

M/S. ANWAR KHAN MEHBOOB & CO. A

v.

STATE OF MADHYA PRADESH AND OTHERS

October 6, 1965

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO,
M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, J.J.] B

*Constitution of India, Art. 32—Earlier decision—when res-judicata—
Right to pluck tendu leaves—If Property.*

*Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964
(M.P. Act 29 of 1964.)* C

The petitioner firm had obtained from the proprietor of an Estate in Madhya Pradesh the right to pluck and carry *tendu* leaves from trees in certain villages. The right was to endure for a period of twenty-five years from 1948 to 1973. In 1950, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act was passed which vested in the State all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right in areas to which the Act was extended. When the petitioner and others were obstructed in plucking *tendu* leaves, they had approached this Court under Art. 32 of the Constitution to enforce what they claimed as their "fundamental right to property". A Division Bench of this Court in *Chhotabhai Jethabhai v. State of Madhya Pradesh* [1953] 3 S.C.R. 476, issued a writ prohibiting the State from interfering with those rights on the ground that contracts and agreements such as the one held by the petitioner-firm in essence and effect licences and that there was nothing in the Abolition Act to affect their validity or to extinguish such rights. Subsequent to this decision, in 1964, the Madhya Pradesh *Tendu Patta* (Vyapar Viniyaman Adhiniyam) was passed, the object of which was to create a State monopoly in the trade of *tendu* leaves restricting its purchase or transport. When the petitioner firm was informed that the right to collect *tendu* leaves was abrogated by the State Government under the *Adhiniyam*, it approached this Court under Art. 32 of the Constitution. In support of the petition, it was contended that (i) the petitioner was seeking to enforce the same "fundamental case and as such this decision had a binding effect as *res judicata*, and (ii) the *Adhiniyam* did not touch the rights of the petitioner as recognised and enforced by this Court in *Chhotabhai Jethabhai's* case and that it did not attempt to nullify that decision expressly or even indirectly. D

HELD : The petition must fail.

(i) *Chhotabhai's* case does not operate as *res judicata* even if it might have been assumed in that case that a right to property was involved. Subsequent decisions of this Court have laid down that the decision in *Chhotabhai's* case which treated the agreements as bare licences and yet considered that a fundamental right to property as conferred by them "was apparently, given *per incuriam* and could not therefore be followed." A right to contract is not a right to property and *Chhotabhai's* case cannot be understood to have treated it as such. It was possible that the Divisional Bench which decided that case thought in terms of property in leaves etc., on their being severed from earth as existing even before these were severed. This was not the true position in law because the agreements then considered betokened a licence coupled with a grant. The attention G

A of the Divisional Bench was not directed to this difference. [47 C; 48 B-C; 49 F-G]

The plea of *res judicata* must also fail because the two causes of action are not alike. In *Chhotabhai* the cause of action was based on the invasion of rights under the authority of the Abolition Act. Now, the invasion is and under the authority of the *Adhinyam*. [48 G-H; 49 E]

B If a statute creates new circumstances which render the earlier decision inapplicable, the effect must be to avoid the earlier decision of the Court. [50 B-C]

(ii) It cannot be said either by reason of any rule of *res judicata* or on analogy that the petitioner is entitled to invoke Art. 32 when it possesses no right of property in the leaves. Since there is no right to property before the leaves are plucked no such right can be said to be invaded by the *Adhinyam*. The petitioner had only a contract in its favour and that is not a right of property. [52 C-D]

C Case law referred to.

ORIGINAL JURISDICTION : Writ Petition No. 38 of 1965.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

D *G. S. Pathak, P. R. Naolekar, J. B. Dadachanji, O. C. Mathur* and *Ravinder Narain*, for the petitioner.

C. K. Daphtary, Attorney-General, B. Sen, M. N. Shroff, and I. N. Shroff, for the respondents Nos. 1 to 4.

The Judgment of the Court was delivered by

E **Hidayatullah, J.** The petitioner is a partnership firm which manufactures and sells *bidis*, under the name and style of Anwar-khan Mehboob and Co., Jabalpur. In 1948 the petitioner firm, with a view to securing a supply of *tendu* leaves over the years acquired for a term of 25 years, the right to pluck and carry away *tendu* leaves from plants in ninety-nine villages in the former Imlai Estate from the *Malguzar* Raja Raghuraj Singh. The period of 25 years was to run from 1948 to 1973. The document, which was not registered (annexure I), was executed by the Raja on August 22, 1948. It is a very brief document and all that it says is that *tendu* leaves in 99 villages have been "sold" for 25 years for a consideration of Rs. 9,000 per year which must be paid after each *tendu* leaf crop is over but before the expiry of three months, that only the leaves should be plucked and that no bushes should be cut down.

H In 1950 the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act (No. 1 of 1951) was passed. Under the Act (which may be briefly called the Abolition Act) all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the pro-

prietor, in an area to which the Abolition Act was extended, including land (cultivable or barren), grass land, scrub-jungle, forest, trees etc., ceased and vested in the State for purposes of State, free from all encumbrances. The Government of Madhya Pradesh obstructed the persons who held contracts for *tendu* leaves, *lac*, wood, timber or other forest produce, including the petitioner firm. The petitioner firm and many others petitioned to this Court under Art. 32 of the Constitution to enforce what they described as 'fundamental rights to property', and asked for writs or orders to restrain the State Government from enforcing the Abolition Act generally and in particular so as to interfere with the right of the petitioner firm to pick, gather and carry away the kind of forest produce for which they held agreements. A dozen such petitions were heard together, that of the petitioner being W. P. No. 309 of 1951 (*Firm Anwar Khan Mehboob & Co. v. State of Madhya Pradesh*), and were decided on December 23, 1952. The main judgment of this Court was pronounced in a petition filed by one Chhotabhai Jethabhai and is reported in *Chhotabhai Jethabhai v. State of Madhya Pradesh*⁽¹⁾. A Divisional Bench of this Court held that contracts and agreements, such as the one held by the petitioner firm, were "in essence and effect licenses granted to the transferees to cut, gather and carry away, the produce in the shape of *tendu* leaves, *lac*, or timber or wood." Holding further that there was nothing in the Abolition Act to affect their validity or to extinguish such rights in favour of the State, the Divisional Bench ruled that the State had no right to interfere with the rights under the contracts and agreements. A "writ of prohibition" was issued, prohibiting the State "from interfering in any manner whatsoever with the enjoyment of those rights". In cases where the periods under the contracts had expired or where the proprietors had still to recover anything from transferees after the date of vesting, the State was held entitled "to assert and enforce its rights standing in the shoes of the proprietors."

The petitioner firm, in common with the other petitioners on that occasion obtained a "writ of prohibition" also. It would have enjoyed the fruits of its agreement with the Raja till the year 1973 but other events followed. In 1964 the Madhya Pradesh *Tendu Patta* (Vyapar Viniyaman) Adhiniyam, 1964 (29 of 1964), (conveniently called the Adhiniyam) was passed, as the preamble openly professes "to make provision for regulating in the public interest the trade of *Tendu* leaves by creation of State

(1) [1953] S. C. R. 476

- A** monopoly in such trade." The Adhiniyam conferred power on the State Government to divide specified areas into units, to appoint its own agents for purchase and trade in *tendu* leaves, to set up advisory committees especially for the fixation of prices at which Government would purchase *tendu* leaves from growers of *tendu* leaves other than Government, to open depots and to purchase
- B** there *tendu* leaves at prices in the lists exhibited there. The Adhiniyam also required growers of *tendu* leaves, the manufacturers of *bidis* and exporters of *tendu* leaves to register. With a view to creating monopoly in favour of Government section 5 of the Adhiniyam imposed a complete restriction on purchase and transport of *tendu* leaves contrary to the provisions of the Adhiniyam and contravention of any provision was made punishable with imprisonment or fine and power was also given to forfeit the whole or any part of *tendu* leaves in respect of which there was contravention. A power of entry, search and seizure was conferred on police officers of the rank of Assistant Sub-Inspectors and
- C** above.
- D**

We have given a resume of the provisions of the Adhiniyam but we must set out s. 5, because it is the heart of the Adhiniyam and also of the problem before us. Before we do so, a few definitions material to its construction and understanding may be noted. "An agent" in the Adhiniyam means the agent of Government and "a grower of *tendu* leave" means in respect of leaves grown :

- E**
- (a) in a reserved or protected forest, or on unoccupied land as defined in the Madhya Pradesh Land Revenue Code 1959, the State Government;

- F**
- (b) on lands with the Bhoodan holder or the Bhoodan tenant or lessee or grantee under certain Madhya Pradesh, Madhya Bharat, Vindhya Pradesh and Rajasthan Acts, those persons; and

- G**
- (c) on other lands the tenure holder or a tenant or a Government lessee of the holding or the holder of service land, as the case may be, in any unit on which *tendu* leaves grow.

Each of the terms holder of a service land, Government lessee, tenant and tenure holder is separately defined but as it was admitted before us that the petitioner firm is not one of them, the definitions need not detain us. Section 5 of the Adhiniyam provides as follows :—

- H**
- "5. Restriction on purchase or transport of *tendu* leaves.

(1) On the issue of a notification under sub-section (3) of section 1 in any area no person other than,—

(a) the State Government;

(b) an officer of State Government authorised in writing in that behalf; or

(c) an agent in respect of the unit in which the leaves have grown;

shall purchase or transport *tendu* leaves.

Explanation I. Purchase of *tendu* leaves from the State Government or the aforesaid Government officer or agent shall not be deemed to be a purchase in contravention of the provisions of this Act.

Explanation II. A person having no interest in the holding who has acquired the right to collect *tendu* leaves grown on such holding shall be deemed to have purchased such leaves in contravention of the provisions of this Act.

(2) Notwithstanding anything contained in sub-section (1),—

(a) a grower of *tendu* leaves may transport his leaves from any place within the unit wherein such leaves have grown to any other place in that unit; and

(b) *tendu* leaves purchased from the State Government or any officer or agent specified in the said sub-section by any person for manufacture of *bidis* within the State or by any person for sale outside the State may be transported by such person outside the unit in accordance with the terms and conditions of a permit to be issued in that behalf by such authority and in such manner as may be prescribed.

(3) Any person desiring to sell *tendu* leaves may sell them to the aforesaid Government officer or agent at any depot situated within the said unit."

We shall analyse the provisions of this section later. For the present we must follow up the narrative of events. By notification the State of Madhya Pradesh, declared the areas to which the Adhiniyam extended and subdivided the area into units. The Imlai Estate, in respect of which the petitioner firm held its agreement, was divided up into :

- A (i) unit No. 3 Baghrajji leased area,
 (ii) unit No. 5 Kundam leased area, and
 (iii) unit No. 11 Umaria leased area.

B Pursuant to the provisions of the Adhiniyam, the State Government set up Advisory Committees under the Madhya Pradesh Tendu Patta Mantrana Samiti Mulya Prakashan Niyam, 1964 and framed rules called Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali, 1965. If it is necessary to name them again, the former will be called the Niyam and the latter the Niyamavali.

C The State Government then invited tenders for the areas including the three units but the remarks column showed that these units were leased by the *Malguzar* to the petitioner firm up to the year 1973. No tenders were received for units 5 and 11 but there was a tender for unit 3. On March 20, 1965 the Minister for Forests in a meeting, informed the representatives of
 D the petitioner firm that their leases stood extinguished by reason of the Adhiniyam and that time was extended for submission of fresh tenders in respect of the units left out. On March 23, 1965 tenders made by two persons in respect of unit 3 (Baghrajji) and unit 11 (Umaria) were accepted and the next day the petitioner firm was informed, by letter from the Divisional Forest Officer,
 E Jabalpur Division, that the right to collect *tendu* leaves in all the 99 villages of Imlai Estate was abrogated by the State Government under the Adhiniyam. The present petition was then filed.

The arguments of Mr. G. S. Pathak in support of the petition were really two although they covered a good deal of ground.
 F His first contention was that the Adhiniyam did not touch the rights of the petitioner firm as recognized and enforced by this Court by its "writ of prohibition" in the earlier case and that the Adhiniyam had not attempted to nullify the decision of this Court either expressly or even indirectly by making the law retrospective. His next contention was that the Adhiniyam in terms did not
 G apply to the petitioner firm because of Explanation I to s. 5 of the Adhiniyam. He claimed that the petitioner firm was entitled to move this Court for the enforcement of the same fundamental right in property which had been recognized by this Court on the earlier occasion and the former decision was binding in this case as *res judicata*. On behalf of the State the learned Attorney-
 H General contended that there was no right in property which could be claimed and the petition was incompetent in view of the later decisions of this Court which had dissented from *Chhotabhai*

Jethabhai's case⁽¹⁾ and that, in any event, the matter then decided could not have taken note of the Adhiniyam which was not in existence. He further submitted that the petitioner firm was as much affected by s. 5 of the Adhiniyam as any other person, the decision of this Court in its favour notwithstanding.

We may begin by considering the correctness of the contention that the earlier decision operates as *res judicata* in this case. The history of the ruling in *Chhotabhai Jethabhai's* case⁽¹⁾ is well-known. That case has now no binding force as a precedent. In *Shantabai v. State of Bombay*⁽²⁾ petitions similar to those in *Chhotabhai Jethabhai's* case⁽¹⁾ met a different fate. Shantabai, who claimed the benefit of Art. 19(1)(f) and (g) had been given a right by her husband to take and appropriate all kinds of wood from his *Zamindari* forests. The document was unregistered. After the Abolition Act came into force the right was interfered with. A petition under Art. 32 of the Constitution was moved in this Court but it failed. *Chhotabhai Jethabhai's* case was cited in support of the petition but it was not followed. Many circumstances not noticed in *Chhotabhai Jethabhai's* case⁽¹⁾ were pointed out. As they have been summarized once before in *Mahadeo v. State of Bombay*⁽³⁾ we may quote from that case. Speaking of the unregistered agreement, it was said :

“if it conferred a part or share in the proprietary right, or even a right to *profit a prendre*—(it) needed registration to convey the right. If it created a bare licence, the licence came to an end with the interest of the licensors in the forests. If proprietary right was otherwise acquired, it vested in the State, and lastly, if the agreements created a purely personal right by contract, there was no deprivation of property, because the contract did not run with the land.”

Mahadeo's case⁽³⁾ took the same view of *Chhotabhai Jethabhai's*⁽¹⁾ case. The Constitution Bench declined to accept that such rights were 'property rights' and the petitioners in *Mahadeo's* case⁽³⁾ admitted that they were only contractual rights. This Court in *Mahadeo's* case⁽³⁾ observed that if they were contractual rights—

“then also, as pointed out in the second of the two cases cited, the licenses came to an end on the extinction of the title of the licensors. In either case there

(1) [1953] S. C. R. 476.

(2) [1959] S. C. R. 265.

(3) [1959] Supp. 2 S. C. R. 339 at 343.

- A was no question of the breach of any fundamental right of the petitioner which could support the petitions which were presented under Art. 32 of the Constitution. It is this aspect of the matter which was not brought to the notice of the Court, and the resulting omission to advert to it has seriously impaired, if not completely nullified, the effect and weight of the decision in *Chhotabhai's* case as a precedent.”

- It was, therefore, laid down that the decision in *Chhotabhai Jethabhai's* case⁽¹⁾, which treated the agreements as bare licences and yet considered that a fundamental right to property was conferred by them, “was apparently given *per incuriam*” and could not therefore be followed.

- In *Chhotabhai Jethabhai's* case⁽¹⁾ reliance was placed on a passage from the judgment of the Judicial Committee in *Mohanlal Hargovind v. C.I.T.*⁽²⁾ to find out the nature of the agreements.
- D The Judicial Committee was discussing the matter to find out whether the amounts spent in buying *tendu* leaves, which were the raw materials for manufacture of *bidis*, became capital expenditure simply because crops of a number of years were presently purchased. So long as crops were purchased and no interest in anything else was obtained, it was held the payment was on revenue and not capital account. The observations were, therefore, made in a very different context. Similarly, reliance on a passage from Baden Powell's book on the *Land Systems of British India* was not helpful because Baden Powell was merely discussing the division of proprietary rights between different layers created by sub-infeudation. Nor was the reference to Benjamin on *Sale* quite
- E and not capital account. The observations were, therefore, made in a very different context. Similarly, reliance on a passage from Baden Powell's book on the *Land Systems of British India* was not helpful because Baden Powell was merely discussing the division of proprietary rights between different layers created by sub-infeudation. Nor was the reference to Benjamin on *Sale* quite
- F happy because the author was referring to mediaeval law and had discussed the modern law on the succeeding page. It was for this reason that in a succession of cases, *Chhotabhai Jethabhai's* case⁽¹⁾ was not relied upon. That ruling must be held not binding.

- G Mr. Pathak, however, contended that whatever might be the position *vis-a-vis* other cases, since the decision was given in respect of the agreement in favour of the petitioner firm, it must control subsequent cases by the rule of *res judicata*. He conceded that the decision was that such agreements betokened licences but he pointed out that this Court must have treated these licences as conveying rights to property because otherwise a writ could not be granted under Art. 32. There can be no doubt that a right to

(1) [1953] S. C. R. 476.

(2) (1949) I. T. R. 473 (P. C.)

contract is not a right to property and it is a little doubtful whether it was really treated as such in *Chhotabhai Jethabhai's* case⁽¹⁾. The Court while narrating the facts did mention that the petitions were "to enforce the fundamental rights of the petitioners to property," but their Lordships were mindful of the *tendu* leaves, *lac*, timber and wood which once plucked, detached or cut would have become the property of the petitioners. Hence the discussion of the definition of goods and future goods in the Indian Sale of Goods Act. But there is no ruling that the contracts themselves were property. Their Lordships did not even once characterize the contracts as such, as property. Indeed, the prayer in the former case was :

"The applicants, therefore, pray that a writ or direction or order be made prohibiting or restraining the State Government from interfering with the right of the applicants to pick, gather and carry away the crop of *tendu* leaves, and for making any claim in respect of the crop by virtue of Act No. 1 of 1951."

This is not claiming a right to property but to the continued acceptance of a contract.

Mr. Pathak, however, argued that the earlier decision of this Court involved the assumption of the fundamental fact that petitioner firm's right to property was invaded. He argued on the authority of *Hoystead v. Commissioner of Taxation*⁽²⁾ that such a fundamental fact cannot, in a fresh litigation, be allowed to be ignored. He submitted that it was open to the Government to have demurred to the claim on the ground that no right of property was invaded, but it did not. This may be right but it does not solve our problem. If the *Adhiniyam* had not been passed and the rights recognised by this Court were again interfered with, it would have been impossible for Government to ask that *Chhotabhai Jethabhai's* case⁽¹⁾ be reconsidered from the point of view whether a fundamental right to property was involved or not. The fresh litigation would in such a case have been on an identical or similar cause of action and because of the decision in favour of the petitioner firm Government would have been bound by the rule of *res judicata*. The situation today is not the same as existed in 1952. The cause of action then was based upon the invasion of the rights of the petitioner firm by and under the authority of the Abolition Act. Today the invasion is by and under the authority of the *Adhiniyam* and manifestly the two causes of

(1) [1953] S. C. R. 476.

(2) [1926] A. C. 155.

A action are not alike. It is worth mentioning that *Hoystead's* case⁽¹⁾ was cited before the House of Lords in *Society of Medical Officers of Health v. Hope*⁽²⁾ but was not followed. It may also be mentioned that in the volume which contains *Hoystead's* case there is to be found another case of the Judicial Committee (*Broken Hill Proprietary Company Limited v. Municipal Council*

B *of Broken Hill*⁽³⁾ which seems to be in conflict with *Hoystead's* case⁽¹⁾. It was argued before the House of Lords that *Hoystead's* case⁽¹⁾ was wrongly decided. The House did not pronounce their opinion on this submission but noted the fact that there was this conflict. They did point out that a decision of the Judicial

C Committee was not binding on the House of Lords. Lord Radcliffe distinguished *Hoystead's* case⁽¹⁾ and stated that it was useless to illuminate the only point which was before the House of Lords, namely, the effect of a succeeding valuation list on a decision given with regard to an earlier valuation list. The same reason obtains here also. The earlier case of this Court is useless

D to illuminate the only point which arises before us, namely, whether by the provisions of the Adhiniyam any right to property as such is being offended. On this question we cannot get any guidance from the earlier decision partly because it did not in express terms decide even on the facts existing in 1952 that a right to property was in jeopardy and mainly because the effect of

E the new law upon the rights such as they are today must be worked out afresh. The cause of action is entirely distinct. For this reason we do not think that the earlier decision operates as *res judicata*, even if it might have been assumed in that case that a right to property was involved.

F We have explained above that the Divisional Bench did not refer to right to property although it is possible that it thought in terms of property in leaves, timber etc. on their being severed from earth as existing even before leaves, timber etc. were so severed. This was not the true position in law because the agree-

G ments then considered betokened a licence coupled with a grant. The petitioner firm like the others had a licence to go to the forests to pick and carry away *tendu* leaves but had no other right. The attention of the Divisional Bench was not directed to this difference. Such a decision cannot constitute a bar on the principle of *res judicata* when new circumstances have come to exist which require

H a reappraisal of the true legal position.

(1) [1926] A. C. 155.

(3) [1926] A. C. 94.

(2) [1960] A. C. 551.

Mr. Pathak next argued that the Adhiniyam said nothing about the earlier decision in favour of the petitioner firm and pointed out that the usual formula by which decisions of courts are vacated by subsequent legislation is not to be found in the Adhiniyam. Mr. Pathak has in mind provisions which begin with the words "notwithstanding anything contained in a judgment of any court etc." Such a provision is, of course, not there. It is, however, not correct to say that a decision may be evaded only by the use of these words or some such words. If a statute creates new circumstances which render the earlier decision inapplicable, the effect must be to evade the earlier decision of the court. The earlier decision then cannot operate because the new statute alters the circumstances to which the old decision applied, and as the cause of action is different, the earlier decision ceases to play a part. The earlier decision of this Court does not play any part, even indirectly, as was suggested by Mr. Pathak.

The core of the problem thus is : what is the effect of the Adhiniyam upon the rights of the petitioner firm under the agreement it had obtained from Raja ? For this purpose, we have to go to the terms of s. 5 of the Adhiniyam already set out. The operative provision is to be found in the first sub-section which says that after a notification is issued under sub-s. (3) of s. 1 (which extends the Adhiniyam to any area) no person shall purchase or transport *tendu* leaves except the State Government or officer authorised in writing in this behalf or an agent of that Government in respect of any unit in which the leaves are grown. The expression "no person" is wide enough to exclude any person whatsoever unless the rights of any party have been expressly saved. Sub-section (1) is intended to be understood with the aid of two Explanations each providing for a different subject-matter. By the first Explanation purchase of *tendu* leaves from any of the three persons mentioned in sub-s. (1) is not to be deemed to be a purchase in contravention of this Adhiniyam. Government or its officers and agents in this way become the sole sellers of *tendu* leaves, and the sub-section confers on the Government exclusively the monopoly of sale of *tendu* leaves from an area to which the Adhiniyam is extended. The second Explanation says that a person having no interest in a holding but who has acquired the right to collect *tendu* leaves grown on such holding shall be deemed to have purchased such leaves in contravention of the Adhiniyam. This Explanation states in the negative form that a person having an interest in the holding may himself collect the leaves but no person can obtain from the person having an interest

- A in the holding, a right to collect *tendu* leaves from his holding. The right to collect *tendu* leaves from the areas to which the Adhiniyam extends belongs to the State Government, its officers and its agents or under the second Explanation to a person having interest in a holding. No purchase of *tendu* leaves, except from Government, its officers and agents, is legal by reason of the first sub-section read with the first Explanation. The second sub-section deals with transport. It allows a grower of *tendu* leaves to transport his leaves from any place within the unit wherein such leaves are grown to any other place in that unit, and *tendu* leaves purchased from the State Government or its officers or agents by any person for manufacture of *bidis* within the State or by any person for sale outside the State may be transported outside the unit. No other person can at all transport *tendu* leaves. The second sub-section has the effect of keeping the *tendu* leaves within the unit until they have been purchased by or from Government. On purchase they can be transported either to a place within the State for the manufacture of *bidis* or exported outside the unit.
- D Under the third sub-section any person who desires to sell *tendu* leaves may sell them to a Government officer or agent at any depot situated within his unit. By reason of these provisions growers of *tendu* leaves, other than Government, are compelled to sell them to Government, its officers and agents, at the various depots at the prices settled by the Advisory Committee under the Niyam. The Niyamavali lays down the procedure to be followed. Once all *tendu* leaves have come into the possession of Government, purchase of *tendu* leaves must be from the Government and its officers and agents because only purchase is not an offence under the Adhiniyam.

F

The position of the petitioner firm is this : it does not seek to justify its acquisition of *tendu* leaves by reason of a purchase from Government. It says that it has already purchased the *tendu* leaves from the Raja by an agreement made with the Raja in 1948 and that that agreement is binding upon Government because of a decision of this Court. But the decision of this Court merely decided that there was nothing in the Abolition Act by which the agreement could be said to be affected. That decision had nothing to say about those rights of the petitioner firm, viewed in the light of the Adhiniyam. The Adhiniyam is challenged only on the ground that it cannot operate against the petitioner firm which holds a decree of this Court. The decree of this Court only said that Government must not interfere with the petitioner firm by reason of anything contained in the Abolition Act. To the Aboli-

G

H

tion Act must now be added the Adhiniyam and we must see what is the joint effect of the two Acts. The Abolition Act vested the forests and *tendu* plants in Government and they become the property of Government. This was decided a long time ago and there is no quarrel on this account. By the Adhiniyam Government gets the sole right to purchase *tendu* leaves from any area to which the Adhiniyam extends and no person can buy *tendu* leaves except from Government, its officers and agents. Government obtains the monopoly of trade in *tendu* leaves in those areas of the State to which the Adhiniyam applies. The purchase of *tendu* leaves must now be in accordance with the Adhiniyam. Since there is no right to property before the leaves are plucked, no such rights can be said to be invaded by the Adhiniyam. It cannot be said either by reason of any rule of *res judicata* or on analogy that the petitioner firm is entitled to invoke Art. 32 of the Constitution when it possesses no right of property in the leaves. It has only a contract in its favour and that is not a right of property. No doubt the Adhiniyam indirectly overreaches the decision of this Court but that, in any event, is open to the State Legislature provided it passes a valid law to that effect. The law is not challenged as invalid and it must therefore apply to the petitioner firm, as to any other person. The petitioner firm cannot take shelter of Explanation I till it buys leaves from Government under the Adhiniyam and the Niyamavali.

In our judgement the rights of the petitioner firm such as they were, must be held to be no longer available to it. The petitioner firm must buy its leaves like any other person. The petition must, therefore, fail. It will be dismissed, but in the circumstances of the case there will be no orders as to costs.

Petition dismissed.