

*The whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly. If a legislature is competent to do a thing directly, then the mere fact that it attempted to do it in an indirect or disguised manner, cannot make the Act invalid.*

## **[Case Brief] K.C. Gajapati Narayan Deo and Other Vs. The State of Orissa**

<b><u>Case name:</u></b>	K.C. Gajapati Narayan Deo and Other Vs. The State of Orissa
<b><u>Case number:</u></b>	1953 AIR 375
<b><u>Court:</u></b>	Supreme Court of India
<b><u>Bench:</u></b>	Mukherjea, B.K. Bhagwati, Natwarlal H. Sastri, M. Patanjali (CJ) Das, Sudhi Ranjan Hasan, Ghulam
<b><u>Decided on:</u></b>	29/05/1953
<b><u>Relevant Act/Sections:</u></b>	Article 31(4), 31A, 31B, 226

### ➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. These six appeals arise out of as many applications, presented to the High Court of Orissa, under article 226 of the Constitution, by the proprietors of certain permanently settled estates within the State of Orissa, challenging the constitutional validity of the legislation known as the Orissa Estates Abolition Act of 1952 (hereinafter called "the Act") and praying for mandatory writs against the State Government restraining them from enforcing the provisions of the Act so far as the estates owned by the petitioners are concerned.
2. The impugned Act was introduced in the Orissa State Legislature on the 17th of January, 1950, and was passed by it on the 28th September, 1951. It was reserved by the State Governor for consideration of the President and the President gave his assent on 23rd January, 1952. The

Act thus receives the protection of articles 31(4) and 31A of the Constitution though it was not and could not be included in the list of statutes enumerated in the ninth schedule to the Constitution, as referred to in article 31B.

3. The Act, so far as its main features are concerned, follows the pattern of similar statutes passed by the Bihar, Uttar Pradesh and Madhya Pradesh Legislative Assemblies. The primary purpose of the Act is to abolish all zemindary and other proprietary estates and interests in the State of Orissa and after eliminating all the intermediaries, to bring the ryots or the actual occupants of the lands in direct contact with the State Government.
4. The High Court said that whenever there is any doubt regarding the constitutionality of an enactment, the doubt should always go in favour of the legislature. The result was that with the exception of the few matters that were kept open, all the petitions were dismissed.

➤ **ISSUE BEFORE THE COURT:**

1. Whether the Orissa Agricultural Income-tax (Amendment) Act of 1950 is valid? (Colourable Legislation)
2. Whether the provisions of section 5 the Act which are applicable to private lands and buildings of the proprietors, both of which vest as parts of the estate are unconstitutional?
3. Whether, the manner of payment of compensation money, as laid down in section 37 of the Act, has been challenged as invalid and unconstitutional?

➤ **RATIO OF THE COURT**

1. The court observed that the Orissa Agricultural Income-tax (Amendment) Act of 1950 is certainly a legislation on " taxing of agricultural income " as described in entry 46 of List II of the Seventh Schedule. The State legislature had undoubted competency to legislate on agricultural income tax and the substance of the amended legislation of 1950 is that it purports to increase the existing rates of agricultural income-tax, the highest rate being fixed at 12 annas 6 pies in the rupee. This may be unjust or inequitable, but that does not affect the competency of the legislature. Both in form and in substance the Act was an agricultural income-tax legislation and agricultural income- tax is certainly a relevant item of deduction in the computation of the net income of an estate and is not unrelated to it as item No. 23(f) of the Bihar Act was held to be.

2. The whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly. If a legislature is competent to do a thing directly, then the mere fact that it attempted to do it in an indirect or disguised manner, cannot make the Act invalid. Under entry 42 of List III which is a mere head of legislative power the legislature can adopt any principle of compensation in respect to properties compulsorily acquired. Whether the deductions are large or small, inflated or deflated they do not affect the constitutionality of a legislation under this entry.
3. The court further stated “It may appear on scrutiny that the real purpose of a legislation is different from what appears on the face of it, but it would be a colourable legislation only if it is shown that the real object is not attainable to it by reason of any constitutional limitation or that it lies within the exclusive field of another legislature. The result is that in our opinion the Orissa Agricultural Income-tax (Amendment) Act of 1950 could not be held to be a piece of colourable legislation, and as such invalid. The first point raised on behalf of the appellants must therefore fail.”
4. It was argued on behalf of the appellant that his clients were not precluded from raising any objection on the ground of inadequacy of compensation in regard to these private lands by reason of article 31(4) of the Constitution, as the provision of that article is not attracted to the facts of the present case. What is said is, that the original Estates Abolition Bill, which was pending before the Orissa Legislature at the time when the Constitution came into force, did not contain any provision that the private lands of the proprietor in occupation of temporary tenants would also vest in the State. This provision was subsequently introduced by way of amendment during the progress of the Bill and after the Constitution came into force. It is argued, therefore, that this provision is not protected by article 31(4). The contention seems to us to be manifestly untenable.
5. To which the court answered by stating the fallacy in the reasoning of the learned counsel lies in the assumption that the Bill has got to be passed in its original shape without any change whatsoever, before the provision of clause (4) of article 31 could be attracted. There is no warrant for such assumption in the language of the clause. The expression "passed by such Legislature" must mean "passed with or without amendments" in accordance with the normal procedure contemplated by article 107 of the Constitution. There can be no doubt that all the requirements of article 31(4) have been complied with in the present case and consequently there is no room for any objection to the legislation on the ground that the compensation provided by it is inadequate.

6. The court further observed that Section 37 of the Act contains the legislative provision regarding the form and the manner in which the compensation for acquired properties is to be given and as such it comes within the clear language of entry 42 of List III, Schedule VII of the Constitution. It is not a legislation on something which is non-existent or unrelated to facts. It cannot also be seriously contended that what section 37 provides for, is not the giving of compensation but of negating the right to compensation.

➤ **DECISION HELD BY COURT:**

1. The appeal was dismissed.
2. The Orissa Agricultural Income-tax (Amendment) Act of 1950 was held constitutionally valid.