UNION OF INDIA

v

ELPHINSTONE SPINNING AND WEAVING CO. LTD. & ORS. ETC.

JANUARY 10, 2001

[G.B. PATTANAIK, S. RAJENDRA BABU, D.P. MOHAPATRA, DORAISWAMY RAJU AND SHIVARAJ V. PATIL, JJ.]

Constitution of India, Articles 14 and 19 (1) (g)—Textile Undertakings (Taking over of Management) Ordinance, 1983 and the Textile Undertakings (Taking over of Management) Act, 1983—Validity of—Takeover of management of respondent mills by legislation—Bombay High Court striking down legislation as being violative of Articles 14 and 19 (1) (g)—Held, High Court was wholly in error in striking down the legislation on a supposed violation of Articles 14 and 19 (1) (g); Further held, microscopic examination of data by Court was impermissible and would not override legislative intent behind taking over of management of the mills in the larger public interest—Whether impugned legislation violative of Article 19 (1) (g) since government did not resort to remedies available under other legislations Held, if Parliament decided to enact a law for taking over management of textile mills in public interest it was not open to the court to examine the question whether other remedies could have been taken Constitution of India, Article 226—Judicial Review—Scope of.

Textile Undertakings (Taking over of Management) Ordinance, 1983 and the Textile Undertakings (Taking over of Management) Act 1983, Ss. 3 (3), (4) (6), 6, 8 and 11 (1) r/w Constitution of India Article 31 A (1) (b)—Whether takeover intended was for a limited period and therefore not within the purview of Article 31 A of the Constitution—Held, impugned legislation was law providing for taking over management for a limited period in public interest and came within the purview of Article 31 A (1) (b) of the Constitution.

Interpretation of Statutes—Textile Undertakings (Taking over of Management) Ordinance, 1983 and the Textile Undertakings (Taking over of Management) Act 1983— Expression 'mismanagement' used in preamble— High Court holding that the expression must necessarily mean an element of fraud or dishonesty—Held, the expression 'mismanagement' in preamble

A *would not control the purpose of the Act; Parliament intended not only to take those mills whose financial condition was deplorable on account of mismanagement but also those where the financial condition might be deplorable but not on account of mismanagement—*

Words and Phrases : 'Mismanagement'—Meaning of.

B

Textile mills in and around Bombay had gone on strike with effect from January 18, 1982. On February 15, 1982 the Government of India declared its policy for nationalization of all these textile industries. In October 1982, the Reserve Bank of India had called a meeting to discuss the situation arising out of the strike. Depending upon the economic conditions of different mills C the mills had been classified into three groups. The continued textile strike had deteriorated the financial condition of all the textile mills and the mills were looking forward to the financial institutions and nationalised banks for financial aid to make the mills viable.

A Task Force constituted by the government submitted its report by the D end of September 1983. On October 18, 1983, the management of thirteen textile mills enumerated in the first schedule to the Textile Undertakings (Taking over of Management) Ordinance, 1983 ('Ordinance') were taken over pending nationalisation. These included the three respondent mills. Later the Ordinance was replaced by the Textile Undertakings (Taking over of E Management) Act 1983 ('Act').

The Ordinance and the Act were challenged by the three respondent mills through writ petitions before the Bombay High Court on the grounds that they were violative of Articles 14 and 19 (1) (g). The High Court held that since the takeover of the management of the mills was for an indefinite F period and pending nationalisation, the protection under Article 31 A (1) (b) would not be available and that therefore the challenge to the legislations on the anvil of violation of Articles 14 and 19 (1) (g) had to be examined. After examining data, the High Court concluded that there was no nexus between the basis for classifying the respondent mills with other mismanaged mills and the object and purpose of the Act. It concluded that the inclusion of the G three respondent mills in the schedule to the Act was arbitrary and also that the Act infringed their rights under Article 19 (1) (g). Accordingly the Act and Ordinance were struck down vis-a-vis the three respondent mills. The High Court however granted the Union of India certificate of fitness to appeal to this court.

H The appellant contended that High Court erred in overlooking the

cardinal principle that there is a strong presumption of constitutionality that attaches to legislations warranting deference to legislative wisdom and that laws relating to economic activities ought to be viewed with greater latitude than those touching upon civil rights. The impugned legislation was enacted in public interest keeping in view the prevailing situation and the High Court erred in misunderstanding the basis of the classification and in assuming mismanagement as fraud. The respondent mills urged that the takeover was for an indefinite period and therefore the immunity to challenge on the grounds of Articles 14 and 19 as provided under Article 31 A (1) (b) was not available. It was indeed an acquisition and therefore the legislation was a pretence warranting examination of its validity notwithstanding the declaration made by the legislature that it was in public interest. The mills had placed materials to show that the legislative facts were incorrect and therefore the High Court was justified in arriving at its conclusions on the basis of such materials.

Allowing the appeals, this Court

HELD : 1.1. The High Court was wholly in error in striking down the taking over of the three petitioners mills before it on a supposed violation of Article 14 of the Constitution. The Parliamentary action in legislating the law and taking over of the management of all the 13 mills included in the First Schedule to the Act could not be held to be discriminatory.

[252-E; 253-A]

1.2. The impugned Act read as a whole unequivocally indicated that the Parliament was satisfied that the management of the textile undertakings specified in the First Schedule should be taken over pending nationalisation of such undertakings, and therefore, passed the impugned Act in public interest. [251-A]

1.3. When Parliament intended the taking over of the management of the 13 Textile Mills pending their nationalisation to be in the public interest, microscopic examination as to the data by the Court for arriving at a conclusion as to the alleged violation of Article 14 of the Constitution was not permissible and would not override legislative intent. [250-C-F-G]

Shell Company of Australia **v.** *Federal Commissioner of Taxation,* **(1931) AC 275;** *Sanjeev Coke Manufacturing* **v.** *M/s. Bharat Coking Coal Limited,* **[1983] 1 SCC 147; In Re The Special Courts Bill, 1978 (1979) 1 SCC 380;** *Daypack System Pvt. Ltd.* **v.** *Union of India,* **(1988) 2 SCC 299;** *R.K.Garg* **v.** *Union of India,* **[1981] 4 SCC 675;** *Ram Krishna Dalmia* **v.** *Shri Justice S.R. Tendolkar,* **[1959] SCR 279;** *The Superintendent and Rememberancer of Legal*

A *Affairs, West Bengal* v. *Girish Kumar Navalakha*, [1975] 4 SCC 754; *Indira Sawhney* v. *Union of India*, [2000] 1 SCC 168; *Dwarkadas Shrinivas of Bombay* v. *The Sholapur Spinning & Weaving Co. Ltd.*, [1954] SCR 674; *Dr. K.R. Lakshmanan* v. *State of Tamil Nadu*, [1996] 2 SCC 226; *Shashikant Laxman Kale* v. *Union of India*, [1990] 4 SCC 366; *Maneka Gandhi* v. *Union of India*, [1978] 2 SCC 248; *Chiranjit Lal Chowdhuri* v. *Union of India*, [1950] SCR 869 and *National Textile Corporation Ltd.* v. *Sitaram Mills Ltd.*, [1986] Supp. SCC 117, referred to

B

2.1. The mere fact that Government did not proceed with the remedies available under other Act and proceeded to enact a legislation for taking over of the management of the Mills would not constitute an infraction of Article 19 (1)(g) of the Constitution. [255-D-E]

C

2.2. If Parliament decided to enact a law for taking over the management of the textile mills, pending completion of the process of nationalization, on a genuine apprehension that there might be a large scale flittering away of assets if the management is not taken over and that would be grossly detrimental to the public interest it would not be open for the Court to examine the question whether other remedies could have been taken and not being taken there has been an infraction of Article 19(1)(g). [255-F-G]

D

Mohd. Faruk v. *State of Madhya Pradesh*, [1970] 1 SCR 156, referred to.

E

3. Having regard to the conditions of these mills at the time of taking over of the management and having regard to the decision of the Union Cabinet on the basis of data and materials to nationalise the mills falling under category III and the ultimate policy decision of the Government to achieve the process of nationalisation in two stages, first by taking over the management of the textile undertakings and thereafter, enact suitable legislation for taking over the management of the mills passed by the Parliament, the impugned Act was a law, providing for taking over of the management for a limited period in public interest and as such the said law came within the purview of Article 31A(1)(b) of the constitution. [245-B-C]

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Raman Lal v. *State of Gujarat*, [1969] 1 SCR 42, distinguished.

The Indore Malwa United Mills Ltd. v. *Union of India*, ILR (Del) 1974 (1) 311, overruled

H

The Governing Body of the Rangaraya Medical College, Kakinada v.

The Govt. of Andhra Pradesh, **AIR (1977) AP 420 (FB), referred to** A

4.1. Use of the expression 'mis-management' of the affairs in the preamble would not control the purpose of the Act, namely, the public interest. The High Court erred in concluding that mismanagement must necessarily mean an element of fraud or dishonesty. [247-A-F-G]

B

4.2. The Parliament having decided to take over the management of the Textile Mills which were in serious financial crisis, in the public interest it was not open for the Court to come to a conclusion by taking recourse to the use of the word 'mis-management' in the preamble to hold that Parliament intended only to take those Mills whose financial condition was deplorable on account of mismanagement and not in case of those mills where the financial C **condition may be deplorable but not on account of mis-management. [248-E-F-G]**

4.3. A cardinal principle of construction of statute was that the true or legal meaning of an enactment was derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or D **object which comprehended the mischief and its remedy to which the enactment was directed. [246-G-H; 247-A]**

Burakar Coal Co. Ltd. **v.** *Union of India,* **AIR (1961) SC 954;** *State Haryana* **v.** *Sampuram Singh,* **[1975] 2 SCC 810;** *Corocraft Ltd.* **v.** *Pan American Airways Inc.* **(1968) 3 WLR 714 and** *Duport Steels Ltd.* **v.** *Sirs* **(1980) 1 All ER 529, referred to.** E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2995-97 of 1984.

From the Judgment and Order dated 13.6.84 of the Bombay High Court F in W.P. Nos. 2401, 2441, 2448 of 1983.

With

C.A. Nos. 3301-03 of 1984.

C.A. Nos. 3018-20 of 1984. G

Harish N. Salve, Solicitor General, Mukul Rohtagi, Additional Solicitor General, R.F. Nariman, Anil B. Divan, F.S. Nariman, S.W. A. Qadri, S.K. Dewedi, Ms. Indira Jaisingh, Pritesh Kapoor, A.S. Rawat, D.S. Mehra, B. Sunita Rao, Ms. Niti Dixit, S.N. Terdol, Kailash Vasdev, Rauf Rahim, S. Ganesh, Ms. Bina Madhawan, Ms. Indoo P. Verma, Zulfikar Kumar, P.H. Parekh, A.S. Bhasme, H

A Ms. Kamini Jaiswal, Milind Sathe, Atul Dayal, Subhash Sharma and Ludo Verma for the appearing parties.

Intervenor-in-person (N.P.)

The Judgment of the Court was delivered by

B **PATTANAIK, J.** These appeals by the Union of India are directed against the judgment of the Bombay High Court. Certificates under Articles 132(1) and 133 of the Constitution for leave to appeal to the Supreme Court having been granted by the High Court itself. By the impugned judgment, the Bombay High Court came to the conclusion that the action of the Union Government in taking over the managements of the three Cotton Mills, namely,
C The Elphinstone Spinning and Weaving Mills Company Ltd., Jam Manufacturing Mills and New City Mills of Bombay under the provisions of Textile Undertakings (Taking over of Management) Ordinance, 1983, (hereinafter referred to as 'The Ordinance') and the Textile Undertakings (Taking over of Management) Act, 1983 (hereinafter referred to as 'The Act'), infringed the
D fundamental right under Article 14 of the Constitution and, therefore, qua them it was invalid. The High Court also further came to hold that the Act infringed the petitioner's fundamental rights under Article 19(1)(g) and on that count qua the petitioner was equally invalid. In coming to the aforesaid conclusion the High Court after thorough discussion of the materials on record found that the Union Government failed to establish either directly or
E inferentially any mis-management on the part of the three companies and failed to establish from the material on record that there was any nexus between the main object or purpose of the Act, *viz.*, to take over management of only those mills whose financial condition before strike was wholly unsatisfactory by reason of mis-management.

F The short facts leading to the promulgation of the Ordinance and replacement of the same by the Act are that the Textile Mills in and around Bombay had gone on strike with effect from 18.1.1982. On 15.2.1982 the Government of India declared its policy for nationalisation of all these Textile Industries. In October 1982, the Reserve Bank of India had called a meeting
G to discuss the situation arising out of the strike. Depending upon the economic conditions of different mills the mills had been classified into three groups. The continued Textile strike had deteriorated the financial condition of all the Textile Mills and the Mills were looking forward to the Financial Institutions and Nationalised Banks for financial aid to make the Mills viable. On 28th March, 1983, the Government of India wrote letters to the Nationalised Banks
H and IDBI to conduct a viability study of these Mills. The three Mills, with

which we are concerned, in these appeals had been included in category III. On 20th September, 1983, the Government of India in the Ministry of Commerce had issued a Memorandum constituting a Task Force to collect data and submit a note for being placed before Economic Affairs Committee of the Union Cabinet to enable it to take a decision as to which of the Mills in category III would be Nationalised. The said Task Force submitted its report by the end of September 1983. On 18th October, 1983, the Ordinance was promulgated and the management of 13 Textile Mills enumerated in the First Schedule to the Ordinance was taken over pending Nationalisation of the Undertakings. The Ordinance indicates that for re-organising and re-habilitating the Textile Mills to protect the interest of the workmen employed therein, and to augment the product and distribution at fair price of different varieties of cloth and yarn so as to subserve the interest of the general public, investment of very large sums of money was necessary and for such investment, the Central Government felt that the acquisition of the Mills would be necessary, but since acquisition would take some time and it was felt that it would be expedient in the public interest to take over the management of the Undertakings, pending acquisition, and that Parliament was not in Session, the President, on being satisfied that circumstances exists for taking immediate action, promulgated the Ordinance in exercise of powers conferred under Article 123(1) of the Constitution. The said Ordinance was replaced by the Act and the Act provided that the same shall be deemed to have come into force on 18th day of October, 1983. Immediately after the promulgation of the Ordinance the Management of the Mills, enumerated in the First Schedule thereof, having been taken over by the Government, the three Mills referred to earlier filed three Writ Petitions in Bombay High Court challenging the applicability of the Ordinance so far as those Mills are concerned. After replacement of the Ordinance by the Act the Writ Petitions were amended and thus the validity of the Act was challenged qua the three Writ Petitioners. Though the challenge was on three counts, namely, violation of Article 14, violation of Article 19(1)(g) and violation of Article 300A, but at the time of hearing the challenge in relation to violation of Article 300A was not pressed and, therefore, the High Court considered the challenge, so far as it relates to violation of Articles 14 and 19(1)(g) of the Constitution. The High Court in the impugned judgment made elaborate discussion of the materials on record as well as interpreted the different provisions of the Constitution and came to hold that the act with its object of only taking over the management cannot be considered to be law for taking over the ownership and control of the property, as required under Article 39(b), but would squarely fall under Article 31A (1)(b) and, therefore, Article 31(c) will have no application. The

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A High Court also came to the conclusion that to protect a legislation under Article 31(c), there must be a declaration in the legislation itself that the Act was enacted to give effect to the Directive Principles under Article 39(b) and (c), and in the case in hand, there being no such declaration either in the Ordinance and in the Act, Article 31(c) will have no application and, squarely the challenge on the ground of violation of Article 14 or 19 has to be B examined. On examining Article 31A(1)(b) the High Court was of the opinion that two conditions must be satisfied for attracting Clause 1(b) of Article 31A, namely, that the taking over of the management of the property by the State would be for a limited period, and such taking over must be either in public interest or in order to secure the proper management of the property, since C the taking over of management was not for any limited period and in fact such management had been taken over pending nationalisation, the provisions of Clause 1(b) of Article 31A would not get attracted. According to the High Court the expression "Pending Nationalisation" cannot be held to be for a limited period and the protection of Article 31A (1)(b) would be available only when there is a definite limit in the law for the period of management and, D consequently the challenge on the anvil of violation of Articles 14 and 19(1)(g) has to be examined. The High Court then examined the factual aspect for considering the question as to whether there were any materials to put the three Mills in a class of Mills for which the taking over of the management was meant notwithstanding a declaration or recital in the Preamble itself, the E same being "Mills whose financial condition had become wholly unsatisfactory by reason of mis-management". The High Court then examined the different datas collected by the Government of India as well as several reports including the Task Force Report and ultimately came to the conclusion that even though the financial condition had become unsatisfactory but the Union Government has failed to establish that such unsatisfactory financial F condition is by reason of mis-management and, therefore, there was no nexus between the basis of the classification of the petitioner Mills with other mismanaged Mills and the said object and the purpose of the Act. In other words, the High Court came to the conclusion that inclusion of the three Mills in the Schedule appended to the Ordinance and the Act was arbitrary and, G on the other hand, the figures given by the Union of India itself show that the financial position of the three Mills were far better than even the Mills which were in category II. Consequently, the High Court was of the opinion that the Government could not have, for taking over of the management of the petitioners' Mills, classified those Mills as Mills whose financial condition was bad due to mis-management. The High Court, therefore, ultimately came H to the conclusion that there has been a gross violation of Article 14 in

clubbing the three Mills with other Mills in category three, enumerated in the Schedule appended to the Act and such inclusion violates the fundamental right guaranteed under Article 14 of the Constitution. The High Court also came to the conclusion that the impugned Act infringed the petitioners' right under Article 19(1)(g) and on that count qua petitioners was equally invalid. Having come to the aforesaid conclusion the Writ Petitions were allowed and the order of taking over of the management of three Mills was set aside. But the operation of the order had been stayed for 8 weeks and certain restrictions had been imposed and the High Court also granted Certificate under Articles 132(1) and 133 of the Constitution for Leave to Appeal to the Supreme Court. When the matter was listed before this Court the aforesaid interim order staying the operation of the judgment was continued and later on certain Misc. Applications being filed by different Mills certain orders have been passed by the Court with regard to the possession of certain assets, like, car, telephone connections etc. When the appeals were taken up for hearing in January 1985, the same had been heard before a Three Judge Bench but after hearing for some time the Three Judge Bench felt that in view of the questions which arise for consideration, and in view of Clause 3 of Article 145 of the Constitution the cases should be heard by a Bench of not less than Five Hon'ble Judges and that is why these appeals were heard by us.

Mr. Salve, the learned Solicitor General, appearing for the appellant Union Government contended that the basic approach of the High Court in examining the constitutional validity of the Act is grossly erroneous and such approach has vitiated the ultimate conclusion. According to the learned Solicitor General, the financial condition of these mills had become so bad that unless large sum of money from the public exchequer was pumped into it, the mills were not in a position to run and that in turn would have made thousands of labourers idle. To overcome the aforesaid crisis and since large scale government money was going to be pumped into the Mills for making it viable, the Parliament itself thought it appropriate to take step for acquiring the Mills and pending finalisation of acquisition the Parliament thought it fit to take over the management which was absolutely necessary in the public interest. According to Mr. Salve this is apparent from the Bill introduced by the concerned Minister as well as the Act itself and in such a case the Court would not be justified in examining the datas which persuaded the Parliament to take the aforesaid decision to come to a conclusion that the said decision of the Parliament could not have been taken on the available materials. According to Mr. Salve the fact that the management of the Mills had been taken over until the Mills are acquired by enacting an Acquisition Act, for

A all practical purposes the taking over was for a limited period thereby attracting Clause 1(b) of Article 31A and the High Court was in error in concluding that the taking over was not for a limited period and, as such, Clause 1(b) of Article 31A will not get attracted. According to learned Solicitor General the Act in question was for a limited period and had been enacted in the public interest coming within the purview of Clause (1)(b) of Article 31A and, therefore, provisions of Article 14 or Article 19 cannot at all be attracted for assailing the validity of the action taken under the Act. The learned Solicitor General also further urged that the materials which were there before the Government before promulgation of the Ordinance and before the Parliament before enactment of the Act were sufficient for classifying the Mills into three categories and in fact by inclusion of the three Mills with which we are concerned in the present appeals with the group of 13, the Management of which was being taken over by the Act, by no stretch of imagination can be held to be discriminatory nor the conclusion of the High Court that there has been an infringement of Article 19(1)(g) of the Constitution is at all sustainable. The learned Solicitor General also placed reliance on the averments made by the Union of India in its Counter Affidavit filed before the High Court to indicate how it was absolutely necessary to promulgate the Ordinance and how the Government took the decision after considering the reports submitted by the IDBI and other financial institutions as well as the report of the so called Task Force. He also placed reliance on the Affidavit of Mr. Prabhat Kumar, the then Secretary Commerce explaining the Task Force Report and contended that the High Court was in error in basing its conclusion on the earlier Affidavit of one Mr. Singh. According to learned Solicitor General that while considering the constitutional validity of a statute, more particularly a statute on economic matter, certain well established principles evolved by the Courts as rules of guidance in discharge of its constitutional function of judicial review have to be borne in mind, and in the case in hand the impugned judgment of the High Court, on the face of it, indicates that those guiding principles have not been borne in mind. According to the learned Solicitor General one cardinal principle well accepted and recognized by Courts is that the legislature understands and correctly appreciates the needs of its own people and its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds and the presumption of constitutionality is indeed so strong that in order to sustain it the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. He further emphasised that the law relating to economic activities should be viewed with greater

latitude than laws touching civil rights such as freedom of speech, religion etc. and the High Court totally over-looked the aforesaid approach and guidelines in basing its conclusion. According to the learned Solicitor General the preamble of the Act unequivocally indicates the Act to be a piece of legislation for taking over in the public interest of the management of the Textile Undertakings of the Companies specified in the First Schedule pending nationalisation of such undertakings. It no doubt, further stipulates that by reason of mis-management of the affairs of the Textile Undertakings specified in the First Schedule their financial condition became wholly unsatisfactory but the financial condition of these Mills had become so precarious and unsatisfactory as was found from the reports of different financial institutions including IDBI that mis-management is the natural inference and the preamble read as a whole would indicate that the Parliament thought it appropriate to take over the management of Textile Undertakings in the public interest pending nationalisation of such undertaking and in this view of the matter the High Court was hyper-technical in recording a finding that even though the financial condition become wholly unsatisfactory but the Government failed to establish the mis-management of the undertaking which had brought the financial condition to such unsatisfactory stage and, therefore, by including the three mills in question in the group of 13 there has been violation of Article 14. The learned Solicitor General also seriously commented upon the conclusion of the High Court and submitted that the High Court committed error in assuming mis-management as fraud and such fraud has not been established by the Union Government . According to learned Solicitor General the High Court mis-understood the basis of the classification itself and taking an over all view of the financial position of these three Mills the conclusion is irresistible that these three Mills were rightly clubbed together with the group of 13 whose financial position was wholly unsatisfactory and government money was required to be pumped into it for making the mills viable and for effective running of the Mills so that the large number of workers will not face the misery of closure of the Mills. The learned Solicitor General also urged that in view of the prevailing situation in the 13 Mills including the three with which we are concerned, in these appeals, the Parliament thought that only way to put the management on the wheels was to take over the management of the Mills which is permissible in the larger public interest, as contained in Article 31A (1)(b) of the Constitution, and such Parliamentary wisdom cannot be scrutinised by the Court in a scale on the basis that certain reports might not have been placed before the Parliament or on the ground that factually the Mills were not mis-managed and yet had sustained heavy financial loss and thereby putting them alongwith the group

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A of 13 constitutes an infraction of Article 14 of the Constitution. According to the learned Solicitor General the burden being on a person who attacks the constitutionality on the grounds of discrimination the said burden cannot be held to have been discharged by the Mills and the High Court committed serious error in annulling the taking over of the management of the three Mills under the Act on the ground that Government failed to establish the relevant B material before the Court. The learned Solicitor General also argued that Article 31(c) does apply to the legislation in question, and therefore, infraction of Article 14 or 19 should not have been gone into by the Court.

Mr. F.S. Nariman, learned senior counsel appearing for the Elphinstone C Spinning and Weaving Mills Company Ltd., emphatically urged that Article 31 A (1)(b) was introduced by the Constitution IVth Amendment Act of 1955 which enables to make law for taking over of the management of any property by the State for a limited period either in the public interest or in order to secure proper management of the same. The law made by the Parliament is the Textiles Undertakings (Taking over of Management) Act, 1983. The D said law permits take over only when the financial condition became unsatisfactory by reason of mis-management of the affairs of the Textile Undertakings. And, this being the position, if there is no material to establish that financial losses is on account of mis-management then the taking over of the management of the mill by taking recourse to the impugned Act must E be held to be invalid and the High Court in fact has held it to be invalid. According to Mr. Nariman mere losses will not entitle to take over of the management of mill, inasmuch as, all the mills have suffered loss and, therefore, there must be some other factors on account of which it will be possible for the Government to take over the management of only 13 mills as included in the First Schedule to the Act. He also further urged that in view of the F language of Article 31A (1)(b) the law for taking over of the management must be for a limited period and the expression 'pending nationalisation' in the impugned Act cannot be construed to be a definite limited period and, therefore, the Act in question is not referable to Article 31A (1)(b). It is in this connection he cited the decision of Raman Lal as well as the decision of the Delhi High Court in ILR 74 (1) Delhi 311 and also a decision of Andhra G Pradesh High Court in AIR 1977 A.P. 420. Mr. Nariman also argued that in the impugned Act there is intrinsic evidence to indicate that the taking over of management was not for a limited period as it would be apparent from Sections 33, 34, 36 and Sections 6, 8 and 11(1), and essentially it constitutes acquisition and not take over of management for a limited period. Mr. Nariman also urged H that the legislative declaration of facts are not beyond judicial scrutiny in the

constitutional context of Articles 14 and 16 and the Court can always tear the veil to decide the real nature of the statute if the facts and circumstances warrant such a course. A mere declaration in the legislation would not be permissible so as to defeat the fundamental right. If the legislation in question was merely a pretence and the object was discrimination the validity of the statute could be examined by the Court notwithstanding the declaration made by the legislature and, therefore, the High Court was fully justified in examining the facts and coming to the conclusion that in grouping the three mills alongwith other 13 mills for the purpose of taking over the management constitutes an infraction of Article 14 of the Constitution. In support of this contention he places reliance on the decision of this Court in *Indira Sawhney* v. *Union of India and others,* [2000] 1 Supreme Court Cases 168. *Mr. R.F. Nariman,* learned senior counsel pursued the arguments advanced by *Mr. F.S. Nariman* and contended that the classification itself may be valid but while choosing the mills to be included in such classification and clubbing the Elphinstone Mill within the group of 13 is discriminatory in as much as a well managed mill is being clubbed with a mis-managed mill. According to *Mr. R.F. Nariman* categorisation of the Elphistone mill as a mis-managed mill is contrary to the facts available on record, and as such, it violates Article 14. *Mr. R.F. Nariman* also further urged that a machinery available under IDR Act for an inquiry not having been resorted to it contravenes Article 19(1)(g). According to learned counsel the Parliament chose to adopt a procedure without any urgency being there and without any machinery to look into the facts on the basis of which categorisation could be made, the classification is bad in law. Mr. Nariman also contended that in view of Article 300A the law must be reasonable and fair and in view of the judgment of this Court in *Dwarkadas Shrinivas of Bombay* v. *The Sholapur Spinning & Weaving Co. Ltd. and others,* [1954] Supreme Court Reports 674, the impugned action is bad in law. Mr. RF Nariman also contended that it was open for the Writ Petitioners to place and establish that the legislative facts are incorrect and in fact the petitioners have discharged that burden by placing materials on record and the High Court, therefore, was fully justified in arriving at its decision on the materials produced. He placed reliance on the decision of this Court in *Dr. K.R. Lakshmanan* v. *State of T.N. and another,* [1996] 2 Supreme Court Cases 226 in support of aforesaid contention. According to Mr. Nariman the following facts establishes that the Elphinstone Mill was not a mis-managed mill and Parliament erroneously clubbed the same with other mis-managed mills. Those facts are :-

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(a) IDBI viability study report

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A (b) Task Force Report

(c) Approval of the Central Government itself to appoint a Managing Director

(d) Sanction of loan by IRCI AND IDBI in September 1993

B (e) No investigation done under Section 15 and 15(a) of IDR Act, and

(f) No action of any kind under the provisions of Companies Act, and on this score the conclusion of the High Court is unassailable.

C Mr. Ganesh, learned counsel appearing for the New City Mills contended, that the High Court itself has given a positive finding on the basis of the materials those have been produced that the performance of the mill; was good. Even the Counter Affidavit of the Union Government before the High Court does not indicate that the performance of the New City Mill was in any way made out a case of mis-management. The analysis of Mr. Bilmoria, D the letter of RBI dated 23rd March, 1983 and the very Task Force Report clearly demonstrates that the New City Mill was not at all a mis-managed mill and these materials could be looked into by the Court when the Mill itself had alleged discrimination under Article 14. In support of this contention he places reliance on the decision of this Court in *Shashikant Laxman Kale and Another* v. *Union of India and Another,* [1990] 4 Supreme Court Cases 366 E and *Mrs. Maneka Gandhi* v. *Union of India and Another,* [1978] Supreme Court Cases 248. Mr. Ganesh also placed reliance on the decision of this Court in *Chiranjit Lal Chowdhuri* v. *The Union of India and Others,* [1950] Supreme Court Reports 869 and submitted that in that case the Court did go into the materials and came to the conclusion about the mis-management and, F therefore, in the case in hand the High Court was fully justified in interfering with the order of taking over qua New City Mill.

Ms. Indira Jaisingh, learned senior counsel appearing for the workers of the Mills supported the stand taken by the learned Solicitor General and placed before us different materials on record to establish the mis-management G of the mills concerned.

In view of the rival submissions the following questions arise for our consideration:-

1. Can the impugned Act be held to be a law providing for the H taking over of the management of the Mills for a limited period?

2. The Act read as a whole expresses the intention of the Parliament for taking over the management of the Textile Undertakings specified in the First Schedule in the public interest or is it capable of indicating the legislative intent that only those Mills whose financial condition became wholly unsatisfactory by reasons of mis-management of the affairs of the Textile Undertakings which are sought to be specified in the First Schedule and management of those Mills are being taken over under the Act?

3. Has any case been made out by the Mills concerned to enable a Court that in fact by clubbing the three Mills in the group of 13 there has been the violation of the mandate under Article 14?

4. Was the High Court justified in recording a conclusion that there has been a violation of Article 19(1)(g)?

5. On the available materials on record was the High Court justified in going behind the legislative intent apparent on the face of the Act to find out the so called true intention and thereby coming to the ultimate conclusion that there has been a gross discrimination in clubbing the three mills with the other admitted mis-managed mills which are enumerated in the Schedule to the Act?

But before examining the aforesaid questions it would be appropriate for us to notice the legal position on certain general principles relating to the challenge of a statute in the anvil of Articles 14 and 19 and the parameters of Courts jurisdiction to examine materials for arriving at the legislative intent behind a statute as well as the presumption of constitutionality of a statute.

A statute is construed so as to make it effective and operative. There is always a presumption that the legislature does not exceed its jurisdiction and the burden of establishing that the legislature has transgressed constitutional mandates such as, those relating to fundamental rights is always on the person who challenges its vires. Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the constitution it must be allowed to stand as the true expression of the national will - *Shell Company of Australia* v. *Federal Commissioner of Taxation*, (1931) AC 275 (Privy Council). The aforesaid principle, however, is subject to one exception that if a citizen is

A able to establish that the legislation has invaded its fundamental rights then the State must justify that the law is saved. It is also a cardinal rule of construction that if one construction being given statute will become ultra vires the powers of the legislature whereas on another construction which may be open, the statute remains effective and operative then the Court will prefer the latter, on the ground that the legislature is presumed not to have intended an excess of jurisdiction. In *Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Limited*, [1983] 1 Supreme Court Cases 147. the Constitution Bench speaking through Chinnappa Reddy, J., had observed, in the context of interpretation of the provisions of Coking Coal Mines (Nationalisation) Act, 1972 that the Court is not concerned with the statements made in the Affidavits filed by the parties to justify and sustain the legislation. The deponents of the affidavits filed into the court may speak for the parties on whose behalf they swear to the statements. They do not speak for the Parliament. No one may speak for the Parliament and Parliament is never before the court. After Parliament has said what it intends to say, only the court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court is the only authentic voice which may echo the Parliament. This the Court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances which in their view led to the legislation. When they do so, they do not speak for Parliament. No Act of Parliament may be struck down because of the understanding or misunderstanding of parliamentary intention by the executive Government or because their spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the court may ultimately find and more especially by what may be gathered from what the legislature has itself said. In the facts of that case the Court had held that We do not entertain the slightest doubt that the nationalisation of the coking coal mines and the specified coke oven plants for the above purpose was towards securing that "the ownership and control of the material resources of the community are so distributed as best to subserve the common good and there has been no discrimination or infringement of Article 14 of the Constitution". Justice A.N. Sen in his separate judgment also agreed with the ultimate conclusion of Chinnappa Reddy, J and had said that there was logical basis for the nationalisation of the 4 oven plants of the petitioners, leaving out a few and

I am not satisfied that there has been any wrong and arbitrary discrimination of Article 14 of the Constitution. While examining the constitutional validity of the Special Courts Bill in the anvil of Article 14 of the Constitution, after an exhaustive review of all the decisions bearing on the question, in [1979] 1 S.C.C. 380, it was held as follows:-

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> "(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.
>
> (4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.
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> x x x x x x x x x
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> (6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.
>
> (7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."

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A In the *Doypack System Pvt. Ltd.* v. *Union of India*, [1988] 2 Supreme Court Cases 299, the Court had observed that when the constitutionality of a legislation is being assailed before a Court it is the collective will of the Parliament with which the Court is concerned. No officer of the department can speak for the Parliament. The interpreter of the statute must take note of the well known historical facts. In conventional language the interpreter B must put himself in the armchair of those who were passing the Act i.e. the Members of the Parliament. It is the collective will of the Parliament with which we are concerned. The aforesaid observation had been made in the context of an argument sought for by the petitioner for production of certain documents to ascertain the question whether the shares vested in the C Government or not?

In Bearer Bonds' case (1981) 4 Supreme Court Cases 675, this Court held that it is a rule of equal importance that laws relating to economic activities should be viewed with greater latitude than law touching civil rights, such as freedom of speech, religion etc. The Court observed D that :-

> " It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of E solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of F economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey* v. *Doud*, (354 US 457:1 L Ed 2d 1485 (1957)) where *Frankfurter, J.* said in his intimitable style:

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> In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct, the uncertainty, the liability to error, the bewildering conflict of the experts, H and the number of times the judges have been overruled by events

self- limitation can be seen to be the path to judicial wisdom and institutional prestige and stability. A

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstrct propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience." Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the *United States Supreme Court in Secretary of Agriculture* v. *Central Reig Refining Company*, (94 L Ed 381: 338 US 604 (1950)) be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues." B C D E F G

In *Shri Ram Krishna Dalmia* v. *Shri Justice S.R. Tendolkar and Ors.*, 1959, S.C.R., 279, this Court held:

(a) xxx xxxx xxxx xxxx H

A (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and
B correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to
C be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."
D

In the case of The Superintendent and Remberancer of Legal Affairs, *West Bengal* v. *Girish Kumar Navalakha and Ors.*, [1975] 4 S.C.C. 754, this Court held:

"The preamble provides the key to the general purpose of the Act.
E That purpose is the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion in the economic and financial interest of India. The general purpose or object of the Act given in the preamble may not show the specific purpose of the classification made in Section 23(1)(a) and Section 23(1A) .The Court has therefore to ascribe a purpose to the
F statutory classification and co-ordinate the purpose with the more general purpose of the Act and with other relevant Acts and public policies. For achieving this the Court may not only consider the language of Section 23 but also other public knowledge about the evil sought to be remedied, the prior law, the statement of the purpose of
G the change in the prior law and the internal legislative history. When the purpose of a challenged classification is in doubt, the court attribute to the classification the purpose thought to be most probable. Instead of asking what purpose or purposes the statute and other materials reflect, the Court may ask what constitutionally permissible objective this statute and other relevant materials could plausibly be
H construed to reflect. The latter approach is the proper one in economic

regulation cases. The decisions dealing with economic regulation indicate that courts have used the concept of 'purpose' and 'similar situations' in a manner which give considerable leeway to the Legislature. This approach of judicial restraint and presumption of constitutionality requires that the Legislature is given the benefit of doubt about its purpose. How far a court will go in attributing a purpose which though perhaps not the probable is at least conceivable and which would allow the classification to stand depends to a certain extent upon its imaginative power and its devotion to the theory of judicial restraint."

The Court further held:

"It would seem that in fiscal and regulatory matters the Court not only entertains a greater presumption of constitutionality but also places the burden on the party challenging its validity to show that it has no reasonable basis for making the classification."

The Legislation in a modern State is actuated with some policy to curb some public evils or to effectuate some public benefit. The Legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But from the very nature of things, it is impossible to anticipate fully, the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite reference are bound to be in many cases, lacking in clarity and precision, and thus giving rise to the controversial question of construction. Bearing in mind the aforesaid general principles, let us now examine the five questions formulated earlier.

Coming to the first question, the contention of the Companies, who were the petitioners before the High Court is that under Article 31A(1)(b), a law providing for taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, cannot be assailed on the ground of violation of Article 14 or 19 but the impugned ordinance and the Act cannot be held to be a law for providing for taking over of the management for a limited period, even though, the same may be in the public interest and as such, such a law cannot be held to be immune from attack being violative of Article 14 or 19 within the ambit of Article 31A(1)(b) of the Constitution. According to the learned counsel, appearing for these textile mills, the expression "for a limited period" as a definite connotation and the impugned legislation being

A a law until the acquisition proceedings are over, cannot be held to be a law for a limited period. This argument found favour with the High Court and following the decision of this Court in Raman Lal's case, the High Court held that the legislation in question cannot be held to be within the purview of Article 31A(1)(b) of the Constitution. Mr. Salve, the learned Solicitor General, appearing for the Union of India contended before us that it is the usual B pattern of taking over of such undertaking to take over the management, immediately by a law made by the appropriate legislature and since it was apparent at the time of enactment of the law that the taking over of the management is pending nationalisation which had been embodied in the legislation itself, such take-over of the management must be held to be for C a limited period and the observations of this Court in Raman Lal, must be construed in the context of the facts of the said case and will have no application to the facts and circumstances of the present case. According to the learned Solicitor General, the legislature on being satisfied about the financial instability of the mills and further substantial sum of money required to be pumped into the mills for running of the same, so that large number D of employees will not be kept out of employment, it was necessary in the public interest to take over the management immediately, inasmuch as the process of nationalisation will take sometime, the conclusion is irresistible that the so-called taking over was for a limited period and not for ad infinitum, and is intended to over-come a particular crisis. That being the E position, the High Court committed error in recording a finding that the taking over of the management was not for a limited period.

Mr. Nariman, the learned senior counsel, appearing for one of the mills, on the other hand contended that the expression 'pending nationalisation', by no stretch of imagination can be held to be a definite period and this has F been answered directly in the case of *The Indore Malwa United Mills Ltd. and Ors.* v. *Union of India and Ors., Indian Law Reports,* (Delhi) 1974(1) Page 311, as well as the High Court of Andhra Pradesh in Full Bench decision of The Governing Body of the *Rangaraya Medical College, Kakinada and Anr.* v. *The Govt. of Andhra Pradesh and Anr.*, AIR (1977), Andhra Pradesh, Page G 420, following the decision of this Court in Raman Lal, [1969] 1 S.C.R., 42. According to *Mr. Nariman,* there is intrinsic evidence in the impugned Act itself that the so-called taking-over was not for a limited period, as is apparent from examining Section 3(3), 3(4), 3(6), Section 6, Section 8 and Section 11(1) of the Act. The Counsel further urged that the Act is in essence one for acquisition and not for taking over of management for a limited period and H consequently, the challenge on the ground of Articles 14 and 19 will get

attracted, as the law does not come within the purview of Article 31A(1)(b) of the Constitution. Article 31A was introduced by the Constitution (First Amendment) Act, 1951 to validate the acquisition of Zamindari and the abolition of Permanent Settlement without interference from Courts. The further amendment of the Constitution was made by (Fourth Amendment) Act of 1955 with the object that items of agrarian and social welfare legislation, which affect the proprietary rights, should be kept out of the purview of Articles 14, 19 and 31. Clause (b) of Article 31A(1) provides for taking over the management of any property, movable or immovable, agricultural or non-agricultural for a limited period without being obliged to justify its action in a Court of law, with reference to Article 14 or 19. The necessary conditions for application of sub-clause (b), therefore are that the taking over in question must be for a limited period, as distinguished from any indefinite period and such taking over must be either in the public interest or in order to secure the proper management of the property, which of course require to be objectively established. That the facts and circumstances leading to the taking over of the management of the sick mills undoubtedly indicated that the same was in the public interest, but the only question remains to be answered is whether it can be said to be for a limited period. In Ramanlal's case, [1969] 1 S.C.R., 42, the provisions of Bombay Tenancy and Agricultural Lands Act was under consideration before this Court. The said Act had been amended by Bombay Act 13 of 1956, which confers the power on the State Government to take over the management of any land on the ground that full and efficient use of the land had not been made for the purposes of agriculture and under the Act, it was contemplated that the land taken over could be returned to the land holder under certain contingencies. This Court considering the provisions of the Act and the rules made thereunder, came to the conclusion that even though there may be a possibility of return of the land to the original owner but that does not satisfy the requirement of Article 31A(1)(b), as the taking-over of the management was not for a limited period. The Court held that the scheme of the Act ought to have shown the limit of the period for which the management is being taken over and consequently, the protection of Article 31A(1)(b) cannot be invoked as the limit for the period of management had not been indicated. Having examined the ratio of the aforesaid decision to the case in hand, we are not in a position to hold that the taken over of the management in the present case was not for a limited period. The Act itself stipulates that the management of the mill is being taken over pending nationalisation of the mill, therefore, the decision to nationalise the mills had already been taken. But as the process of nationalisation would take a considerable period and it was thought absolutely necessary in the public

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A interest to take over the management of the mills immediately, the Parliament passed the impugned legislation. In our considered opinion the context in which the observations have been made by this Court in Raman Lal's case, referred to supra, will have no application to the case in hand and it must be construed that the management of the property in the present case by virtue of the ordinance and the Act was for a limited period, the period being
B till the process of nationalisation is finalised. It is to be noticed that Sita Ram Mills, which was also one of the mills in category III and had been put in Group II by the Task Force, whose management had been taken over under the provisions of Textile Undertakings (Taking over of Management) Act, 1983 had approached the High Court and the High Court had upheld the
C action of taking over but had held that the surplus lands appurtenant to the mills would not vest under sub-section (2) of Section 3 of the Act, but this Court had reversed the said decision and had held that the surplus lands appurtenant to the mill did form a part of the assets in relation to the textile undertaking within the meaning of Section 3(2) of the Act and the said land was held for the benefit of, and utilised for the textile mill in question. Before
D this Court, it is true that the question of applicability of Article 31A(1)(b) had not cropped up for consideration, but yet certain observations of this Court in the aforesaid case would be appropriate to be quoted:-

> "There can be no doubt that the legislative intent and object of the impugned Act was to secure the socialisation of such surplus lands
E with a view to sustain the sick textile undertakings so that they could be properly utilised by the Government for social good i.e. in resuscitating the dying textile undertakings. Hence, a paradoxical situation should have been avoided by adding a narrow and pedantic construction of a provision like sub- section(2) of Section 3 of the Act
F which provides for the consequences that ensue upon the taking over in public interest of the management of a textile undertaking under sub-section(1) thereof as a step towards nationalisation of such undertakings, which was clearly against the national interest. In dealing with similar legislation, this Court has always, adopted a broad and liberal approach."

G What has been observed above, while interpreting sub-section (2) of Section 3, should be borne in mind also while interpreting the expression for a limited period used in Article 31A(1)(b) and in our view the construction to the aforesaid expression made by Delhi High Court in its Judgment in The Indore *Malwa United Mills Ltd. & Ors.* v. *Union of India and Ors.*, I.L.R. (Delhi) 1974
H (1) 311, as well as the Bombay High Court in the impugned judgment, cannot

be accepted. The Delhi High Court has no doubt in *The Indore Malwa United Mills* case, considered the applicability of Article 31A(1)(b) and held that taking over of the management, pending nationalisation cannot be held to be for a limited period, since there is no question of returning the property to the old management, but we are unable to accept this view of Delhi High Court and we hold that the views expressed therein are not correct in law. Having regard to the conditions of these mills at the time of taking over of the management and having regard to the decision of the Union Cabinet on the basis of data and materials to nationalise the mills falling under category III and the ultimate policy decision of the Government to achieve the process of nationalisation in two stages, first by taking over the management of the textile undertakings and thereafter, enact suitable legislation to nationalise the same, the ultimate legislation for taking over the management of the mills passed by the Parliament, cannot but be held to be a law, providing for taking over of the management for a limited period in public interest and as such the said law comes within the purview of Article 31A(1)(b) of the Constitution. Once it is held that the law is one attracting Article 31A(1)(b) of the Constitution, then the validity of the said law cannot be assailed on the ground of violation of Articles 14 and 19 of the Constitution. But since elaborate arguments had been advanced, we would also examine the other questions posed by us.

So far as the second question is concerned, the entire emphasis of the arguments advanced on behalf of the mills was on the expression 'whereas by reason of mismanagement of the affairs' used in the preamble and it was contended that though the financial condition of the mills might have deteriorated but until and unless such deterioration is attributable to the mismanagement of the textile undertakings, the management of the mills could not have been taken over and therefore, choosing of such mills like those of the petitioners was discriminatory. This argement advanced on behalf of the Mills persuaded the High Court and the High Court in fact came to the conclusion in paragraph 125 of the impugned judgment that the provisions of the Act read with its objects and reasons and the preamble go to show that in the context of things the term 'mismanagement' has been used in the impugned Act not as indicating mere bad or incompetent or poor management as contended by the learned counsel for the Union of India but meant mismanagement having an element of fraud or dishonesty. Thereafter the High Court examined different affidavits and materials and came to the conclusion that the question of management of the mills had no where been discussed or dealt with either directly or indirectly and that the existence of bad financial condition was in fact a general phenomena during the said period amongst the Textile Mills in Bombay and the same by itself anything

more could not have been an indication of bad/inadequate management. In paragraph 180 of the impugned judgment the High Court came to the conclusion that the Government, therefore, could not have, for taking over the management of the said Mills, relied on the said CATS for classifying the petitioners' Mills as mills whose financial condition was bad due to mis-management. In paragraph 203 of the impugned judgment the learned Judges came to the ultimate conclusion :

> "In our view, therefore, all the circumstances mentioned above by the learned counsel for the Union of India do not bring out either directly or inferentially any mis-management on the part of the petitioner company, but on the contrary the fact that the said circumstances existed even in case of some of CAT I and CAT II Mills show that the Government could not have considered the said circumstances for concluding that the said Petitioners' Mills were mismanaged or their financial condition was wholly unsatisfactory by reason of such mismanagement."

The learned Judges then held that there was no nexus between the main object or purpose of the Act to take over the management of only those Mills whose financial condition before strike was wholly unsatisfactory *by reason of mis-management*., and as such, the rights of the Mills under Article 14 of the Constitution has been violated. At the outset it may be stated that the High Court committed serious error in recording a finding that the preamble and other provisions of the Act go to show that in the context of things the term 'mis-management' has been used to mean mis- management having an element of fraud or dishonesty. We have examined the impugned Act carefully and we fail to understand that how the High Court could come to a conclusion that the expression 'mis-management' has been used to indicate an element of fraud and dis-honesty whereas in fact neither the provisions of the Act nor the object or preamble have indicated any such intention. While examining a particular statute for finding out the legislative intent it is the attitude of judges in arriving at a solution by striking a balance between the letter and spirit of the statute without acknowledging that they have in any way supplement the statute would be the proper criteria. The duty of judges is to expound and not to legislate is a fundamental rule. There is no doubt a marginal area in which the courts mould or creatively interpret legislation and they are thus finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing. (see: *Corocraft Ltd.* v. *Pan American Airways Inc.*, (1968) 3 WLR 714, p.732, State of Haryana v. *Sampuran Singh,* [1975] 2 SCC 810). But by no stretch of imagination a Judge is entitled to add something more than what is there in the Statute by

way of a supposed intention of the legislature. It is, therefore, a cardinal principle of construction of statute that the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. Applying the aforesaid principle we really fail to understand as to how the learned judges of Bombay High Court could come to a conclusion that the mismanagement must necessarily mean an element of fraud or dishonesty. Courts are not entitled to usurp legislative function under the disguise of interpretation and they must avoid the danger of determining the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. Caution is all the more necessary in dealing with a legislation enacted to give effect to policies that are subject to bitter public and parliamentary controversy for in controversial matters there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable; it is the Parliament's opinion in these matters that is paramount. (see; *Duport Steels Ltd.* v. *Sirs*, (1980) 1 All ER 529 at 541). When the question arises as to the meaning of a certain provision in a Statute it is not only legitimate but proper to read that provision in its context. The context means; the statute as a whole, the previous state of law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy. An Act consists of a long title which precedes the preamble and the said long title is a part of an Act itself and is admissible as an aid to its construction. It has been held in several cases that a long title along with preamble or even in its absence is a good guide regarding the object, scope or purpose of the Act whereas the preamble being only an abbreviation for purposes of reference is not a useful aid to construction. The preamble of an Act, no doubt can also be read along with other provisions of the Act to find out the meaning of the words in enacting provisions to decide whether they are clear or ambiguous but the preamble in itself not being an enacting provision is not of the same weight as an aid to construction of a Section of the Act as are other relevant enacting words to be found elsewhere in the Act. The utility of the preamble diminishes on a conclusion as to clarity of enacting provisions. It is therefore said that the preamble is not to influence the meaning otherwise ascribable to the enacting parts unless there is a compelling reason for it. If in an Act the preamble is general or brief statement of the main purpose, it may well be of little value. Mudholkar, J. had observed in *Burakar Coal Co. Ltd.* v. *Union of India*, AIR (1961) SC 954. It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded though, where the object meaning of an enactment is not clear the preamble

A may be resorted to explain it. Again where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances, the enactment is intended to apply. We cannot, therefore, start with the preamble for construing the provisions of an Act, though we could be justified in resorting to it nay we will be required to do so if we find that the language
B used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application. In Coal Bearing Areas (Acquisition and Development) Act 1957 the Court was construing a Notification issued under Section 4(1) of the said Act and as in the present case the preamble of that Act was to the effect 'An Act to establish in the
C economic interest of India greater public control over the coal mining industry and its development by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits or of right in or over such land, for the extinguishment or modification of such rights accruing by virtue of any agreement, lease licence or otherwise, and for matters connected therewith'. Repelling an argument advanced on behalf of the Mine
D owners that the Act intended to apply only to virgin land and not on the land which are being worked or were worked in the past because of the use of the words 'unworked land' in the preamble, this Court held that the language of the enacting provisions was clear and therefore not controlled by the preamble. (see; *Burrakur Coal Co.* v. *Union of India*, AIR (1961) SC 954 at p. 957. This being the position, and the Textile Undertakings Taking
E Over of the Management Act, 1983, being an Act providing for taking over in the public interest of the Management of Textile Undertakings of the Companies specified in the First Schedule pending nationalisation of such undertakings and for matters connected therewith or incidental thereto as is apparent from the long title, use of the expression 'mis-management' of the
F affairs in the preamble will not control the purpose of the Act, namely, the public interest and the Parliament having decided to take over the management of the Textile Mills which were in serious financial crisis, in the public interest it was not open for the Court to come to a conclusion by taking recourse to the use of the word mis-management in the preamble to hold that the Parliament intended only to take those Mills whose financial condition was
G deplorable on account of mismanagement and not in case of those mills where the financial condition may be deplorable but not on account of mis-management.

Mr. R.F. Nariman, learned senior counsel had strongly relied upon the decision of this Court in Madras Race Club case 1996 (2) Supreme Court
H Cases, 226, whereunder the Court struck down the provisions of Madras Race

Club (Acquisition and Transfer of Undertakings) Act, 1986, on a conclusion that the declaration made in the Act that the Act was made to implement Article 39 (b) & (c) was a mere cloak and there was no nexus between the Act and the objects contained in Article 39 (b) & (c), and as such the Act is arbitrary. But a reading of the aforesaid case would make it clear that the facts and features of that case were completely different from the facts and features of the present case. In the Madras case the objects and reasons, as indicated in the Act, was that the acquisition is for a public purpose but in fact there was no material to show that any inquiry or investigation had been held by the State Government in the affairs of the Club and the Court held that no public purpose is being served by the acquisition and transfer of the undertaking of the Club by the Government. But in the case in hand, as has been noticed by this Court in Sitaram Mills' Case, the Government had before it several viability surveys made by different authorities like, Ahmedabad Textile Industries Research Association, Textile Commissioner's Office, SR Batliboi and Company and an independent survey by the IDBI itself. These surveys had been directed in ascertaining whether companies textile undertaking was a techno economically viable unit or not and whether it was desirable to provide the company with the working capital. The Government in the Ministry of Commerce had constituted a Task Force to look into the affairs of the Category III strike affected mills. On the basis of all these informations it was decided as a matter of policy that it was desirable to achieve the process of nationalisation, initially by taking over the management of the mills and thereafter by enacting suitable legislation to nationalise the same. The objects and reasons of the Act unequivocally indicated that the basic decision of nationalisation having been taken a genuine apprehension having arisen in the Government's mind that unless the management of the concerned undertakings was taken over on immediate basis, there might be large scale flittering away of assets which would be detrimental to the public interest and it thus became urgently necessary for Government to take over the management of the undertakings in the public interest. In this state of affairs, we have no doubt in our mind that the decision in Madras Race Club case will have no application to the case in hand.

In our considered opinion the impugned Act read as a whole unequivocally indicates that the Parliament was satisfied that the management of the Textile Undertakings specified in the First Schedule should be taken over pending nationalisation of such undertakings, and therefore, passed the impugned Act in public interest.

A So far as third question is concerned, we think it appropriate to discuss the same alongwith Fifth question as they are inter-linked. In the case in hand the High Court appears to have examined in detail the functioning of each of these three mills which had filed Writ Petition before it, for ascertaining whether the financial conditions of those mills had deteriorated because of the strike or on account of mis- management and on scrutiny of different B materials came to hold that the Union Government has failed to establish the case of mis-management which in turn would mean a case of fraud and dishonesty on the part of those who were in management of the mills. We have already indicated that the legislature nowhere expressed that fraud or dishonesty on the part of those who were in management of the mills had C brought the mills to the acute financial crisis. That apart, when an Act has been made by the Parliament as the Parliament thought the taking over of the management of the 13 Textile Mills pending their nationalisation would be in the public interest, it was not open for a Court in exercise of its power of judicial review to have in depth examination of different facts and circumstances and record a conclusion, as has been done in the case in hand D by the High Court concerned. It is of course true, as held by this Court in the case of *Indra Sawhney* v. *Union of India and Others*, [2000] 1 Supreme Court Cases 168, that the legislative declaration of facts are not beyond judicial scrutiny in the constitutional context of Articles 14 and 16. In *Keshwananda Bharti's* case this Court had also observed that the Courts E could lift the veil and examine the position inspite of a legislative declaration. In *Indra Sawhney*'s case (supra) the Court was examining whether the Appropriate Authorities have rightly determined the persons to be included in the creamy layer or whether such determination has been arbitrarily made. These principles will have no application to a legislation of the present nature where the Parliament itself had already taken a decision to nationalise the F Textile Mills which had undergone severe financial crisis and such mills could not be re-started without pumping in large amount of money from the public exchequer and, therefore, the legislation in question was passed to take over the management of the mills immediately as such take over was in the public interest. The argument advanced on behalf of the mills and the microscopic G examination of datas by the Court for arriving at a conclusion as to the alleged violation of Article 14 of the Constitution is not permissible and will not override the legislative intent behind taking over of management of the mills in the larger public interest. The conclusion of the High Court on the basis of the IDBI Viability Study Report, the Task Force Report, approval of the Central Government to the posting of a Managing Director and the sanction H of loan by the financial institution by no stretch of imagination could out-

weigh the conclusion of the legislature that the Act is intended to provide for the taking over of the management of the Textile Undertakings of the Companies specified in the First Schedule, pending nationalisation in the public interest. We are unable to agree with the arguments advanced on behalf of the counsel appearing for the respondents that by picking up the three mills who had approached the High Court and clubbing them together with other mills in the First Schedule the Government did not have germane considerations before it, in fact it is not the Executive Government but the Parliament itself had chosen to take over the management of the 13 mills included in the First Schedule to the impugned Act and for that purpose the impugned legislation was enacted and the management of the mills could be taken over by operation of law. As has been indicated in the judgment of this court in the case of *National Textile Corpn. Ltd.* v. *Sitaram Mills Ltd. and others*, [1986] Suppl. Supreme Court Cases 117, that the Textile Mills and the Textile Industry in India has played an important role in the growth of national economy. Its importance in the industrial field is because of the fact that it produces an essential commodity and the export of such commodity helps in building up the foreign exchange reserve of the country, simultaneously the industry gives employment to a large number of persons. It is because of this consideration the Government has always been conscious that it is necessary to preserve such mills and assist them by granting necessary financial loans and advances from public financial institutions so that mills will not be close down but in the year 1983 because of an indefinite strike the financial condition was not satisfactory on account of lack of proper management. This Court had indicated that as the overall economic factors applicable to all Textile Mills in Greater Bombay were broadly and generally comparable the worker position of mills in question was attributable to mis-management. This Court had also taken note of the fact that the Government of India was required to evolve a scheme to put the Textile Industries on its rail and therefore after getting the matter investigated by committee and after recommending that IDBI and Nationalised Bank should finance and put through expeditiously, the re-habilitation programme and having accepted the categorisation made in the meeting called by the Reserve Bank of India on October 29, 1982, and having realised that none of the 13 mills in Category III could be expected to survive on a sound basis without financial assistance from the Government controlled Institutions and Nationalised Banks and thereafter obtaining a detailed Viability Report from the IDBI and the Task Force, which was constituted by the Ministry of Commerce the Government decided that the Mills in question should be re-habilitated by injecting public funds but since the management of the mills has been defective, in as much

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A as had there been no mis-management the mills would not be found themselves in the conditions in which they were even before the general strike. As the matter of policy it was desirable to achieve the process of nationalisation in two stages (1) taking over of the management and (2) thereafter suitable legislation to nantionalise the same and the taking over of management was with a view to implement the decision of nationalisation. We have refrained B from going into the details of the financial position of different mills which filed the Writ Petition in Bombay High Court in as much as the financial condition was such that it could not have revived without pumping in of large scale of money either from financial institutions or from the IDBI. The fact that in some of the Reports indicating viability of the mills on large scale C money being pumped in would not in any way affect the ultimate conclusion of the Parliament in providing for a law to take over in the public interest the management of Textile Undertakings of the Companies specified in the First Schedule, as the danger of pumping in of large sum from the public exchequer without taking over the management of the mills would not have been a prudent action. As has been stated earlier, and as is apparent from the long D title of the Act itself, that the decision to nationalise the mills had already been taken, but pending nationalisation the 13 mills in question including the mills of the three petitioners who filed Writ Petition in Bombay High Court the management was taken over by the impugned legislation as otherwise there was imminent danger to the finance to be pumped into for its revival E and revival was necessary to provide employment to the large number of mill workers. In the aforesaid premises, we have no hesitation to come to a conclusion on the materials on record the Parliamentary action in legislating the law and taking over of the management of all the 13 mills included in the First Schedule to the Act cannot be held to be discriminatory nor the High Court was justified in recording a conclusion about the true intention of the F legislation that it is only the mis-managed mills whose financial condition had deteriorated, the management of those to be taken over and not others. On the other hand the sharp deterioration in the financial position lead to an irresistible conclusion that it was because of mis- management and nothing else and that is why in the preamble of the Act the legislature have indicated that the affairs of the Textile Undertakings specified in the First Schedule on G account of mis-management have become wholly unsatisfactory. In other words while the Act of taking over of the management of the mills was in the public interest, the inference of mis-management was the inference of the Parliament duly arrived at from the fact that the financial condition of the mills had become wholly unsatisfactory even before the commencement in January H 1982 and such financial condition has further deteriorated thereafter. This

inference of the Parliament is not subject to a mathematical judicial scrutiny and the way in which the High Court has gone into this question in the impugned judgment is certainly not within the parameters of the power of High Court under Article 226 of the Constitution. In our view the High Court was wholly in error in striking down the taking over of the three petitioners' mills before it on a supposed violation of Article 14 of the Constitution.

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So far as the fifth question is concerned, though it is no doubt true that the Court would be justified to some extent in examining the materials for finding out the true legislative intent, engrafted in a Statute, but the same would be done only, when the Statute itself is ambiguous or a particular meaning given to a particular provision of the Statute, it would make the Statute unworkable or the very purpose of enacting the Statute would get frustrated. But by no stretch of imagination, it would be open for a Court to expand even the language used in the preamble to extract the meaning of the Statute or to find out the latent intention of the legislature in enacting the Statute. As has been stated earlier, in the case in hand, the Taking over of Management Statute of 1983, had been engrafted in the public interest as the legislature found that there is imperative need to take over of the management of the companies until the process of nationalisation is finalised. This is apparent from the long title of the Act itself and the preamble also indicates that to make the mills viable, it would be necessary for the public financial institutions to invest very large sum of money, so that the mills will be rehabilitated and the interest of the workmen, employed therein would be protected. The preamble further indicates that the process of acquisition would take a longer time and to enable the Central Government to invest large sum of money, it was necessary in the public interest to take over the management of the undertakings. Thus, the taking over of the management of the mills was in the public interest, the said public interest being to rehabilitate the mills by pumping in, huge sums of public money to protect the interest of the workers in the mills. The High Court in the impugned judgment, however gave a restricted meaning to the purpose of the act by interpreting the expression "Mismanagement" used in the first preamble to connote fraud and dis-honesty, and in our considered opinion, the High Court was wholly unjustified in going behind the apparent legislative intention as already stated and in coming to a conclusion which cannot be sustained either on the materials on record or applying the rules of interpretation of a Statute. The said conclusion of the High Court as to the spirit behind the Statute, therefore, cannot be sustained.

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A Apart from answering the five points, formulated by us, we may also deal with some other ancillary points, which have been raised in course of arguments. *Mr. R.F. Nariman* had argued on the basis of Article 300A of the constitution and relied upon the judgment of this Court in *Dwarkadas Shrinivas of Bombay* v. *The Sholapur Spinning & Weaving Co. Ltd. and Ors.*, [1954] S.C.R. 674, but we find from the impugned judgment that the said B contention had not been pressed before the High Court and, therefore, we are not called upon to examine the contention to find out whether the Act can be held to be reasonable and fair. That apart, the impugned Act merely takes over the management of the property by a legislation permitted under Article 31A(1)(b) of the Constitution. This being the position, Article 300A C will have no application.

Mr. Nariman also had raised a contention that the very fact that the other provisions, available under the Companies Act or under Industrial Development and Regulation Act had not been adhered to and a drastic step had been taken by immediately taking over of the management of the mills, D would constitute an infraction of Article 19(1)(g) and in support of the said contention, reliance has been placed on the decision of this Court in the case of *Mohd. Faruk* v. *State of Madhya Pradesh and Ors.*, [1970] 1 S.C.R. 156. In the aforesaid case, the Court was considering the validity of the notification issued by the Government of Madhya Pradesh in cancelling the confirmation E of the bye-laws made by Jabalpur Municipality, insofar as the bye-laws relate to slaughter of bulls and bullocks. This Court had observed "that the Court in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the F object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency-national or local or the G necessity to maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved". It is these observations on which Mr. R.F. Nariman strongly relied upon, since in the case in hand, the appropriate Government did not take any action under the H provisions of the Companies Act, nor there had been any investigation as

provided under Section 15 and 15A of the Industrial Development and Regulation Act, according to Mr. Nariman, obviously, those provisions are less drastic in nature than the impugned Act and in fact, there was no urgent necessity for enacting a law and taking a drastic measure of taking over the management of the mills. We are unable to accept this contention, since we have already discussed the public interest involved and how the Parliament thought of taking over the management of the mills without which, it would not be feasible to pump in, large sums of money from the public exchequer and leave the management with the erstwhile managers for whose mismanagement, the mills would not have been in the situation in which the law was enacted. The decision to take over the management of the mills with a view to implement the decision to nationalise the mills being the basis for enactment of the Taking Over of the Management of the Mills Act, question of taking recourse to the remedies available under the Companies Act or Industries Development and Regulation Act really do not arise and on that score it cannot be said that there has been a violation of Article 19(1)(g). Applying the observations of this Court in Dwarka Das, in fact a somewhat similar contention had been noticed in Sitaram Mills' case in paragraph 14 of the judgment. We are, therefore, unable to persuade ourselves to accept the contention that the very fact that Government did not proceed with the remedies available under other Act and proceeded to enact a legislation for taking over of the management of the Mills would constitute an infraction of Article 19 (1)(g) of the Constitution. We may reiterate that we are examining the enactment of a law by the Parliament itself and the wisdom of the Parliament in taking a decision to take over the management of the mills in the larger public interest and not an executive decision of the Government which could have taken recourse to some other remedial measure provided under the Industries Development and Regulation Act or the Companies Act. If Parliament decides to enact a law for taking over the management of the Textile Mills, pending completion of the process of nationalisation, on a genuine apprehension that there might be a large scale flittering away of assets if the management is not taken over and that would be grossly detrimental to the public interest it would not be open for the Court to examine the question whether other remedies could have been taken and not being taken there has been an infraction of Article 19(1)(g). In the aforesaid premises, we have no hesitation in coming to the conclusion that the High Court was in error to hold that there has been an infraction of Article 19(1)(g) in the case in hand.

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In view of our conclusions, as aforesaid, we do not propose to examine H

A the contention of the learned Solicitor General, with regard to the applicability of Article 31C of the Constitution, which he had raised in course of his arguments. In the premises, these appeals are allowed. The impugned judgment of the Bombay High Court is set aside and the writ petitions, filed before the High Court stand dismissed.

B During the pendency of these appeals this Court had passed some interim orders with regard to possession of certain land and other assets as well as with regard to cars and telephone connections. In view of our decision setting aside the impugned judgment of Bombay High Court and in view of Section 3(2) of the Act all interim orders would stand vacated. But the C Elphinstone Spinning & Weaving Mills in its Writ Petition No. 2401 of 1983 having made a specific case that notwithstanding the Act being valid and the management of the mills can be taken over and its properties and assets vest with the Central Government under Section 3(2) of the Act, but there are certain other assets which cannot be held to form a part of the assets of Elphinstone Spinning and Weaving Mill and, therefore, cannot be taken over, D the High Court has not considered this question as the Act itself was struck down but it would be proper for the High Court now to consider the same, bearing in mind the law laid down by this Court in Sitaram Mills' case interpreting the provisions of Section 3(2) of the Act on the materials to be produced by the parties. Be it stated that until a decision is given by the High E Court on this score, by virtue of operation of law all the assets would stand vested and such vesting would be subject to a final decision of the High Court in respect of any of these so-called assets which the petitioner establishes not to be an asset of Elphinstone Mill notwithstanding the wider meaning given to Section 3(2) in Sitaram Mills' case.

S.M. Appeals allowed.