

The next question that arises for consideration is does a validly retrenched workman has not right under the law? Answer is in the affirmative. While a validly retrenched workman in the nature of things cannot as a matter of right seek reinstatement with backwages, Section 25-F of the Act nevertheless does accord a preferential treatment to him for re-employment if after the retrenchment of the workman a vacancy of similar or comparable post occurs in the given industrial establishment.”

(6) The petitioner has admittedly been taken back in service pursuant to the order passed by the Motion Bench on February 22, 1990. He is in service. Consequently he will be entitled to the back wages during the period he was not in service provided he was not gainfully employed anywhere. The writ petition is disposed of accordingly.

S.C.K.

Before G. R. Majithia, J.

INDERJIT BAHAL AND ANOTHER,—*Petitioners.*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 9120 of 1990.*

10th September, 1990.

*Constitution of India, 1950—Arts. 14, 19(1) & (c), 19(4), 19(6), 300-A—Indian Council of World Affairs Ordinance, 1990—Ss. 2, 4 to 11, 15, 23—Societies Registration Act, 1860—Fundamental rights—Indian Council of World Affairs Ordinance—Ordinance incorporating a society into body corporate—Transferring assets of the society to body corporate—Right of membership and holding of office of Society effected—Constitutional validity questioned—Provisions of Ordinance, held, unconstitutional.*

*Held, that the provisions of the Ordinance have placed unreasonable restriction on the petitioners' fundamental right regarding freedom of speech and expression guaranteed by Article 19(1) (a) of the Constitution since the petitioners who are the office bearers of the Indian Council of World Affairs are entitled to*

**Inderjit Bahal and another v. Union of India and others**  
(G. R. Majithia, J.)

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exercise their right enshrined in Article 19(1)(a) of the Constitution by arranging discussion, lectures, exchange of ideas and information. Under the Ordinance, the term of office bearer and the membership of the existing members have been put to an end. The provisions of the Ordinance have deprived the petitioners of their fundamental right of freedom of speech and expression.

(Para 10)

*Held*, further that the assets of the Society have been transferred arbitrarily to the New Council. There is no rational basis for depriving the members of the society of the assets without payment of any compensation. The provisions in so far as it relate to the transfer of the assets of the society to the corporate body constituted under the Ordinance without compensation are concerned, they are arbitrary, unreasonable and capricious. This provision is also discriminatory. This discrimination is not based on any rational basis. So, the provisions of Ordinance clearly violate Article 14 of the Constitution of India.

(Para 16)

*Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may very kindly be pleased to:—*

- (a) *declare the Indian Council of World Affairs Ordinance, 1990 promulgated by the President of June, 30, 1990 ultra virus of Articles 14 and 19 (1) (a) to (c) of the Constitution of India and hence unconstitutional and void;*
- (b) *issue a writ of mandamus or writ in the nature of mandamus commanding the respondents and its officers from not enforcing and giving effect to the provisions of the said Ordinance;*
- (c) *issue a writ of Certiorari quashing the notice dated June, 30, 1990 issued by respondent No. 1 appointing respondent No. 3 as the First Director and Chief Executive Officer of the Indian Council of World Affairs;*
- (d) *exempt the filing of certified copies of Annexures and dispense with the requirement of serving the advance notice upon the respondents;*
- (e) *award the costs of this writ petition to the petitioners.*

*It is further prayed that during the pendency of this writ petition, operation of Annexures P-1 and P-3 may kindly be stayed.*

G. C. Dhuriwala, Advocate, with Nidhi Gupta, Advocate, Harbhagwan Singh and K. K. Cuccaria, Senior Advocates, for the petitioner.

H. S. Brar, Senior Standing Counsel with Manjit Singh, Advocate, for the Respondents.

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**JUDGMENT**

*G. R. Majithia, J.*

(1) The petitioners have challenged the validity of the provisions of the Indian Council of World Affairs Ordinance, 1990, promulgated by the President of India on the ground that the impugned Ordinance is violative of Articles 14(1)(a) and 19(1)(c) of the Constitution of India. Petitioner No. 1 is the President of the Indian Council of World Affairs, Chandigarh Branch and petitioner No. 2 is the National Vice-President of the Indian Council of World Affairs, New Delhi. The petitioners claim that they are Indian Citizens and the impugned Ordinance affects their fundamental rights guaranteed under Articles 14, 19(1)(a) and 19(1)(c) of the Constitution of India.

(2) The brief facts of the case are as follows :—

The Indian Council of World Affairs is a Society registered under the Societies Registration Act, 1860. The Society was registered in the year 1943. The initial members were distinguished persons in public life; like Pt. Jawahar Lal Nehru, Sir Tej Bahadur Sapru, Sir Ardeshir R. Dayal, Sir Maurica Gwyer, Dr. M. R. Jayakar, Mr. Hirday Nath Kunzru, Sir Shri Ram, Mrs. Vijaya Lakshmi Pandit, Mr. S. Shiva Rao, Dr. K. N. Katju, Shri T. T. Krishnamachari, Shri M. R. Masnani, Shri Dev Das Gandhi and others. The object of the Society was to establish independent centre for study and research on national and international problems. The Society was formed as non-official, non-political and non-profit earning organisation. One of the objects laid down in the Bye-laws is as under:—

“Promoting the study of Indian and international questions so as to develop a body of informed opinion of world affairs and India’s relation thereto through study, research, discussion, lectures, exchange of ideas and information etc. with other bodies of India and abroad engaged in similar activities.”

(3) By means of the Ordinance called Indian Council of World Affairs Ordinance, 1990 (for short, the Ordinance), the Indian Council of World Affairs has been declared the institution of national importance and it has been incorporated into a body corporate. Section 2 of the Ordinance declares Indian Council of World Affairs to be an institution of national importance. Section 4

Inderjit Bahal and another v. Union of India and others  
(G. R. Majithia, J.)

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of the Ordinance has constituted Indian Council of World Affairs into a body corporate by the name of the Indian Council of World Affairs. This body shall have perpetual succession and a common seal with power subject to the provisions of this Ordinance, to acquire hold and dispose of property, both movable and immovable and it can sue and be sued. According to section 4 of the Ordinance, all assets and liabilities of existing council i.e. Indian Council of World Affairs registered under the Societies Registration Act, 1860, has been vested in the Indian Council of World Affairs incorporated under section 4 of the Ordinance.

(4) Provisions of section 5 of the Ordinance reads as follows :—

“5(1) On and from the appointed day,—

- (a) all properties and other assets vested in the existing Council immediately before that day, shall vest in the Council;
- (b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Council immediately before that day for or in connection with the purpose of the existing Council, shall be deemed to have been incurred, entered into and engaged to be done, with or for the Council;
- (c) all sums of money due to the existing Council, immediately before that day shall be deemed to be due to the Council;
- (d) all suits and other legal proceedings instituted or which could have been instituted by or against the existing council, immediately before that day, may be continued or instituted by or against the council; and
- (e) every employee holding any office under the existing council immediately before that day, shall on that day, hold his office or service under the Council with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting; and shall

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continue to do so unless and until his employment under the Council is duly terminated or until his remuneration and other conditions of service are duly altered by the Council.

- (2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the absorption of any employee by the Council in its regular service under this section shall not entitle such employee to any compensation under that Act or any other Law and no such claim shall be entertained by any Court, tribunal or other authority."

(5) Section 6 of the Ordinance gives the composition of the Council which reads as follows :—

"6. (1) The Council shall consist of the following members, namely:—

- (a) the Minister for External Affairs of the Central Government, who shall be the President, *ex officio*;
- (b) the Director, *ex officio*;
- (c) four members to be nominated by the Central Government who are distinguished in the field of diplomacy;
- (d) nine members to be nominated by the Central Government from amongst experts in the fields of diplomatic history, international affairs, international law and organisation, global economics, strategic studies and social sciences;
- (e) four members to be nominated by the Central Government who are eminent in public life;
- (f) two members to be nominated by the Central Government from amongst the Vice-Chancellors of Universities;
- (g) two members to be nominated by the Central Government from amongst eminent media persons;

Inderjit Bahal and another *v.* Union of India and others  
(G. R. Majithia, J.)

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(h) four members of Parliament of whom two each from the House of the People and the Council of States to be nominated by the Speaker of the House of the People and the Chairman of the Council of States respectively;

(i) four members to be nominated by the Central Government to represent respectively the ministers of the Central Government dealing with Education, External Affairs, Finance and Science and Technology *ex officio*.

(2) It is hereby declared that the office of the member of the Council shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

(3) A person shall be disqualified for being nominated as a member if he:—

(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government, involves moral turpitude; or

(b) is a discharged insolvent; or

(c) is of unsound mind and stands so declared by a competent Court.”

(6) Section 7 of the Ordinance provides that the term of the office bearers and the member shall be three years from the date of nomination. Section 7(5) of the Ordinance confers powers on the Central Government to remove any member from the Council after giving him an opportunity of being heard. Section 8 of the Ordinance gives the powers of President. Section 9 gives the powers of the Vice-President. Section 10 of the Ordinance relates to the payment of allowances to the members of the Council. Procedure for holding the meeting is laid down in section 11 of the Ordinance. Section 15 of the Ordinance lays down the functions of the Council. Section 23 of the Ordinance confers the rule making powers of the Council.

(7) Written statement has been filed on behalf of the Union of India by M. V. Tuli, Deputy Secretary (Co-ordination), Ministry of

External Affairs, New Delhi. The stand of the Union of India is that the Indian Council of World Affairs has been declared the institution of national importance. The provisions of Ordinance do not violate Articles 14, 19(1)(a) and 19(1)(c) of the Constitution of India.

(8) The principal object of the Indian Council of World Affairs, a Society registered under the Societies Registration Act, 1860, was to promote the study of Indian and International questions so as to develop a body of informed opinion of World Affairs and India's relation thereto through study, research, discussion, lectures, exchange of ideas and information etc. with other bodies in India and abroad engaged in similar activities. It is thus evident that one of the important functions of the Society was to undertake, research, discussion, lectures, exchange of ideas and information. This was possible due to the freedom of speech and discussion conferred on all citizens under Article 19(1)(a) of the Constitution of India. With the issuance of the Ordinance, the office bearers of the existing society have ceased to hold the office. Now the members and the office bearers are nominated by the Government from different sources. The existing members have no say in the working of the Council. It has been contended by the counsel for the petitioners that the fundamental right of the petitioners to exercise freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and to form association of their choice under Article 19(1)(c) of the Constitution have been completely taken away by the promulgation of the Ordinance. The office bearers and members of the Society were performing important public duties in the form of discussion, lectures for the purpose of exchange of ideas and information. By issuing the Ordinance, the fundamental right of the petitioners to express opinion on problems of international affairs has been taken away.

(9) The Apex Court in *Bennet Coleman & Co., v. Union of India* (1), while considering the right of the share holders of the Company and fundamental right under Article 19(1)(a) of the Constitution of India observed thus:—

“A shareholder is entitled to protection of Article 19. That individual right is not lost by reason of the fact that he is a shareholder of the company. *The Bank Nationalisation case* (supra) has established the view that the

**Indrajit Bahal and another v. Union of India and others**  
(G. R. Majithia, J.)

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fundamental rights of shareholders as citizens are not lost when they associate to form a company. When their fundamental rights as shareholders are impaired by State action, their rights as shareholders are protected. The reason is that the shareholders' rights are equally and necessarily affected if the rights of the company are affected. The rights of shareholders with regard to Article 19(1)(a) are projected and manifested by the newspapers owned and controlled by the shareholders through the medium of the Corporation. In the present case, the individual rights of freedom of speech and expression of editors, directors and shareholders are all exercised through their newspapers through which they speak. The press reaches the public through the newspapers. The shareholders speak through their editors. The fact that the companies are the petitioners does not prevent this Court from giving relief to the shareholders, editors, printers who have asked for protection of their fundamental rights by reason of the effect of the law and of the action upon their rights."

(10) In view of the above, it is evident that the petitioners, who are the office bearers of the Indian Council of World Affairs are entitled to exercise their right enshrined in Article 19(1)(a) of the Constitution by arranging discussion, lectures, exchange of ideas and information. Under the Ordinance, the term of office bearer and the membership of the existing members have been put to an end. They have been deprived of their assets. The assets of the Society have been transferred arbitrarily to the New Council. The provisions of the Ordinance have clearly deprived the petitioners of their fundamental right of freedom of speech and expression. This fundamental right can only be regulated on the grounds stated in Article 19(6) of the Constitution. Counsel for the Union of India has not been able to draw my attention to any provisions of Article 19(6) of the Constitution under which the restriction on the fundamental right of the petitioners to the freedom of speech and expression can be justified. I am of the opinion that the provisions of the Ordinance have placed unreasonable restriction on the petitioners' fundamental right regarding freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution.

(11) The petitioners are equally strong on the other ground that the provisions of Ordinance violate their fundamental right to form



association. Article 19 (1)(c) in unrestricted terms confers fundamental right on all citizens to form associations and unions. Admittedly, the petitioners formed a registered society called the Indian Society of World Affairs. This was an association which was formed with the object laid down in the memorandum of association with that object in view, the office bearers of the Association have been arranging discussions, lectures for the purpose of exchange of ideas and information. This association has acquired a very important position in the world affairs. Under the Ordinance, the right of membership of the petitioners to the society has been taken away. Furthermore, all the assets of the society have been transferred to the Council without payment of any compensation. So, it is apparent that the petitioners have been deprived of their fundamental right guaranteed by Article 19(1)(c) to form association. The fundamental right to form association according to Article 19(1)(c) can be regulated only to the extent as laid down in Article 19(4) of the Constitution. Article 19(4) of the Constitution reads as follows :—

“19(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposed or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.”

(12) The counsel for the Union of India has not been able to justify and show under what provision of Article 19(4) of the Constitution, the provisions of the Ordinance can be justified. Admittedly, the Ordinance does not relate to the sovereignty and integrity of India nor does it relate to the public order. The right to form association could only be regulated as laid down in Article 19(4) of the Constitution. The provision of the Ordinance is not covered by any other ground mentioned in Article 19(4) of the Constitution. In addition, the provisions of Ordinance are arbitrary as the right of the petitioners to be the office bearers of the Association as well as the membership has been arbitrarily taken away. The assets of the Society have also been transferred to the Council. On the face of it, the restrictions imposed by the Ordinance deprive the petitioners of their right to continue as office bearers as also the membership of the association. Further association has been deprived of their assets. The Supreme Court in *Smt. Damyanti Naranga v. Union*

Inderjit Bahal and another v. Union of India and others  
(G. R. Majithia, J.)

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of *India*, (2), has considered the provisions of similar Act. Bhagwati, J. speaking for the Constitution Bench observed as under:—

“The right to form an association necessarily implies that the persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law, by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. The Hindi Sahitya Sammelan Act does not merely regulate the administration of the affairs of the original society, what it does is to alter the composition of the society itself. The result of this change in composition is that the members, who voluntarily formed the Association are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The Act, therefore, violates the right of the original members of the Society to form an association guaranteed under Article 19(1)(c). Article 19(4) on the fact of it cannot be called in aid to claim validity for the Act. The alteration of the constitution of the Society in the manner laid down by the Act is not in the interest of the sovereignty and integrity of India or in the interests of public order or morality. Once Section 4 is declared void, the whole Act becomes ineffective inasmuch as the formation of the new Sammelan is the very basis for all the other provisions contained in the Act.”

(13) In the abovesaid case it has been laid down by the Supreme Court that it necessarily implies the right to continue to be associated with the association. It has been further laid down by the Constitution that if the constitution of the society is drastically altered so as to take away the rights of the members to function as

members of the society, it would violate the provisions of Article 19(1)(c) of the Constitution. In this view of the matter, the Supreme Court declared that the provisions of the Hindi Sahitya Sammelan Act, 1962 are violative of Article 19(1)(c) of the Constitution. The provisions of the present Ordinance are more drastic in character. I am of the opinion that this case is fully covered by the law laid down by the Supreme Court in the aforesaid case. The ratio of the above ruling was approved by the Supreme Court in *Asom Rastrabhasha Prachar Samiti & Anr. vs. State of Assam* (3). The constitutional validity of Asom Rashtrabhasha Prachar Samiti (Taking Over Management and Control) Act, 1984 was challenged by Asom Rashtrabhasha Prachar Samiti in the following circumstances:—

“In 1929 Lahore Congress under the leadership of Mahatma Gandhi adopted a resolution for the spread of Hindi as the common language for the whole of India with a view to promote national integrity and in pursuance of this resolution institutions for the spread and prachar of Hindi in the non-Hindi areas were established. First of this kind was established in Madras city in the name of Dakshin Bharat Hindi Prachar Samiti, then in Wardha, for the development and spread of Hindi in the rest of India. Late Baba Raghav Dass a devoted disciple of Gandhiji undertook the task of spreading Hindi in the North Eastern part of India and in 1934 eminent local leaders of this region Late Tarun Ram Phukan, Late Nabin Chandra Bardaloi, Late Gopinath Bardaloi, Late Krishna Nath Sharma, and others joined Baba Raghav Dass and the first institution named Asom Hindi Prachar Samiti was formed on 3rd November, 1938 at Gauhati with Late Gopinath Bardaloi the first Chief Minister of Assam under the 1935 Act as its President. In 1948 Asom Hindi Prachar Samiti was renamed as Assam Rashtrabhasha Prachar Samiti with its head office at Gauhati. The Samiti is registered under the Societies Registration Act, 1860. The Society has membership of over 22,000 persons scattered all over the States and Union territories of North-Eastern part of India. The Samiti has district committees under its control. The Samiti has also two affiliated bodies, namely, Manipur Hindi Prachar Sabha, Imphal and the Asom Rashtrabhasha Sewak Sangh. This Samiti has a sole constitution known as Bidhan which

(3) A.I.R. 1989, S.C. 2126.

Inderjit Bahal and another v. Union of India and others  
(G. R. Majithia, J.)

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is also registered with the Registrar of Societies Assam at Gauhati. This Samiti is a literary body. The Governor of Assam purporting to act under Clause 1 of Article 230 of the Constitution of India promulgated an Ordinance called the Asom Rashtrabhasha Prachar Samiti (taking over of Management and Control) Ordinance. The Ordinance was replaced by Act No. XXIII of 1984. By the provisions of this Act, virtually the Samiti which was a public body constituted by its members having elected Byabasthapila Sabha and Karyapalika were substituted by Board appointed by the Government and all the functions, properties and affairs of the Samiti were taken over by this Board and it is this action taken under the Ordinance and the Act and ultimately the Act which was the subject matter of challenge, the apex Court held thus:

“It is, therefore, clear that so far as the present case is concerned it is not only that the new members are introduced, not only that the complete control is left to the Board to be nominated by the Government, about the persons no norms have been laid down, the person so nominated could be anyone and no control is kept to those who formed the Society, those who had a right to form an association will be kept away and the Society shall be run by group of persons nominated by the Government in accordance with Section 3. It is therefore clear that what was done in the Sammelan Acts which were under examination in the Constitutional Bench judgment referred to above, much more has been done in this case. In this case virtually the right of association has been taken away and not only that it is a sort of deprivation for all times as it is not even provided that this Board may be an interim Board and thereafter a proper Board will be elected but here this Board will continue to control and manage the affairs of the Society. In the Constitutional Bench case their Lordships considered the scope of Art. 19(1)(c) in the context of what was contemplated in that Act and observed :

“The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also

the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Art. 19(1)(c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership either chose by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the association."

"It is therefore, clear that even on the basis of the pronouncement of the Constitution Bench, the Act and the notification issued under this Act taking over the management of the Rastrabhasha Prachar Samiti could not be accepted to be in accordance with the Constitution."

The Supreme Court in this case declared the provisions of Asom Rashtrabhasha Prachar Samiti (Taking over Management and Control) Act, 1984 to be violative of Article 19(1)(c) of the Constitution. Respectfully following the dictum laid down in the above case, I hold that the provisions of the ordinance are violative of Article 19(1)(c) of the Constitution and are, therefore, unconstitutional.

(14) There is another aspect of the matter. Under our Constitution, no person can be deprived of his property without authority of law. This principle is enshrined in Article 300 A of the Constitution of India. Article 300 A reads as follows :—

"No person shall be deprived of his property save by authority of law."

(15) In order to deprive a citizen of his property, it is necessary that there should be a valid law which may confer powers on the

Inderjit Bahal and another v. Union of India and others  
(G. R. Majithia, J.)

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**authority** to take the action. The law under which the authority acts must be a valid law. In other words, the law under which a citizen is deprived of the property must pass the test of Article 14 of the Constitution. The law should not be arbitrary, unreasonable and capricious. It is now well-settled by the series of the decisions of the Supreme Court that if the legislative action of the Government is arbitrary, unreasonable and capricious, it will necessarily result in denial of equality enshrined by Article 14 of the Constitution (See *Maneka Gandhi's case* (4)).

(16) In our system of law, if a citizen is deprived of his property, he is to be provided compensation according to the provisions of Land Acquisition Act. The detailed procedure for acquisition of the property of a person is laid down in Sections 4 and 6 of the Land Acquisition Act. The Act further provides that the compensation should be paid according to the principles laid down in Sections 23 and 24 of the Act. There is no rational basis for depriving the members of the society of the assets without payment of any compensation. The provisions of the Ordinance in so far as it relate to the transfer of the assets of the society to the corporate body constituted under the Ordinance without compensation are concerned, they are **arbitrary, unreasonable and capricious**. This provision is also discriminatory. This discrimination is not based on any rational basis. **When every person deprived** of his property as a result of acquisition is paid compensation according to the principles laid down in Sections 23 and 24 of the Land Acquisition Act, no reason are disclosed why the Society in the present case has been deprived of its assets without payment of any compensation. The provisions of the Act further make a hostile discrimination only against this particular society called Indian Council of World Affairs. So, in my opinion, the provisions of Ordinance clearly violate Article 14 of the Constitution of India.

(17) Learned counsel for the petitioners has also argued that the provisions of Ordinance are beyond the legislative powers of the Parliament. For this argument, reliance is placed on the decision of the Supreme Court in *Smt. Damyanti Naranga's case* (supra). I am in respectful agreement with the view taken by the Supreme Court in the above said case and, therefore, hold that the provisions of the Act are also beyond the legislative competence.

(18) For the aforesaid reasons, the provisions of the Ordinance are declared *ultra vires* the Constitution, beyond the Legislative competence of the Parliament as well as violative of Articles 14, 19(1)(a) and 19(1)(c) of the Constitution of India. Accordingly the writ of mandamus is issued directing the respondents not to execute the Ordinance against the petitioners. All the assets of the Society, if taken over, should be returned to the Society forthwith.

S.C.K.

Before S. S. Sodhi, J.

RAJ KUMAR,—Petitioner.

*versus*

SMT. BIMLA KUMARI AND ANOTHER.—Respondents.

Civil Revision No. 2316 of 1990.

12th November, 1990.

*Code of Civil Procedure, 1908 (V of 1908)—O. 1, rl. 10—Scope of—Court's jurisdiction to implead a party to suit—Claim of plaintiff founded upon family settlement—Applicant seeking to set up will—Introduction of new cause of action—Impleading of applicant, held. unjustified.*

*Held, that the plaintiff is the dominus litis and no person can thus be impleaded as a party whom he opposes. It is only in exceptional cases where the court finds that addition of a party is absolutely necessary to enable it to adjudicate effectively and completely in the matter between the parties that a person is permitted to be added as a party despite the opposition of the plaintiff. Where the claim of the plaintiff is founded upon a Family Settlement, whereas, the respondent seeks to set up a Will, by impleading the respondent as a party, a new cause of action is introduced for the court to adjudicate upon, namely, the validity of the Will set up by the respondent. Such a respondent cannot be impleaded as a party.*

(Paras 5 & 8)

*Petition under Section 115 C.P.C. for revision of the order of the Court of Shri Deepak Gupta, HCS, Sub Judge III Class, Faridabad dated 30th July, 1990 allowing the application. Applicant be impleaded as defendant No. 2. Plaintiff may file fresh plaint, if he wishes, impleading the applicant as defendant No. 2.*

*Claim :—Suit for declaration.*

*Claim in revision:—For reversal of the order of lower court.*

*S. C. Kapoor, Advocate. for the Petitioner.*

*A. P. Bhandari, Advocate, for the Respondent.*