

stray observation does not to my mind support the contention of the learned counsel for the appellant that something over and above what was contained in section 59(1)(d) was also required to be proved before plaintiff could succeed. I do not think that Addison, J., in that ruling was laying the proposition that besides proving that the land in suit was occupied by the common ancestor, it had further to be proved that every successive heir was also in occupation of the land.

Shiv Singh
v.
Jiwan Das
and others
Tek Chand, J.

The other authority reported in *Mst. Har Kaur v. Kharga* (1), does not lay down any proposition from which support can be found for the appellant's contention.

After giving my careful consideration to the arguments of the learned counsel I find no force in the contention of the appellant. I agree with the conclusion arrived at by the lower Courts. I, therefore, dismiss the appeal. In the circumstances of the case the parties are left to bear their own costs throughout.

D. K. M.

CIVIL REFERENCE

Before Falshaw and Mehar Singh, JJ.

SHRI SATISH CHANDER AND ANOTHER,—Petitioners

versus

DELHI IMPROVEMENT TRUST, ETC.,—Respondents.

Civil Reference No. 7 of 1956

*Government Premises (Eviction) Act (XXVII of 1950)—
Constitution of India Article 19(1)(f)—Whether Government
Premises (Eviction) Act is ultra vires, Article 19(1)(f) of
the Constitution of India.*

1957
Sept., 5th

(1) A.I.R. 1927 Lah. 534(1).

Held, that the Government Premises (Eviction) Act is *ultra vires* as it offends against the fundamental right to property conferred on citizens by Article 19(1)(f) of the Constitution and that it is not saved by the provisions of clause (5) of Article 19.

ORDER OF REFERENCE.

The land in dispute, situate inside Ajmeri Gate, Delhi, which belonged to the Government, was leased out for 90 years for the purpose of building shops to one Shree Bengali Mal the predecessor in interest of the plaintiff and defendants No. 2 to 4. Said Shree Bengali Mal died and the plaintiff and defendants No. 2 to 4 claim to be his heirs. It is stated by the plaintiff that thereafter there was a partition between them and the lease hold rights fell to the share of the plaintiff. The Chairman of the Defendant No. 1 (Delhi Improvement Trust) acting as Competent Authority under the Government Premises Eviction Act, issued a notice under Section 3 of the said Act for evicting the plaintiff on the ground that the lease had been terminated by Delhi Improvement Trust who was managing the property. The plaintiff challenged the action of the Chairman as wanton, malicious, ultra vires and ineffective on many grounds one among which is that Government Premises Eviction Act, 1950, and particularly Section 3 of the same is ultra vires, the Constitution of India because it contravenes the provisions of that. The plaintiffs have, therefore, brought a suit for declaration that the letter determining their lease was wanton, malicious, illegal and for issue of injunction restraining the Defendant No. 1 from evicting them or their tenants.

The defendant contested the suit and urged that neither the Government premises Eviction Act nor Section 3 of the same was ultravires the Constitution of India and that Civil Courts have no jurisdiction to try the suit in view of Section 6 of the Government Premises Eviction Act. Following preliminary issues were framed:—

- 1. Has Civil Court jurisdiction to try the suit?*
- 2. Is Section 3 or any provision of the Government Premises Eviction Act ultra vires the Constitution?*

Today I have heard the counsel for the parties.

Issue No. 2.—On this issue the learned counsel for the plaintiff cited two authorities and those 58 Calcutta

Weekly notes 1066 in which the following observations are made:

"The Government Premises (Eviction) Act, 1950, is ultra vires void as infringing the provisions of Article 19(1)(f) of the Constitution. Under the provisions of the Act, the title of a citizen to property is to be decided upon the subjective satisfaction of the "Competent Authority" who may have no competence whatsoever to decide such a question, and behind the citizen's back, without giving him any opportunity of vindicating his title, and the jurisdiction of the civil court has been barred under the Act. The provisions of the Act constitute a wholly unreasonable restriction on the fundamental right granted to a citizen of acquiring and holding property and as such are void."

The other authority cited was Division Bench Judgment of the Allahabad High Court in *Brigade Commander, Meerut Sub-Area and another v. Shri Ganga Prasad and another* (1). In that also it was held that the whole of the Government Premises Eviction Act was invalid as the same contravened provisions of Article 19(1)(f), Article 31 of the Constitution. The following is the concluding para of that judgment given on page 256:—

"As the Government Premises (Eviction) Act. itself is invalid the notice issued under its provisions must also be held to be invalid. We, therefore, agree with the order of the learned single Judge though for different reasons."

The learned counsel for the Defendant No. 1 on the other hand could not produce even a single direct authority on the point to the effect that the Government Premises Eviction Act, is intera vires the Constitution. Having regard to the rulings of Allahabad and Calcutta High Courts and in the absence of any authority by our own High Court to the contrary I am bound to come to the conclusion that Government Premises Eviction Act is ultra vires the Constitution. This point is very necessary to be determined for the purpose of disposal of this suit because if it is decided in favour of the plaintiff his whole suit might succeed.

(1) 1956 All. Law Journal 251.

So, under Section 113, C.P.C., as amended it is necessary for me to refer the matter to the Hon'ble High Court and in my opinion, it is proper that this matter should be referred.

In fact that learned counsel for the defendant No. 1 Shri Bishambar Dayal, Advocate, and Shri B. D. Bahl, Advocate, for the plaintiff also favoured the reference. Accordingly, I refer for the opinion of the High Court the following matter:—

“Is the Government Premises Eviction Act or any provision thereof ultra vires the Constitution.”

The file of the case should be immediately transmitted to the Hon'ble High Court along with this order of reference.

D. D. CHAWLA and B. D. BAHL, for Petitioner.

C. K. DAPHTARY with JINDRA LAL and I. D. DUA, for Respondents.

ORDER OF THE HIGH COURT

FALSHAW J.—The question whether the Government Premises (Eviction) Act 27 of 1950 is *ultra vires* of the Legislature on the ground that it offends certain principles laid down in the Constitution of India had arisen in a large number of cases pending in this Court, including a number of writ petitions filed under Article 226 of the Constitution as well as in a reference by a Subordinate Judge to the High Court under the provisions of section 113, Civil Procedure Code. Several of these cases, including the reference, have been placed before the Bench for hearing today and we have decided that the best method of dealing with the matter is to answer the question referred to the Court by the Subordinate Judge under section 113, Civil Procedure Code, and to leave the writ petitions to be decided by Single Judges in accordance with the answer given to the question referred to us and any special features which may arise in the individual cases.

The suit in which the reference has been made was filed by two brothers, Satish Chandar and Suresh Chandar, against the Delhi Improvement Trust and certain *pro forma* defendants, who are apparently related to the plaintiffs, on the allegation that some land belonging to the Government situated inside Ajmeri Gate, Delhi, had been leased for 90 years to the predecessor-in-interest of the plaintiffs and *pro forma* defendants for the purpose of building shops and subsequently on a partition among the descendants of Bengali Mal the lease-hold rights had become the exclusive property of the plaintiffs shortly before the suit was instituted, however, the Chairman of the Delhi Improvement Trust acting as a Competent Authority under the Government Premises (Eviction) Act issued a notice under section 3 of the Act calling on the plaintiffs to surrender possession of the land within fifteen days on the ground that the lease had been terminated by the Delhi Improvement Trust which was managing the property. The suit was instituted for a declaration that the notice issued by the Chairman of the Trust as competent authority was invalid and illegal on various grounds one of which was that the Government Premises (Eviction) Act was *ultra vires* as it offended the provisions of the Constitution. At the same time the defendant raised the plea based on section of the Act that the civil Court had no jurisdiction to entertain the suit, and preliminary issues were framed on these two points. The learned Subordinate Judge has only dealt with the question of the validity of the Act, which apparently has already been held to be *ultra vires* by a learned Judge of the Calcutta High Court in the case *Jagu Singh v. Shauket Ali and another* (1), and also by a Division Bench of the Allahabad High Court in the case *Brigade Commander,*

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.
Falschaw, J.

(1) 58 C.W.N. 1066.

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.

Meerut Sub-area and another v. Ganga Prasad and another (1). In the circumstances, with the agreement of the learned counsel for the defendant in the suit, he framed the question—

Falshaw, J.

“Is the Government Premises (Eviction) Act or any provisions thereof *ultra vires* of the Constitution?”

and has referred it to this Court under the provisions of section 113, Civil Procedure Code.

In dealing with the matter it is necessary first to give some description of the impugned Act which begins with the words “Act to provide for the eviction of certain persons from Government Premises and for certain matters connected therewith.” The following abstract from the statement of objects and reasons appears to be relevant :—

“In Bombay and Calcutta there are many cases of unauthorised occupation of accommodation requisitioned/hired/owned by Government. The local military authorities who have sought the assistance of the Provincial Government in securing the eviction of unauthorised occupants have been advised to file ejectment suits. The occupation of these unauthorised occupants extends in many cases to considerable periods and Government has been put to loss in having to pay rent for requisitioned/hired premises without being able to use them or to recover rent. Government has also been advised against acceptance of rent as such acceptance would amount to recognition of tenancy. Eviction by resort to the Civil Court in

which several cases were filed has not yielded results for obvious reasons. In these circumstances the only remedy is legislation to provide Government with powers of eviction of unauthorised occupants corresponding to similar provision made under the Delhi Premises (Requisition and Eviction) Act, 1947."

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.

Falshaw, J.

Section 2 of the Act contains definitions, and section 3 reads—

"Power to evict certain persons from Government premises.—(1) If the competent authority is satisfied—

- (a) that the person authorised to occupy any Government premises has, whether before or after the commencement of this Act,—
 - (i) sub-let, without the permission of the Central Government or of the competent authority, the whole or any part of such premises, or
 - (ii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or
- (b) that any person is in unauthorised occupation of any Government premises, the competent authority may, by notice served by post or otherwise, order that that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.
Falshaw, J.

within fifteen days of the date of the service of the notice.

- (2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may evict that person from, and take possession of, the premises and may for "that purpose use such force as may be necessary."

Section 4 reads—

"Power to recover damages.—(1) Where any person is in unauthorised occupation of any Government premises, the competent authority may, in the prescribed manner, assess such damages on account of the use and occupation of the premises as it may deem fit, and may, by notice served by post or otherwise, order that person to pay the damages within such time as may be specified in the notice.

- (2) If any person refuses or fails to pay the damages within the time specified in the notice, the damages may be recovered as arrears of land revenue:"

Section 5 deals with appeals and reads—

"(1) Any person aggrieved by an order of the competent authority under section 3 or section 4 may, within ten days of the date of the service of the notice under section 3 or section 4, as the case may be, prefer an appeal to the Central Government:

Provided that the Central Government may entertain the appeal after the

expiry of the said period of ten days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.

- (2) On receipt of an appeal under subsection (1), the Central Government may, after calling for a report from the competent authority, and after making such further inquiry, if any, as may be necessary, pass such orders as it thinks fit, and the order of the Central Government shall be final.

Falshaw, J.

* * * * *

Section 6 bars the jurisdiction of Civil Courts in the following terms—

“No order made by the Central Government or the competent authority in the exercise of any power conferred by or under this Act shall be called in question in any Court and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

Section 7 bars suits, prosecution or other legal proceeding against the Central Government or the competent authority in respect of acts done in good faith in pursuance of the Act. Section 8, provides for the delegation of its powers under the Act to a specially empowered officer. Section 9 provides a punishment up to a fine of Rs. 1,000 for contravention of the provisions of the Act or rules or orders made thereunder or obstruction of the lawful exercise of any power, and the

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.

Falshaw, J.

last section No. 10 is the usual section empowering the Central Government to frame rules for carrying out the purposes of the Act.

It is rather surprising to find that although the reasons given by the learned Judges of both the Calcutta and Allahabad High Courts for holding the Act to be *ultra vires* are in substance the same, they have based their decisions on different provisions in the Constitution. The learned Judge of the Calcutta High Court held the Act to be *ultra vires* because it offended against the provisions of Article 19(1) (f) of the Constitution, whereas the learned Judges of the Allahabad High Court found that the Act offended the provisions of Article 14.

Article 14, embodies the principle of equality before the law in the words "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India", and the point taken in the Allahabad decision was briefly that persons occupying Government premises should not be on any worse footing in the way of defending any rights they may possess than persons occupying private premises.

On the other hand Article 19(1) starts with the words "All citizens shall have the right" and item (f) "to acquire, hold and dispose of property". This is subject to the restrictions contained in the 5th part of the Article which reads—

"Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing reasonable restrictions on the exercise of any of

the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe."

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.

The conclusion of Sinha, J., was that the provisions of the Act constitute a wholly unreasonable restriction on the fundamental right granted to a citizen of acquiring and holding property and as such are void.

Falshaw, J.

On the whole it seems to me that in view of the reasons given for arriving at these conclusions, as long as these reasons are sound, the view of Sinha, J., is more correct and it is the provisions of Article 19(1) (f) of the Constitution which are infringed rather than those of Article 14. Indeed the final conclusions of the learned Judges of the Allahabad Court on the latter point expressed towards the end of the judgement are to some extent inconsistent with an earlier passage of the judgement to the following effect :—

"Thus it is obvious that the whole object of the Act was to provide for the eviction of persons who are in unauthorised occupation of Government premises in a speedy and effective manner. The object is laudable and there can be no doubt that the Government does at times stand in need of speedy recovery of possession over its property. This necessity offers an intelligible basis of differentiation between occupants of Government premises and occupants of private premises."

One of the reasons given for invalidating the Act is the definition of "Competent Authority"

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.

Falshaw, J.

contained in section 2 which has not yet been set out. Section 2 (a) reads—

“‘Competent authority’ means any person authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority under this Act for such area as may be specified in the notification.”

It is to be borne in mind that it is the satisfaction of the competent authority which forms the sole basis both of orders to quit issued under section 3 and the fixing and levying of damages under section 4. Both Courts had taken the view that since the competent authority is all-important in these matters, the Act is unreasonable in leaving it open to the Government to choose anybody for appointment as competent authority, whether in fact he possesses the necessary qualification or not for determining the questions of title likely to be involved in issuing orders under section 3. I myself am not sure that this is altogether a valid objection to the Act in that I am of the opinion that there is no presumption that the Government is at all likely to appoint unsuitable persons to be placed in such a responsible position, and in fact it appears to me that there would be a presumption to the opposite effect. In this I derive support from the observations of Kania, C. J., in *Dr. Khare's case* cited in his judgment by Sinha, J,—

“Moreover, this whole argument is based on the assumption that the Provincial Government when making the order will not perform its duty and may abuse the provisions of the section. In my opinion it is improper to start with such an assumption and decide the legality

of an Act on that basis. Abuse of the power given by a law sometimes occurred but the validity of the law cannot be contested because of such an apprehension."

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.

Falshaw, J.

I consider, however, that there is more force in the view expressed in both the judgments that the powers given to the competent officer under the Act are so wide and capable of abuse, and that the protections provided by the Act to the rights of any persons affected by orders passed by the competent authority under sections to be enforced are so inadequate, that the provisions of the Act as a whole amount to interference with the fundamental right of a citizen under Article 19(1) (f) to hold property which is not saved by the provisions of clause (5) of the Article. The only right given to any person affected by such an order is contained in section 5 by way of appeal to the Central Government, which means to an officer appointed by the Central Government in this behalf, and it seems to me that the protection afforded by this so-called appeal is almost illusory. The section gives no right to the persons affected to be heard by the appellate authority, and on this point it is also to be borne in mind that in the first instance the competent officer is empowered to issue orders under sections 3 and 4 on being satisfied that certain conditions exist, and there is no provision in these sections for the issuing of any preliminary notice to show cause to the person affected, who thus at no stage has any right to be heard in his defence. According to section 5 all that the appellate authority has to do is to call for a report from the competent authority, who may naturally be expected to state the case as he himself sees it, and to justify his order, and who is not likely to mention

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.

Falshaw, J.

any fact which the person affected by the order may have to set up in his defence, and then the appellate authority, if it thinks necessary, may hold some further enquiry, but it may not do so. It is obvious that any report submitted by the competent officer to justify his orders is hardly likely to contain any grounds which suggest the necessity of any further enquiry. Finally, in order to bar any loophole by which the person affected by the order might escape, the Legislature has expressly taken away the powers of civil courts to entertain any actions challenging any orders passed under the Act or to issue any injunctions.

It seems to me that the Act as a whole might not be so bad if it were only to be applied in the sort of cases for which, to judge by the passage from the statement of objects and reasons set out above, it seems to have been intended, and if competent officers were only to pass orders under sections 3 and 4 in clear cases of wrongful occupation of premises either owned or requisitioned or leased by the Government for allotment for residential purposes to Government servants by virtue of their occupation. The ordinary way of getting rid of persons in wrongful or unauthorised occupation of premises, or persons who have contravened the terms of their leases by subletting or otherwise, is by proceedings for their ejection under the ordinary law, which generally speaking, at any rate in urban areas, means proceedings under the local Rent Restriction Act. In most of such acts there is already a provision excluding premises which are allotted or leased to employees by their employers as a direct consequence or condition of their employment. Thus the use of an Act allowing Government to adopt summary methods for the

eviction of persons in wrongful occupation of Government residential premises might appear to be legitimate.

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.
Falshaw, J.

The trouble, however, is that the Act is capable of widest possible employment in matters of a wholly different nature to the cases mentioned above. For instance, in the Calcutta case the Act was invoked to get rid of certain hawkers who were alleged to have wrongfully occupied the pavements of the ground-floor of office premises leased by the Government, whereas apparently according to the judgment the hawkers in question had been paying rent for a long period of years. Moreover, the suit from which this reference has arisen is of a different kind from that originally contemplated by the Act if the statement of objects and reasons is correct, since the powers conferred by the Act on the competent officer are being used in this case to terminate an agreement conferring leasehold rights for 90 years for the purpose of building shops, and obviously a person whose leasehold rights are terminated in this way is entitled to more of a hearing than he can possibly get under the provisions of the Act. The question whether the cancellation of the leasehold rights in question is justified is one which requires to be fully thrashed out which obviously can properly be done in a regular trial in a Civil Court.

The learned Solicitor-General has attempted to argue that although section 6, of the Act ostensibly bars the jurisdiction of the Civil Courts, it might not in fact effectually do so, since it might be open to a Civil Court to decide the question whether the premises in dispute were Government premises within the meaning of the Act, and could, therefore, be the subject of orders passed under section 3 or 4 of the Act. This argument

Shri Satish
Chander
and another
v.
Delhi Improve-
ment Trust, etc.
Falshaw, J.

in my opinion sounds extraordinary when it comes from the mouth of the learned Solicitor-General, speaking on behalf of the Government which quite evidently has done its best expressly to bar the jurisdiction of the Civil Courts to question the validity of any order passed under the Act, and it may be recalled, as I stated earlier, that in the very suit from which this reference has arisen the Government has in fact taken the plea that the jurisdiction of the Civil Court to entertain the suit is barred.

In the circumstances my opinion, for generally the same reasons as have been given in the Calcutta and Allahabad cases, is that the Government Premises (Eviction) Act is *ultra vires* as it offends against the fundamental right to property conferred on citizens by Article 19(1) (f) of the Constitution and that it is not saved by the provisions of clause (5) of Article 19. I would accordingly answer the question referred to the Court by the learned Subordinate Judge under section 113, Civil Procedure Code, in the affirmative. Costs in the reference will be costs in the suit. Counsel's fee Rs. 150.

D. K. M.

CIVIL WRIT

Before Bishan Narain J.

THE PUNJAB STATE CLUB, SIMLA,—*Petitioner*

versus

THE MUNICIPAL COMMITTEE, SIMLA,—*Respondent*.

1957

Civil Writ No. 755 of 1957.

Sept., 5th

Punjab Municipal Act (III of 1911)—Section 47(2) and (3)—Provisions of, whether, mandatory—Whether a Municipal Committee can lease out premises without complying with the provisions of section 47(2) and (3)—Whether a