oust jurisdiction of the High Court exercising power of Article 226/227 of the Constitution by a learned single Judge. The State legislature has no legislative List for ousting the jurisdiction of the single Judge of the High Court exercising power under Article 226/227 of the [Constitution of India](#).

20. He also argues that right to sue or prefer Appeals or Revision are substantive rights and are creature of statutes and to that extent are also a vested rights. Such rights of the Court or Tribunals not having been interfered with by the Land Tribunal Act, Courts and other authorities continue to proceed with those pending cases notwithstanding the creation of Tribunal. Unless the provisions of the Statutes so express, the pending cases are not affected by a new law. He relies

on -- (i) Craies on Statute Law, 7th Edition pages 399, 400 & (ii) Justice G. P. Singh 'Interpretation of Statute' 6th Edition 1996 page 347 --first paragraph.

21. He submits that by Section 9, only proceedings pending in the High Court under Articles 226 & 227 before a single Bench are transferred to the Tribunal but no such transfer of any other proceeding in relation to the specified Act pending before any other authorities or Courts, is made. On the principles relied on hereinabove those proceedings remain to be adjudicated as before. He also argues there is no rational nexus for making such discrimination otherwise the provisions of Article 14 are infringed.

22. Mr. Bose further argues that the provision of Section 9 is violative of the basic structure of the Constitution and in List-II of the 7th Schedule there is no entry whereby the State Legislature can oust the jurisdiction of the High Court under Articles 226 & 227 of the Constitution; it has been consistently held by the judicial decisions that even where the decision is said to be final, such decision is subject to the decision of the High Court under Articles 226 & 227 of the Constitution.

23. In case of Keshavananda Bharati, : AIR 1973 SC1461 a Full Bench of 13 Judges of the Supreme Court declared that the basic structure of the original Constitution cannot be taken away by the subsequent amendment of the Constitution. This was also followed by the decision of the same Court in Indira Gandhi's case, : [1976]2SCR347 .

24. Mr. Bose argues that under the formation, power and authority as providing Articles 214 to 227 are part of the basic structure of the Constitution and those powers cannot be interfered with by any authority. Mr. Bose further argues that the decision of L. Chandrakumar's case, : [1997]228ITR725(SC) so far as it relates to ouster of initial jurisdiction of the High Court under Articles 226 & 227 are nothing but a direction in nature and the same cannot be a declared law under Article 141 of the [Constitution of India](#) so as to incorporate in Entry in the legislative List-II of the 7th Schedule so as to enable in State legislature to exclude the jurisdiction of single Judge of the High Court in exercising power under Articles 226 & 227 of the Constitution. He argues that it is not everything said by a Judge when giving judgment that constitute precedent 'Rupert Cross v. President in English Law, First

25. Mr. Balai Chandra Roy, the learned Senior Advocate, appearing on behalf of the State being the respondent No. 2 herein submits at the very outset in answer to the point that the Act cannot be claimed to have been enacted in accordance with the provisions of Article 323B of the [Constitution of India](#), that the West Bengal Estates Acquisition Act, 1953 being one of the specified Acts defined in Section 2(r) of the impugned Act is admittedly undisputed and unchallenged. So, he submits the other specified Acts as defined in the aforesaid section are required to be explained as being the laws relating to land reform as defined in Article 323B.

26. While explaining the interpretation and connotation of the word 'estate' in Clause (a) of Sub-article (2) of Article 31A of the [Constitution of India](#) he submits that the word 'estate' not only means what are mentioned in Clause (a) but also includes all those other categories of land mentioned in Sub-clauses (i), (ii) & (iii) of Clause (a). The definition of the word cannot be given a restrictive meaning. He has relied on a decision of the Supreme Court on this point, reported in : 1988(36)ELT201(SC) . He submits even one is to go by the argument made by Mr. Pal the definition of the word 'estate' is the same definition mentioned in Sub-section (4) of Section 3 of the Bengal Tenancy Act, 1885 then the word estate has got exhaustive meaning opposite to restricted meaning.

27. Mr. Roy argues, hence land reforms by way of acquisition by the State of any holding of a raiyat or under-raiyat or of any right in such holding or extinguishment or modification of any such right of a raiyat or under-raiyat amount to acquisition, extinguishment or modification of any such right in an estate.

28. While distinguishing the judgment delivered in Kochuni v. State of Madras, : [1960]3SCR887 Mr. Roy submits that the Supreme Court later on has distinguished the aforesaid Kochuni's case while delivering in Ranjit Singh' s case, : [1965]1SCR82 and held that 'the decision of the Kochuni's case was special and we cannot apply it to cases where the general scheme of legislature is definitely agrarian reform and under its provisions something ancillary thereto in the interest of the rural economy has to be undertaken to give full effect to the reform.' Earlier

in this decision it was further observed that there is reason to think that the Kochuni's case was regarded on other occasions too, as one decided on its own fact. So the ratio of the Kochuni's case cannot be made applicable here.

29. Mr. Roy further argues the expression 'estate' appearing in Article 31A(2)(a) of the Constitution comprehends not only lands held by zamindars but also lands held by patnidar, darpatnidar, sepatnidar as well as lands held by raiyats and under-raiyats. The expression 'estate' has been given an inclusive definition. In Sub-clauses (ii) of Clause (a) of Sub-article (2) of Article 31A of the Constitution any land held under ryotwari settlement is an 'estate'. So he submits that each and every specified Acts, excluding the undisputed Act as aforesaid, deals with such kinds of land that must be categorised as estate or part of an estate within the meaning of Article 31A(2)(a) of the Constitution. It is thus apparent that even if the definition of estate had not been expanded by including Sub-clauses (i), (ii) & (iii) the holding of a raiyat or under-raiyat as also land holding by a patnidar, darpatnidar or sepatnidar would be regarded as an estate and rights in their land holdings would be such rights in an estate.

30. Mr. Roy further argues in giving answer to the argument of Mr. Pal that specified Acts do not relate to agrarian reform and as such beyond the scope of Article 323B(2)(d) of the Constitution. He submits the dominant provision of Clause (d) of Article 323B of the Constitution is Land Reforms to be achieved by -- (i) acquisition by the State of any estate as defined in Article 31A, or (ii) any rights therein, or (iii) the extinguishment or modification of any such right, or (iv) by way of ceiling of agricultural land, or (v) in any other way. He argues the language of Clause (d) is not ambiguous. The provision plainly intends to convey that it relates to land reforms to be achieved by one or other modes indicated above. He argues acquisition of estate or rights in an estate is one of such modes. The other modes being the second one is extinguishment of right in an estate and the third is modification of any such right in an estate. He submits that Land reforms may also be done by fixing ceiling area of agricultural land. If laws are made providing for land reforms 'in any other way' then also such law falls within Clause (d) 323B (2) of the Constitution. He further argues that extinguishment or modification of rights in an estate need not be by way of acquisition by the State. In support of this he

relies on a Supreme Court decision rendered in the case of Sri Ram Ram Narainv. State of Bombay reported in : AIR 1959 SC459 .

31. Mr. Roy further argues the expression land reforms mentioned in Clause (d) of sub-Article (2) of that Article of 323B of the [Constitution of India](#) cannot be equated with agrarian reform. The aforesaid words land reforms are not confined to legislation for agrarian reforms. This has been held, according to Mr. Roy by a Supreme Court decision in case of State of Haryana v. Chanan Mal reported in : [1976]3SCR688 . The meaning of land reforms must be understood in its plain grammatical sense. In interpreting the word 'land' in Entry 49 of List-II of the 7th Schedule a Constitution Bench of the Supreme Court held in the case of Raja Jagannath Baksh Singh v. State of Uttar Pradesh reported in : [1962]46ITR169(SC) that the word 'land' includes all lands whether agricultural or not. Again interpreting the meaning of the word 'land' in Entry 18, List-II of 7th Schedule of the Constitution, the Supreme Court held in case of Jilubhai Nanbhai Khachar v. State of Gujarat reported in : AIR 1995 SC142 it has been held that 'land in Entry 18 is not restricted to agricultural land alone but includes non-agricultural land, etc.' He continues in his argument that settled principle of construction of a statute shall have the same meaning unless the context otherwise requires. He relies on decision of Supreme Court reported in : 1959 CriLJ389 , In this connection reliance is placed upon several decisions of the Supreme Court reported in : AIR 1959 SC422 , : [1977]2SCR522 and : 1974 CriLJ885 . So, according to Mr. Roy, the words 'land, reforms' shall have the meaning of reforms of all kinds of lands.

32. In. answer to the argument of Mr. Pal that the real connotation and meaning of the word 'estate' mentioned in Article 323B(2)(d) relates to agrarian reform only. Mr. Roy submits the agrarian reform does not necessarily mean for agricultural purpose. He submits that the concept of agrarian reform is a complex and dynamic one promoting wider interest than conventional reorganization of the land system or distribution of land. He argues referring to a decision of Supreme Court reported in : [1965]1SCR82 (Ranjit Singh v. State of Punjab) that where the general scheme of legislation is definitely agrarian reform and under its provisions something ancillary in the interest of rural economy has to be undertaken to give

full effect to the reforms, shall be contemplated to be within the scope of Article 31A of the Constitution. He submits relying on a decision of Supreme Court reported in : [1989]2SCR687 (State of Gujarat v. Kamlaben Jivabhai) that in order to treat a particular law as part of an agrarian reform, it is not necessary that on the land which is the subject matter of the said law actual cultivation should be carried on. He argues that in order to ascertain whether a statute is relating to agrarian reform or not it has been decided by the Supreme Court in a case of State of Kerala v. G. R. Silk, : [1974]1SCR671 that this question has to be resolved by looking into the substance of the Act. He seeks support, in this context, of another decision of Supreme Court reported in : [1983]3SCR536 (Prem Nath v. State of J & K).

33. Mr. Roy argues having applied the aforesaid test it would be crystal clear that all the disputed specified Acts are relating to land reforms and within the expression as mentioned in the aforesaid Article 323B(2)(d) Mr. Roy submits that the decision of L. Chandrakumar' s case, : [1997]228ITR725(SC) clearly indicate that what were the issues that the Supreme Court had in mind. He argues that the aforesaid decision is a binding precedent and declared law under Article 141. So this im-'pugned Act has been enacted as far as the ouster of the jurisdiction of the High Court as a Court of first instance under Articles 226 & 227 in the line and in compliance of the Supreme Court decision of L. Chandrakumar's case. Therefore, the said Act is constitutionally valid and the challenge which has been thrown by the petitioners are wholly unacceptable and this Court should not accept the same.

34. Mr. Dasgupta, appearing for the learned Advocate General, adopted the submission of Mr. Roy.

35. I have heard submissions of all the learned lawyers. It appears to me the submission made by Mr. Pal and Mr. Bose who are sailing in the same boat while spearheading the attack against the vires of the said Act, are substantially three folds.

(i) The impugned Act has not been enacted in conformity with Article 323B Clause 2 (d), in other words, the Act does not come within the sweep and/or purview of Article 323 Clause (2) (d). It may at the highest be construed as a piece of

legislation while exercising power under Article 245 read with Article 244 of the [Constitution of India](#).

(ii) The jurisdiction of the High Court under Articles 226 & 227 of the [Constitution of India](#) cannot be taken away in view of the recent decision of the Apex Court reported in : [1997]228ITR725(SC) (L. Chandrakumar's case) which held amongst other the power and jurisdiction under Article 226/227 of the [Constitution of India](#) is part of the basic structure of the Constitution and the same is inviolable by any ordinary legislation.

(iii) The provision for transfer of all the pending cases in this Hon'ble Court as mentioned in Section 9 of the impugned Act is ultra vires and which has been held by necessary implication in L. Chandrakumar's case. The decision and direction given in L. Chandrakumar's case debarring the litigants from approaching at the first instance the High Court under Article 226/227 is not a declared law within the meaning of Article 141 as such the same cannot be binding upon this Court while testing vires of the aforesaid Act.

36. In order to appreciate and decide the first question, I feel it necessary to analyse the scope, purport and purview of Article 323B (2) (d) as admittedly the impugned legislation has been enacted in exercise of the aforesaid power.

37. It is no longer res Integra that Article 323B in its entirety is unconstitutional and invalid. So, this question does not require any consideration at all. Before analysing the scope and purport of Article 323B, it will be appropriate to reproduce the Article 323B(1) Clause (2) (d) of the [Constitution of India](#).

'The appropriate legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in Clause (2) with respect to which such legislature has power to make clause.

Sub-Section (2) -- The matters referred to in Clause (1) are the following, viz.

(a) to (c).....

(d) Land reforms by way of acquisition by the State of any estate as defined in Article 31A or of any right therein or the extinguishment or modification of any such right or by way of ceiling on agricultural land or in any other way.'

38. It is settled position that List-II being the State List in Schedule 7 of the Constitution the State legislature is competent to frame and/or enact any law relating to such power falls within Entry 18. It appears to me upon interpretation of Article 323B Clause (2) (d) that State legislature is competent to enact any law providing for the adjudication or trial by a tribunal of all or any dispute, complaints or offences in relation to amongst other land reforms.

39. Mr. Pal addressed me saying words 'land reforms' necessarily means agrarian reform and/or relates to agricultural land. I am unable to accept this argument. He further argues that the words land reforms used in Article 323B are compendium words and the same cannot be splitted. I regret to accept the submission which appears to me to be apparently absurd. It is meaningless if the two words land and reforms are splitted in the context of the entire provision Clause (2) (d) of Article 323B. The books cited and relied on by Mr. Pal, viz., Land Reforms in West Bengal written by Basu and Bhattacharyay Dutta & Sundaram -- Indian Economy and Long Title of Land Reforms Act, 1955 as originally enacted are not the authorities to hold the meaning of the land reform has restricted meaning and the same confined to agrarian reform only or for that matter the same relate to agricultural land.

40. The decision of Supreme Court reported in : [1974]1SCR671 cited by Mr. Pal in this connection was rendered on the question whether forest land held under janmam right could be acquired by State under Article 31A of the [Constitution of India](#) treating the same being estate as defined therein. In paragraph 17 therein it was held amongst other that all the private forests described therein were held in janmam right and janmam right being an 'estate' are liable to be acquired by the State under Article 31A(1)(a) as a necessary step to the implementation of agrarian reform. Therefore, they would attract the protection of Article 31A(1). It would not be, in such a case, necessary to further examine if the land so vested in the Government are agricultural lands falling within sub-Clause (iii).

41. This decision did not lay down that land reform will necessarily mean and/or restrict to agrarian reform. In this judgment Justice Krishna Ayer while concurring with majority view further added inter alia if the Act by which 'the estate' as defined in Article 31A and is sought to be acquired is not essentially meant for agrarian reform then no protection of the above Article is available. Rather in paragraph 31 of the same judgment it is observed 'it is thus clear to those who understand developmental dialectic and rural planning that agrarian reform is more humanist than mere 'land reform' and scientifically viewed, covers not merely abolition of intermediary tenures, zamindari and the like restructuring of village life itself taking in its broad embrace the socio-economic regeneration of the rural population'.

42. Similarly, the decision of the Supreme Court cited by Mr. Pal in this context in : [1989]2SCR687 was rendered while examining the object of enactment of Gujarat Surviving Alienations Abolition Act, 1963 as being an act for agrarian reform or not so as to bring within the purview of the Article 31-A held that extinguishment of right of receiving a sum of Rs. 3500/- in lieu of right of cutting and removal of forest wood is an estate within the meaning of the above Article and they are entitled to compensation.

43. The said decision does not lay down that land reform shall be restricted to agrarian reform or relates to agricultural land.

44. In a decision of Supreme Court reported in : [1976]3SCR688 cited by Mr. Roy it has been held amongst other that Article 31-A of the Constitution is not confined to legislation for agrarian reform. Agrarian reform is only one of the possible or alternative objects of such acquisition.

45. In Clause (2) (d) of Article 323B it has been provided illustratively ways of land reforms. One of the ways in my view is acquisition of any estate as defined in Article 31A as it is clear from the word 'or' used in the above clause. Therefore, it is necessary to understand the purport and meaning of the definition of 'estate' as mentioned in Article 31A of the [Constitution of India](#) that is quoted hereunder :--

'The expression of 'Estate' shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to tenures in force in that area and shall also include --

(i) any Jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any Janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land agricultural labourers and village artisans.'

46. Given the aforesaid definition, meaning of the word 'estate' essentially or exclusively confined to agricultural land or relate to agrarian reform only and not otherwise as submitted by Mr. Pal, cannot be accepted. It will appear from plain reading of Article 31A(2)(a) of the [Constitution of India](#) that 'estate' not only means what are mentioned in Clause (a) but also includes all those other categories of land mentioned in sub-Clauses (i), (ii) & (iii) of Clause (a). The purport of sub-Clause (i) provides clearly for the lands of all classes, while Sub-clauses (ii) & (iii) make room for agricultural land and agrarian reform. I am in agreement with Mr. Roy that the word 'include' expands the meaning of word 'estate' as it has been held by Apex Court in two decisions reported in : (1960)ILLJ523SC (Corporation of the City of Nagpur v. Its Employees) and : [1975]1SCR534 and followed by another decision of the same Court reported in : 1988(36)ELT201(SC) .

47. Mr. Pal has rightly submitted that the definition of estate in Clause (2) of Article 31A is having the same meaning as that of expression had in the Bengal Tenancy Act, 1885, then being existing law in West Bengal relating to land tenures that was in force at the time of incorporation of Article 31A of the [Constitution of India](#). The meaning and definition of estate in the aforesaid Act as mentioned in Section 3, sub-section (4) is as follows :--

'(4) 'estate' means land included under one entry in any of the general registers of revenue paying lands and revenue free lands, prepared and maintained under the law for the time being in force by the Collector of a district and includes Government khas mahals and revenue free lands entered in any register.'

48. Thus, it is clear from the aforesaid definition that the word 'estate' did or does not relate or confine to any specified class or nature of land not to, speak of agricultural land alone. In my view, estate means an interest and/or right in any kind of land whether it is revenue paying or revenue free, having control over the land. My view is drawn from the ratio laid down in a decision cited by Mr. Roy, of Supreme Court reported in : AIR 1959 SC519 . It has been held therein amongst other that the word estate means an area of land which is an unit of revenue or revenue free estate. The same view is also taken in the decision rendered by the same Court in another case reported in : AIR 1959 SC459 . So, Mr. Roy's painstaking effort to convince me for holding the 'estate' does relate to any class of land, deserves recognition and acceptance, so I do.

49. Mr. Pal of course wants me to give the meaning of the word 'estate' otherwise, rather asks me to give restrictive meaning as being agricultural land and/or agrarian reform by citing decisions of the Supreme Court reported in : [1960]3SCR887 (Kochuni v. State of Madras) and : AIR 1962 SC694 .

50. The decision of the Supreme Court reported in : AIR 1962 SC694 does not clearly lay down by that the meaning and connotation of the word estate in Article 31A exclusively relate or restrict to agricultural land qua agrarian reform. It appears to me reading paragraph 19 that all the States have resorted to Article 31A for agrarian reform in different method. Kochuni's case : [1960]3SCR887 is also distinguishable and in fact it has been distinguished by a later decision of the Supreme Court in Ranjit Singh's case reported in : [1965]1SCR82 followed by another decision of Supreme Court in case of Prem Nath v. State of J & K reported in : [1983]3SCR536 . In both the cases Supreme Court held that the decision in Kochuni's case was treated in Ranjit Singh as a special case which cannot apply to cases where the general scheme of legislation is agrarian reform and under its provisions, something ancillary thereto in the interests of rural economy has to be

undertaken to give full effect to those reforms. It is no doubt that the Bengal Tenancy Act, 1885 confined to agricultural land but I am unable to endorse the submission of Mr. Pal that expression 'estate' in the 1885 Act could only relate to agricultural lands as because the said Act was meant for agrarian reform. The superficiality of this submission will appear from the plain reading of the definition of 'estate' in the said Act. If the scheme of the entire Act is read then definition of estate appears to have broader sense and meaning and do not relate to agricultural land alone. The decision cited on this point by Mr. Pal reported in (1977) 1 Cal LJ 695 is not at all applicable in this context. So, I do not apply the ratio laid down therein. The scheme and object of Article 31-A of the [Constitution of India](#) is one thing, which may or may not be for agrarian reform or relate to agricultural land; but the thing and/or subject by which the object of Article 31-A is to be achieved is another thing. Therefore, I have no hesitation to hold that the word 'estate' in Article 31-A connotes all classes of land. It does not restrict and confine to agricultural land not to speak of agricultural reform.

51. Now it has to be examined and tested as to whether specified Acts mentioned in the said Act have attributes of the 'land reform' as defined in Article 323-B Clause (2) (d) or not.

52. The lexicon meaning of land is solid part of the earth's surface (New Webster's dictionary). In Black's Law Dictionary (6th Edition) the meaning of land is any ground, soil or earth whatsoever including fields, meadows, pastures, woods, moors, waters, marshes, and rock. The word reform means restructuring and/or reorganisation for betterment of the people. There is no definition of combined words 'land reforms' in the Constitution. So, ordinary meaning reformation of land and/or land reform is to be applied. In Constitution I find the word land only. The connotation of word 'land' means all kinds of lands. This view of mine is supported by the decision of Supreme Court rendered in case of Raja Jagannath Baksh Singh v. State of Uttar Pradesh reported in : [1962]46ITR169(SC) and of the same Court in case of Jilubhai Nanbhai Kachar v. State of Gujarat reported in : AIR 1995 SC142 . So Land Reform means reformation of all kinds of land.

53. In the impugned Act I find that there are five specified Acts, viz., (i) West Bengal Estate Acquisition Act, 1953, (ii) The West Bengal Land Reforms Act, 1955, (iii) The Calcutta-Thika Tenancy (Acquisition and Regulation) Act, 1981, (iv) The West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975 and (v) The West Bengal Land Holding Revenue Act, 1979.

54. I should mention that Mr. Pal, however, does not dispute that West Bengal Estate Acquisition Act, 1953 does have attribute of 'land reform' as mentioned in Clause 2 (d) of the said Article. According to him it is an Act which has got the trappings of agrarian reform. The challenge to that extent against the said Act is not pressed. So remaining four specified Acts are to be examined on the anvil of the provision of Article 323B(2)(d).

(i) The West Bengal Land Reforms Act, 1955 -- This Act in my view has provided for land reform by way of acquisition by the State of any estate and further right of a raiyat, extinguishment and modification of right of a raiyat and lastly by way of ceiling on agricultural land.

55. Chapter V of the said Act which covers Sections 39 to 48A, deals with the acquisition of the right of the raiyats. Section 39 specifically deals with the acquisition of the right of raiyat upon payment of compensation. Section 40 of the said Act deals with redistribution of the land after acquisition. So it purports creation and/or modification of the right of the raiyats.

56. Chapter-IIB of the aforesaid Act deals with fixation of ceiling on agricultural land and this fixation of ceiling on holding is directed' towards acquisition of the excess land by way of vesting.

57. Chapter-VI of the said Act deals with distribution of the excess land so vested under Chapter-IIB. This necessarily means modification of the right of a raiyat. In the said Act a further right by way of Bargadar has been provided in Chapter-111.

(ii) The Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 -- This Act has been enacted for extinguishment of right of the superior landlord and further

acquisition of such right. Moreover, the right of the thika tenant and that of Bharatia mentioned in the Calcutta Thika Tenancy Act have been modified. So this has got also attributes of the aforesaid Clause 2 (d).

(iii) The West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975 -- The scope and purport of the aforesaid Act also relate to acquisition of the homestead land for Agricultural Labourers, Artisans and Fishermen Act and by the said Act necessarily it means the extinguishment of the right of a class of a holder of the land and further creation of right in favour of some other class. This Act also has trappings and attributes of the aforesaid Clause 2 (d).

(iv) The West Bengal Land Holding Revenue Act, 1979 -- This Act comes within the purview of 'any other way' as this Act is intended to be brought into existence for rationalization and improvement of the system of revenue on land holdings in the interest of proper implementation of comprehensive measures for land reform in the state with a view to providing incentives for increased production and ensuring proper distribution of material resources for social and economic welfare. This Act may not have object or effect of land reforms by way of acquisition of any estate or of any right therein or extinguishment or modification of any such right, but it has object or effect of land reform by 'any other way'.

58. Therefore, I hold that by the said Act for resolution of all the disputes relating to and/or arising out of the aforesaid four Acts, a tribunal can be established for adjudication thereof. Accordingly, I have no hesitation to accept the submission of Mr. Roy that the formation of the tribunal by the said Act in relation to the aforesaid four (five) specified Acts is not ultra vires of Article 323B(2)(d).

59. Now, I am to examine whether the formation of a tribunal by the said Act in exercise of power under Article 323B in any way affects the basic structure of the Constitution in taking away the power of judicial review of High Court under Articles 226 and 227 as a Court of first instance or not.

60. The Supreme Court had conflicting opinion before the judgment of the Supreme Court forming a Bench of seven Judges in L. Chandrakumar's case

reported in : [1997]228ITR725(SC) , was rendered. In Sampath Kumar's case, AIR 1987 SC 386 which held amongst other that it was possible to set up an alternative institution in place of the High Court for providing judicial review. The formation of this kind of tribunal does not affect the power of judicial review a fortiori affects the basic structure of the Constitution. The Full Bench decision of the Andhra Pradesh High Court, however, did not follow the decision of Sampath Kumar's case and held amongst other that the decision rendered in Sampath Kumar's case is not the declared law and the same cannot be a binding precedent and further held amongst other in setting up tribunal in exercise of Article 323A and B the legislature is not competent to oust the power of judicial review of the Supreme Court and the High Court.

61. In the context of the aforesaid divergent views of the Apex Court and the High Court the decision in L. Chandrakumar's case (AIR 1997 SC 1126) was rendered and the Apex Court has, however, set at rest all the disputes arising out of the divergent views of the various Courts.

62. After the decision rendered in L. Chandrakumar's case I am to examine how far the said Act constitutionally valid so far as it affects power of judicial review of High Court under Articles 226 & 227 as a Court of first instance. In other words, whether the scope and purport of the said Act in the context of decision of Supreme Court in L. Chandrakumar's case have affected basic structure of the Constitution by taking away power of judicial review of High Court under Articles 226 and 227, as a Court of first instance.

63. Mr. Pal and Mr. Bose strenuously attacked various sections of the said Act as not being constitutionally valid. It will appear from the preamble of the impugned Act and the background of the framing of the Act that this Act has been framed following the decision of L. Chandrakumar's case : [1997]228ITR725(SC) and this has been made amply clear in the preamble itself. It is quoted below.

'Whereas it is expedient to provide for setting up of a land reforms and tenancy tribunal and for adjudication and trial by such tribunal of disputes, claims objections and applications relating to or arising out of land reforms or tenancy in land and other matters under a specified Act and for the exclusion of the

jurisdiction of all Courts except Division Bench of the High Court exercising writ jurisdiction under Articles 226 & 227 of the [Constitution of India](#) and the Supreme Court of India in adjudication and trial of such disputes, claims, objections and applications and for matters connected therewith or incidental thereto.

The statement of object and reasons also make it clear expressly that the said tribunal has been constituted following the decision of the Supreme Court in L. Chandrakumar's case.'

64. Therefore, it is imperative for me to analyse the ratio and decision of the Supreme Court in L. Chandrakumar's case.

65. From very first paragraph of the said judgment delivered by the then Hon'ble Chief Justice of India Mr. Justice Ahmedi (as His Lordship then was) it would be clear that the said decision was necessitated to be rendered in view of the various earlier decisions of the Supreme Court and that of different High Courts on several provisions in different Acts enacted under Articles 323A & 323B of Constitution. The questions and/or issues which were formulated for decision are set out in paragraph 1 of the said judgment. The questions and/or issues are reproduced hereunder.

'(i) Whether the power conferred upon Parliament or the State legislature, as the case may be, by Sub-clause (d) of Clause (2) of Article 323A or by Sub-clause (d) of Clause (3) of Article 323B of the Constitution to totally exclude jurisdiction of all Courts excepting that of the Supreme Court under Article 136 in respect of disputes and complaints referred to in Clause (1) of Article 323A or with regard to all or any of the matters specified in Clause (2) of Article 323B, runs counter to the power of judicial review conferred on the High Courts under Article 226/ 227 and on the Supreme Court of Article 32 of the Constitution?

(ii) Whether the tribunals constituted either under Article 323A or under Article 323B of the Constitution possesses the competence to test the constitutional validity of statutory provision/rule?

(iii) Whether these tribunals, as they are functioning at present can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objects?'

66. In this case the questions and/or issues in item No. (i) is a very exhaustive one and the decision and/or judgment rendered on Clause (1) would be relevant in this case.

67. L. Chandrakumar's case, : [1997]228ITR725(SC) while examining the questions as to whether the power of judicial review of the High Court and the Supreme Court under Articles 226 & 227 and Article 32 being one of the basic structures of the Constitution can be taken away by enacting laws by the Parliament and the State under above Articles the Supreme Court considered various decisions. Their Lordships after analysing all the decisions on this point starting from the first ever case State of Madras v. V. G. Rao, : 1952 CriLJ966 , Bidi Supply Co. v. Union of India, : [1956]29ITR717(SC) , : AIR 1965 SC745 and the decision of the Constitution Bench in Keshavananda Bharati's Case, : AIR 1973 SC1461 and up to : (1995)11LLJ640SC have decided on this point as follows :--

In paragraphs 90 and 93 Their Lordships have been pleased to hold that power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot be excluded. After holding this, Their Lordships, however, were pleased to add that the tribunal is competent to decide all questions except the questions of constitutional validity of the parent Act by which it is formed and the decision of the tribunal should be made judicially reviewed by the High Court under Articles 226 & 227.

68. In paragraph 99 it has been expressly held by Their Lordships 'in view of the reasoning adopted by us, we hold that Clause (2) (d) of Article 323A and Clause (3) (d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Article 226/227 and 32 of the Constitution are unconstitutional'. It has been further held that Section 28 of the Act (Administrative Tribunal Act) and the exclusion of jurisdiction clauses in all other legislation

enacted under the aegis of Articles 323A & 323B would to the some extent be unconstitutional. Their Lordships continue to add in paragraph 99 that the jurisdiction conferred upon the High Court under Articles 226 & 227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted other Courts or tribunals may perform a supplemental role in discharging the powers conferred by Articles 226 & 227 and Article 32 of the Constitution.

69. Simultaneously holding the aforesaid manner Their Lordships, however, have also come to the opinion and/or views. 'The tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty they cannot act as substitute for the High Courts and Supreme Court which have, under our constitutional set up been specifically entrusted of such an obligation. Their function in this respect is only supplementary and all such decisions of the tribunals will be subject to scrutiny before Division Bench of the respective High Courts. The tribunals will consequently also have the power to test the vires of the subordinate legislations and rules. However, this power of the tribunals will be subject to one important exception. The tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a tribunal which is a creature of an Act cannot be declared that very Act to be unconstitutional. In such cases alone the concerned High Court may be approached directly. All other decisions of these tribunals, rendered in cases that they are specifically empowered to adjudicate upon the vires of that parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the tribunals will, however, continue to act as the only Courts of the first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Court even in cases where the question or the vires of statutory legislation (except, as mentioned, were the legislation which creates the particular tribunal is challenged) by overlooking the jurisdiction of the concerned tribunal.'

70. Then it has been further viewed by Their Lordships -- 'directions issued by us in respect of making the decision of the tribunals amenable to scrutiny before

Division Bench of the respective High Courts will however come into effect prospectively that will apply the decision rendered hereinafter. To maintain the sanctity of judicial proceedings we have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decision already rendered.'

71. I have been urged by both Mr. Pal and Mr. Bose to hold the aforesaid direction of Supreme Court is mere direction not a declared law so as to make it binding precedent. I have refrained myself from making any comment and deciding as no ground has been taken in the petition, further while testing a legislative action on the anvil of constitutional provision, legal implication of the above decision of the Supreme Court shall not be ascertained in this action. So, I have left it open.

72. In my opinion, ratio and/or issue which has been decided in the aforesaid judgment is whether the power under Articles 226 & 227 of the High Court can be ousted by enacting a legislation in exercise of power under Articles 323A & B. It has been decided answering the above issue that the power of the High Court under Articles 226 & 227 is inviolable provision and the same being the part of the basic structure of the Constitution. The legislature is not competent to take away such authority. In paragraphs 90 & 99 it has been made amply clear.

73. Therefore, I hold the ratio decided in the aforesaid judgment of the Supreme Court in L. Chandrakumar's case in answer to the issues and/or questions to the question No. 1 that the power of the High Court under Articles 226 and 227 cannot be ousted by enacting any legislation under Articles 323A & B and this decision is declared law under Article 141 of Constitution. In other words, if any provision made in this kind of legislation to oust the jurisdiction under Articles 226 & 227 runs counter to the power of judicial review conferred on the High Courts under Articles 226 & 227 and on the Supreme Court under Article 32 of the Constitution as Court of first instance. .

74. I agree with and accept the submission made by Mr. Pal that the power under Articles 226 & 227 of the High Court is inviolable provision and the same being basic structure of the Constitution. The framers of the Constitution has given this power under Articles 226 & 227 to the High Court keeping in view the long tradition

of this higher judiciary which is capable of handling all kinds of disputes mentioned therein. This power given to this Court is so wide that even the Hon'ble Supreme Court does not possess such power under Article 32. The framers of the Constitution even has conceived and/or made provision for delegating the power under Article 32 of the Supreme Court exercisable under Sub-clause (1) upon any other Court to exercise within the local limits of its jurisdiction all or any of the power exercisable by the Supreme Court under Clause (2). In the context of Sub-clause (3) of Article 32 of the [Constitution of India](#). Their Lordships in L. Chandrakumar's case have been pleased to make an observation in paragraph 81 that when the Supreme Court's power under Article 32 can be conferred upon any other Court additionally there is no reason why the same situation cannot subsist in respect of the jurisdiction concerned upon High Courts under Article 226 of the Constitution and in this context it was held by Their Lordships that the power under Articles 226 and 32 can be conferred upon additionally to any other Courts and/or tribunals. It was not drawn attention of Their Lordships to Article 226 nowhere therefrom it appears that such power has been given to either Parliament or to State Legislative for conferring the power of the High Court under Articles 226 & 227 to any other Courts or tribunal additionally excepting the provisions of Article 323-A & B. The power under Article 32 of the Supreme Court of India is very restricted and this power can be exercised only, in case and situation as contemplated in Clause 2 of the aforesaid Article and not otherwise. It can be exercised only in a case when there is infringement of any of the right conferred by Part-III of the [Constitution of India](#), viz. enforcement of fundamental right not any other right whereas the jurisdiction and/or power given in Article 226 is wide enough and it covers various matters, it does not restrict to enforcement of fundamental right only. It extends for any other purposes. The words any other purposes cannot be given an exhaustive meaning by way of illustration. This provision of Articles 226 & 227 is an original constitutional jurisdiction and this has been given by the framers of the Constitution as a basic part and feature of the Constitution.

75. Now in the context of the aforesaid analysis of the judgment of L. Chandrakumar' s case I am to examine as to whether various provisions made in the impugned legislation in for adjudication and resolution of the disputes relating

to the laws mentioned in Article 323B as supplemental to that of the High Court. This is clear from paragraph 80 of the decision in L. Chandrakumar's case.

76. I have already observed that by the impugned legislation a tribunal has been set up consisting of a Chairman and two other members. Section 4 of the impugned legislation provides for composition and manner of functioning of such tribunal. This section has provided for mode of appointment of the Chairman and members of such tribunal.

77. Section 6 of the impugned legislation has provided for jurisdiction, power and authority of the tribunal. By the Section 6 the power or jurisdiction has been given as and by way of Court of first instance and as an appellate Court against an order of the mines tribunal appointed under Section 36 of the West Bengal Estate Acquisition Act, 1953 and further power of adjudication of disputes and applications relating to matters under any provision of a specified Act involving interpretation of any provision of the Constitution or of validity of a specified Act or of any other law for the time being in force. Further power of adjudication of matters, proceedings, cases and appeals which stand transferred from the High Court and other authorities to the tribunal in accordance with the provisions of this Act.

78. Under Section 7 of the aforesaid impugned Act it has been provided that the tribunal shall with effect from the date appointed by the State Government under Section 6 exercise all jurisdiction, power, and authority exercisable immediately before that day by any Court including the High Court, except the writ jurisdiction under Articles 226 & 227 of the Constitution exercised by Division Bench of the High Court, but excluding the Supreme Court, for adjudication or trial of disputes and applications relating to land reforms and matters connected therewith or incidental thereto and other matters arising out of any provisions of a specified Act.

79. By and under Section 8 of the said impugned Act the jurisdiction of various Courts has been excluded by making expressed provision to the effect that on and from the date from which jurisdiction, power and authority become exercisable under this Act by the tribunal, the High Court, except where the Court exercises writ jurisdiction under Articles 226 & 227 of the Constitution by Division Bench or

any Civil Court, except the Supreme Court, shall not entertain any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or application relating to land reforms or any matter connected therewith and incidental thereto for any other matters under any provision of a specified Act.

80. The combined reading of Sections 7 & 8 of the impugned legislation it would appear that the intention of the legislature is to confer jurisdiction for adjudication of all matters relating to the specified Act inclusive of jurisdiction exercisable under Articles 226 & 227 by the High Court as a Court of first instance and further ouster of jurisdiction correspondingly of the High Court under Articles 226 & 227 as a Court of first instance by making a provision for entertaining application and/or appeal under Articles 226 & 227 by a Division Bench against the decision of tribunal.

81. As I have already observed and held that the ratio of the L. Chandrakumar's case is that the power and jurisdiction of the High Court under Articles 226 & 227 either as a Court of first instance or as a revisional Court or judicial reviewing Court cannot be taken away and/or ousted by any legislature. So, the provision of Sections 7 & 8 so far as it relates to ouster of the jurisdiction of the High Court as a Court of first instance under Articles 226 & 227 is unconstitutional inasmuch as the same affects and hits the basic structure of the Constitution. But this tribunal can function and/or play supplemental role to the High Court for entertaining the application and/or disputes relating to any matter which can be entertained by the High Court as a Court of first instance under Articles 226 & 227. In other words, I mean to say that High Court's power under Articles 226 & 227 as a Court of first instance shall remain unaffected and ouster of jurisdiction of the High Court under Articles 226 & 227 in any manner by the impugned Act cannot be Constitutionally accepted.

82. It is for the High Court in its discretionary power to entertain any matters for judicial review as Court of first instance or not and this discretion cannot be ousted and/or affected by the legislature and such attempt of ouster of such power amounts to transgression of the power of judicial review of the High Court under

Constitution by legislature.

83. Section 9 of the said Act has provided for transfer of case records from High Court. It provides that all matters, proceedings, cases and appeals relating to land reforms and matters connected therewith or incidental thereto or other matters arising out of a specified Act pending before the High Court except where a Division Bench of that Court exercise writ jurisdiction under Articles 226 & 227 of the Constitution, on the date appointed by the State Government under Section 6 shall stand transferred to the tribunal for disposal in accordance with the provision of this Act; where any matter, proceeding, case or appeal stands transferred from the High Court to the tribunal under sub-Section (1) :--

(a) The High Court shall, as soon as may be after such transfer, forward the record of such transfer, proceeding, case or appeal to the tribunal in accordance with such procedure as may be prescribed and

(b) the tribunal shall, on receipt of such record, proceed to disputes of such matter, proceeding, case or appeal so far as may be from the stage reached before such transfer or from any earlier such de novo as it may deem fit. Provided that any interim order granted in a matter, proceeding or case by the High Court shall stand vacated on the expiry of the twelve weeks from the date appointed by the State Government under Section 6 unless the tribunal by an order varies, modifies or extends the same earlier on an examination of such records, matters proceedings or case.

83-A. The aforesaid provision of Section 9 for transfer of the case record from High Court so far as the same relate to proceeding under Articles 226 & 227 is also ultra vires Constitution for the same reasons as this takes away the power and jurisdiction of the High Court under Articles 226 and 227 of the [Constitution of India](#) and the same violate inviolable provision of the [Constitution of India](#). Following the ratio and decision in L. Chandrakumar' s case I strike down the provision of Section 9 of the said Act relating to transfer of pending cases under Articles 226 & 227 of the [Constitution of India](#). I make it clear the pending cases other than under Articles 226 & 227 mentioned in Section 9 of the said Act shall stand transferred by operation of the said section as the provision under Section 9

of the said Act to that extent is not unconstitutional.

84. It appears the aforesaid provision for transfer under Section 9 has been made in exercise of the power under Article 323B Clause 3 (e) of the [Constitution of India](#). The said Clause reads as follows :

'Provide for the transfer to each such tribunal of any cases pending before any Court or any other authority immediately before the establishment of such tribunal, if the causes of action on which such suits or proceedings are based has arisen after such establishment.'

85. Nothing has been produced before me showing that the aforesaid provision was ever tested as to whether the same violates and/or hits the basic structure of the Constitution. Apparently the aforesaid provision enables the State legislature to transfer all the pending cases even under Articles 226 & 227 in the High Court. It is settled law as it has been held in Keshabananda Bharati's case, : AIR 1973 SC1461 followed by the subsequent Supreme Court decision and latest being in L. Chandrakumar

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