a trespasser who could be thrown out by an executive order and by the use of physical force but has to be dealt with in accordance with the ordinary law if ejectment is to be sought.

(9) In the result, the writ petition is allowed and a writ of mandamus ordered to issue to the respondents directing them not to dispossess the petitioner from the land leased out to him except in accordance with law. There is no order as to costs.

K. S. K.

LETTERS PATENT APPEAL

Before R. S. Narula and H. R. Sodhi; JJ.

RAM CHAND,—*Appellant.*

versus

THE STATE OF HARYANA ETC.,—*Respondents.*

Letters Patent Appeal No. 762 of 1970.

April 15, 1971.

East Punjab Utilization of Lands Act (XXXVIII of 1949 as amended by Act XXIV of 1957)—Section 6—Constitution of India (1950)—Articles 13(2) and 14—Punjab Tenancy Act (XVI of 1887)—Section 77—Section 6 as introduced in Act 38 of 1949 by section 2 of Act 24 of 1957—Whether ultra vires *Articles 13(2) and 14,Constitution of India—Other provisions of Act 24—Whether severable from section 2—Subsequent taking away the alternative remedy as enacted by section 6—Whether validates the section.*

Held, that by section 2 of East Punjab Utilization of Lands Act, 24 of 1957, section 6 has been introduced in the principal Act, East Punjab Utilization of Lands Act, 38 of 1949. This section provided for two alternative remedies for determining a lease granted under the Act. Before the enactment of this section, the Collector had the authority to get a lease determined and to eject a lessee by resort to the ordinary civil proceedings in a revenue Court under section 77 of the Punjab Tenancy Act. Section 6 of the Act as enacted in 1957, further made available to the Collector an alternative and more drastic remedy than the ordinary pre-existing one under section 77 of the Punjab Tenancy Act. Section 6, therefore, is void under Article 13(2) of the Constitution as being violative of the guarantee of equal protection of laws enshrined in Article 14 of the Constitution. (Para 29).

Held, that other provisions of Punjab Utilization of Lands Act, 24 of 1957 are not severable from and cannot stand independent of and apart from section 2 thereof whereby section 6 was inserted in the principal Act, 38 of 1949. (Para 29).

Held, that section 6 is a law enacted after the coming into force of the Constitution. Being a post-Constitution law and having been made in contravention of the express prohibition contained in Article 13(2) of the Constitution was void *ab initio,* still-born and non-existent in the eye of law. The section cannot subsequently be validated by merely taking away from subsequent date the alternative remedy because of the presence of which section 6 suffered from the vice of invidious discrimination. (Para 29).

Letters Patent Appeal under Clause X of the Letters Patent against the order dated 26th November, 1970 passed in Civil Writ No. 1591 of 1970 by the Hon'ble Mr. Justice C. G. Suri.

ANAND SARUP, SENIOR ADVOCATE WITH S. M. ASHRI, AND R. N. NARULA, ADVOCATES, or the appellant.

J. N. KAUSHAL, ADVOCATE-GENERAL (HARYANA) WITH ASHOK BHAN AND C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL (HARYANA), for the respondents.

JUDGMENT

R. S. NARULA, J.—(1) All these five Letters Patent Appeals (Nos. 762 to 765 and 767 of 1970) arise out of common judgment of a learned Single Judge, dated November 26, 1970, whereby five writ petitions of the respective appeallants principally impugning the validity and constitutionality of section 6 of the East Punjab Utilization of Lands Act (38 of 1949) (introduced by section 2 of the East Punjab Utilization of Lands Act, 24 of 1957, into the 1949 Act as amended up to that time) were dismissed. The facts of only one of these cases (L.P.A. 762 of 1970) may be noticed as there is no material difference between those facts and the history of the other four cases so far as the same are relevant for deciding the points argued before us.

(2) The Collector, Karnal, gave ten acres of Banjar land (of which he had taken possession under section 3 of the Act) on lease for twenty years to Ram Chand appellant on August 31, 1954, at the rate of Rs. 3 per acre per annum. This lease was given under section 5 of the Act. Copy of the instrument of lease is Annexure R/1 to the written statement of the respondents. Conditions Nos. 1 and 2 of the lease provided that the rent of the land for the first

year was to be paid by January 25, 1955, and the rent of the subsequent years was payable on the 15th of January each year; the rent of the last two years of the lease being payable in advance. The lessee was not to assign; transfer; mortgage or sublet the land (condition No. 6). The seventh covenant stated that the lessee shall use his land only for the purpose of sowing food and fodder crops and for no other purpose. The lessee was to reclaim and bring under cultivation half of the leased land by May 23, 1955, and the remaining half by February 23, 1956 (condition No. 8). The ninth term of the lease required the lessee to deposit with the Collector at the commencement of the lease a stipulated amount as security for due observance and faithful performance of the condition of the lease. Conditions Nos. 11, 15 and 16 of the lease were in the following terms:—

> "11. In case of any breach by the lessee of any of the conditions to be observed and performed by him; the Collector shall, without prejudice to other rights and remedies, be entitled to determined the lease and to take possession of the land. In that case the lessee shall not be entitled to any compensation.
>
> 15. The lessee shall be subject to all the provisions of the East Punjab Utilization of Lands Act as amended from time to time.
>
> 16. If any question or dispute shall at any time arise between the Collector and the lessee with respect to the meaning or effect of any clause in this deed or the rights or liabilities of the parties thereto, then all such questions or disputes; save insofar as their decision is provided for in the said Act shall be referred to the arbitration of the Commissioner of the Division acting as such as the time of reference, whose decision shall be conclusive and binding on the parties.".

(3) There in no allegation of any complaint against the appellant regarding violation or non-performance of any of the terms of the lease right from 1954 till the end of 1969. According to the appellant, he had in fact paid rent in excess of the amount due from him at the rate of Rs. 3 per acre per annum as only 9½ acres of land had actually been delivered to him after consolidation as against the stipulated area of 10 acres, and he had been paying Rs. 30 per annum. On April 19, 1970, the Patwari Halqa notified to the appellant to show cause to that Collector on the next day, i.e., on

April 20, 1970; as to why his lease should not be cancelled on account of default in payment of Rs. 30 due as advance lease-money for the year 1970. Admittedly no copy of the notice (which the appellant was made to sign in acknowledgment of its contents having been made known to him) was delivered to or left with the appellant. A copy of that notice (Annexure R/2) was, however, produced by the respondents with their return filed before the learned Single Judge. In paragraph 6 of the writ petition it was stated by the appellant that when he appeared in the Court of respondent No. 2 on April 20, 1970, his statement was recorded by Shri Balmukand; Naib Tahsildar, Kaithal, (respondent No. 4),, who was sitting in a room apart from the Court room of respondent No. 2. Appellant claims to have deposed at that time; (i) that the delay in payment had occurred because of the past practice according to which payment before January 15 was not insisted upon in the previous years; (ii) that in fact excess amount had already been paid by him to the Government which was more than the lease-money due for 1970; and (iii) that he was prepared to pay the amount in question immediately. In the corresponding paragraph of the State return, none of the above-mentioned gavernments had been denied except the allegation about the statement of the appellant having been recorded in a separate room. In that connection it was claimed that the statement of the appellant had been written by the Patwari from the dictation of the Collector in Collector's room. It was not denied that only $9\frac{1}{2}$ acres of land had in fact been given to the appellant against ten acres for which he had been paying lease-money. Nor was it denied that in this manner, the appellant had already paid rent in addition to the amount due from him which excess amounted to more than Rs. 20. The allegation of the appellant about his having paid out Rs. 30 in question in spite of the above facts on may 1, 1970, after the date of hearing, i.e., April 20; 1970; is also not in dispute. A copy of the appellant's statement, dated April 20, 1970, has been produced by the respondent's as Annexure R/3 to their return. In paragraph 8 of the written statement, it has been admitted specifically that the appellant had offered to pay the sum of Rs. 30 at that very time when he appeared before the Collector on April 20, 1970. On the same date, i.e., on April 20, 1970; the Collector signed the impugned order (copy Annexure 'A' to the writ petition), the original of which has been shown to us by the learned Advocate-General, and which was on a typed form with blanks filled in manuscript (erroneously described as cyclostyled in the writ petition), determining the lease of the appellant. In that order it has been stated that the land measuring 76 Kanals and 6

Marlas in lieu of the land originally leased to the appellant had been given to him in consolidation proceedings and the rent of the land had to be paid at Rs. 3 per acre per annum. Without entering into the question of the alleged excess amount paid by the appellant and without dealing with the question of the offer made by him to pay the rent there and then, reference was made to the appellant's admission that Rs. 30 were due according to the Government's account, and it was held that the appellant had, therefore, committed breach of the first condition of the lease. It was on that short ground that the lease of the appellant in respect of the land measuring 76 Kanals 6 Marlas was cancelled by the impugned order. The writ petition from which this appeal has arisen was then filed by Ram Chand in this Court praying for the quashing of the order Annexure 'A', and for restraining the respondents from dispossessing the appellant from the land in dispute. Dispossession of the appellant during the pendency of the writ petition was stayed *ad interim* at the time of the admission of the petition, and that stay was subsequently confirmed till the disposal of the case.

(4) The writ petition was contested by the respondents on whose behalf an affidavit of Shri Ram Narain Singh, S.D.O., (Civil)-cum-Collector, Kaithal, was filed accompanied by the annexures to which reference has already been made. Annexure R/4 was attached to the return to show that the Collector, Karnal, had delegated all the powers of the Collector vested in him under the Act to all the Sub-Divisional Officers (Civil) in Karnal district in exercise of the Collector's power of delegation under section 12 of the Act. Certain amendments made to the Act after the filing of the writ petition will be referred to while giving the history of the relevant legislation. By his judgment, dated November 26, 1970, the learned Single Judge dismissed the writ petition. It appears to be necessary to set out at this stage the history of the relevant legislation with which the learned Single Judge had to deal in all these cases.

(5) The principal Act came into force on its publication in the Official Gazette on November 26, 1949. Sub-section (3) of section 1 thereof provided that the Act was to remain in force only for a period of two years from the date of its commencement. "Collector" was defined in section 2(b) to mean the Collector of the district where the land was situate. Section 3 of the Act authorised the Collector to take possession at any time of any land which had

not been cultivated for the previous two or more harvests by serving on the owner of that land a notice to the effect that the Collector had decided to take possession of such land in pursuance of that provision. It is significant to notice from the language of section 3 that the notice required to be issued under that provision was not for the purpose of affording the land-owner an opportunity to show cause why the land should not be taken over by the Collector, but was intended to give only intimation of the Collector's decision to take possession of the land. Section 3(1) of the Act was given overriding effect notwithstanding any law to the contrary. Section 4 entitled the land-owner to receive from the Collector compensation for being kept out of possession of the land under section 3 which compensation was not to be below the prevailing rents of land in the locality for similar land in similar circumstances, and was to be determined in the manner prescribed. Section 5 authorised the Collector to give the land (of which he may take possession under section 3) on lease to any person on such terms and conditions as he may deem fit "for the purpose of growing food and fodder crops." Proviso to section 5 directed that in case of an evacuee land, the period of the lease was not to exceed one harvest at a time, and in the case of non-evacuee land the lease was not to exceed two years. Section 6 of the Act as originally enacted provided as below:—

> "*Termination of lease.*—(1) The Collector, on being satisfied on an application made to him in this behalf that the owner has made arrangements for the cultivation of the land, shall terminate the lease made by him under section 5.
>
> (2) The owner shall be entitled to possession of the land of which the lease has been terminated under sub-section (1) if he refunds to the Collector such proportionate amount of compensation, if any, as was paid to him under section 4 and as the Collector may determine:
>
> Provided that possession of the land shall not be transferred to the owner from the tenant before the crop standing on the land is harvested.
>
> (3) A tenant whose lease is terminated under sub-section (1) shall not be entitled to compensation except such compensation as may be fixed by the Collector for any improvements made by him on the land leased to him under this Act."

Section 7 then stated that where any land taken possession of by the Collector is on the expiry of the lease or its earlier termination to be returned to the owner, the Collector may specify in writing the person to whom possession of the land has to be given. Section 8 provided a penalty for failure of the tenant to grow food or fodder crops in the following words:—

> "Where the tenant fails to grow food or fodder crops on the land leased to him, he shall besides the payment of rent fixed under section 5 be also liable to pay a penalty not exceeding twice such rent."

Section 11 empowered the Collector to take or cause to be taken such steps and to use or cause to be used such force as may in his opinion be reasonably necessary for securing compliance with any order made by him under the Act. Section 12 authorised the Collector to delegate all or any of his powers and functions under the Act to any officer of the Revenue or Rehabilitation Department in his district either by name or designation. Section 13 states that notwithstanding anything contained in any law for the time being in force, no instrumnet in writing to give effect to a lease by the Collector under the act. shall require stamp, attestation or registration. Section 14 makes the decision of the Collector on any matter, on which he is empowered to give a decision under the Act, to be final and conclusive, and immune against an attack in any Court or before any officer or authority. Suits, prosecutions, and other legal proceedings in respect of anything done in good faith by any person under the Act are barred by section 15. Section 16 authorises the Provincial Government to make rules for carrying out the purposes of the Act.

(6) The objects of enacting the 1949 Act are contained in the following statement of the Minister-in-Charge, dated October 15, 1949, made at the time of introduction of the East Punjab Bill No. 39 of 1949, which ultimately became the 1949 Act:—

> "It has been brought to the notice of Government that large tracts of fertile land might remain uncultivated due to the negligence or absence of displaced or local landlords. Government policy is not to leave an inch of cultivable land unsown as far as possible. Self-sufficiency in the matter of food was to be attained by the end of 1951, but

this date has now been pre-dated by the Prime Minister of India as the end of 1950. It is really lamentable that lands should be allowed to remain uncultivated in East Punjab which is a deficit province. If timely action is not taken, a large portion of the population will have to starve after 1950, when it is proposed to stop all imports of foodgrains from abroad. Government has tried its best to persuade such landlords, but still there is a likelihood of large tracts of fertile and cultivated lands remaining unsown during Rabi, 1949-50. The Bill is, therefore, aimed at bringing all available lands in the East Punjab under fodder and foodgrain crops in order to attain self-sufficiency in the matter of food." (Published on page 1130 of the East Punjab Government Gazette, Extraordinary, dated October 18, 1949).

(7) In exercise of the rule-making power of the State Government, the Punjab Utilization of Lands Rules, 1950, were made and issued by the Punjab Government on February 20, 1950. None of the rules as then framed is relevant for our purposes. The original Act which was to remain in force only for two years would have come to an end by efflux of time on November 25, 1951. Before that, however, the East Punjab Utilization of Lands (Amendment) Act (11 of 1951) was published and came into force. The 1951 Act changed the whole scheme of the principal Act. Sub-section (3) of section 1 which had fixed the life of the original Act at two years was omitted by section 2 of the amending Act. The basis and procedure for taking over the land prescribed in section 3 were radically changed. In sub-section (1) of section 3 of the principal Act, for the words "two or more harvests by serving on the owner a notice to the effect that he has decided to take possession of such land in pursuance of this section "were substituted the words" six or more harvests after serving on the owner a notice that, it he does not cultivate the land within such reasonable period as may be specified in the notice, the Collector may take possession of such land for the purposes of this Act." This change necessitated the serving of a show-cause notice on the landowner before taking over his land. It further empowered the landowner to successfully resist being dispossessed of the land if he could convince the Collector that he was prepared to cultivate the land within the reasonable period specified in the notice. The method of quantification of the compensation to be paid to the landowner was also changed.

Sub-section (1) of section 4 of the principal Act was substituted by the following provision:—

> "Where possession of any land is taken under the preceding section (section 3), there shall be paid compensation, the amount of which shall be assessed by the Collector, so far as practicable, in accordance with the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, as amended in its application to the State and the rules made thereunder."

Section 5 was amended so as to provide that the period of lease to be granted under the amended Act was not to be for less than seven years or more than twenty years. One of the most significant changes brought about by the 1951 Act was that section 6 of the principal Act which authorised the Collector to cancel or terminate a lease was completely omitted by section 6 of the amending Act. Consequently, the words "or its earlier termination" were omitted from section 7 of the principal Act. Similarly section 9 (which provided for penalty for failure of the owner to cultivate the land) was omitted. The statement of objects and reasons of the amending Act of 1951, was given by the Minister-in-Charge at the time of introduction into the Legislature of Punjab Bill No. 7 of 1951 (published in the Punjab Government Gazette, Extraordinary, dated February 22, 1951), in the following words:—

> "It has been brought to the notice of Government that the short period of two years of lease stood in the way of the effective enforcement of the Act, as no cultivator agreed to take land for such a short period. It has been considered necessary that the lease period should at least be eight years for both the evacuee and non-evacuee land and the power of termination of lease should also be withdrawn from the Deputy Commissioners. The Bill is, therefore, aimed at making enforcement of the Act effective so that all available land in the Punjab is brought under fodder and foodgrains crops in order to attain self-sufficiency in the matter of food."

The most significant part of the above-quoted statement of the objects and reasons of the amending Act was the intention of the Legislature to withdraw from the Deputy Commissioner (the Collector) the power of temination of the lease. This intention was

reflected in omitting section 6 of the principal Act after the coming into force of the above-quoted amendment.

(8) The next amendment to the principal Act was made by the East Punjab Utilization of Lands (Amendment) Act (32 of 1953). The change made in section 4 of the principal Act by the said amendment so as to authorise the Collector to deduct from the compensation payable to the landowner amounts of expenditure incurred by him in relation to any preliminary process incidental to the utilization of the land etc., is not relevant for our purposes. Similarly some other changes were also brought about in the principal Act by the East Punjab Utilization of Lands (Amendment) Act, 1956 (Punjab Act No. 39 of 1956). That amending Act was passed with a view to eliminate the provision of the issue of notice to the landowner in case of landowner had been wrongfully shown in the revenue records to have cultivated the land which in fact had remained uncultivated for the previous six or more harvests; and secondly to vest the Commissioners with powers to send for the records *suo motu* or on an application made to them and after examining the record, to amend, modify or cancel the order made by the Collector. These objects are mentioned in the statement of objects and reasons published in the Punjab Gazette, Extraordinary, dated August 21, 1956. These objects were achieved by substituting new sub-section (1) of section 3 in place of the corresponding provision in the principal Act; and by substituting a new sub-section (1) of section 14 of the 1949 Act. I am, therefore, ignoring for the present the amendments made by the 1953 and the 1956 amending Acts.

(9) As the law on the subject stood in 1952, there was no provision in the Act authorising the Collector to determine any lease, as original section 6 of the Act was omitted by the 1951 amending Act. When the law on the subject was in that state, the Collector, Karnal, by his order, dated September 9, 1952, cancelled the lease of one Ladli Pershad Jaiswal, and directed that possession of the land which had been given to him under section 5 of the Act be taken back from him, on the ground that he had failed to comply with the conditions of the lease, inasmuch as he had not paid the rent of the land before the 15th of January, 1952. Ladli Pershad Jaiswal filed a writ petition in this Court which was dismissed by a learned Single Judge. While allowing the Letters Patent Appeal against that judgment, it was held by a Division Bench of this Court (Bhandari, C.J., and Bishan Narain, J.); in *Shri Ladli Pershad*

Jaiswal v. *The Collector, Karnal* (1), that it was not within the competence of the Collector to determine whether the conditions of the lease granted under section 5 of the Act had or had not been violated, that if the Collector was of the opinion that the lessee had committed a breach of the terms of the contract, it was open to him to pursue such remedies under the ordinary law as he thought fit or proper, but he could not himself cancel the lease. It was in that context that it was observed that the provisions of sections 8 and 10 of the Act appear to militate against the contention that the Collector was at liberty to cancel a lease without the intervention of an independent judicial tribunal, and that the Collector could not be a Judge in his own cause and could not direct the lessee to be thrown out of the land by use of force.

(10) All the learned counsel appearing before us were agreed on the point that the ordinary legal remedy which could be available to the Collector for ejecting the lessee in case of violation of any terms of the lease could only be a proceeding under section 77 of the Tenancy Act before a revenue Court and no other. After the announcement of the above-mentioned judgment of this Court, the Government appears to have realised that there was no provision in the Act which empowered the Collector to terminate the lease, The State Legislature, therefore, sought to amend the principal Act so as to give a specific power to the Collector to enforce the conditions of clause 11 of such lease-deeds. (Clause 11 of the lease-deed has already been quoted by me in an earlier part of this judgment). With that object in view (as contained in the statement of objects and reasons published in the Punjab Gazette, Extraordinary, dated May 21, 1957), a new provision was enacted by section 2 of the East Punjab Utilization of Lands (Amendment) Act (24 of 1957), and inserted as section 6 in the principal Act in the following terms:—

> "(1) If a person to whom land has been leased under section 5 commits a breach of any of the terms and conditions thereof, the Collector shall, without prejudice to any other right or remedy against him, have the power to determine the lease and take possession of the land.
>
> (2) Where lease has been determined by the Collector the lessee shall not be entitled to any compensation."

(1) 1956 P.L.R. 548.

(11) The next amendment to the Act was made by substituting a new provision in place of the previous section 14 in the principal Act by section 2 of the East Punjab Utilization of Lands (Amendment) Act (1 of 1960), which conferred on any person aggrieved by an order passed by the Collector a right of preferring an appeal against the same to the Commissioner and conferred on the Commissioner the power to hear and decide an appeal, and further permitted the State Government or the Financial Commissioner authorised by the State Government in that behalf to examine the records of any case pending before or disposed of by any officer, and to pass such order in reference thereto as the State Government or the Financial Commissioner may deem fit. Sub-section (5) of the new section 14 provided that no order made or action taken in exercise of any power conferred by the Act would be called into question in any Court or before any officer or authority. This was the state of law when the writ petitions from which the present appeals have arisen were filed in this Court in May, 1970. After the service of notices of the writ petitions on the respondents, it appears to have been realised that objection to the constitutionality of new section 6 may be taken by lessees on the ground that the power to determine leases vesting in the Collector by that provision was not exclusive, but had on the contrary been stated to have been conferred "without prejudice to any other right or remedy" against the lessees, and there was no provision in the Act giving any guidance to the Collector as to the case in which he may resort to the more drastic remedy under the Act, and others in which he may initiate normal ejectment proceedings before the ordinary Courts of law, and, therefore, section 6 was void as offending Article 14 of the Constitution. In an attempt to avoid an attack of that type on the validity of section 6, the last amendment was made in the Act by the promulgation on September 18, 1970, of the East Punjab Utilization of Lands (Haryana Amendment) Ordinance, 1970, by the Governor of Haryana. Sub-section (2) of section 1 of the Ordinance gave retrospective effect to its provisions with effect from January 1, 1968. A new provision was inserted as section 14-A into the principal Act by section 2 of the Ordinance. It stated that no civil Court shall have jurisdiction to entertain any suit or proceedings in respect of the eviction of any person to whom the land had been leased under section 5. While subsequently replacing the Ordinance by the East Punjab Utilization of Lands (Haryana Amendment) Act (1 of 1970), the phraseology of the section was

further changed and section 14-A then emerged in the following language:—

> "*Bar of jurisdiction.*—No civil or revenue Court shall have jurisdiction to entertain any suit or proceedings in respect of the eviction of any person to whom land has been leased under section 5."

Retrospective effect was given to the above-quoted provision with effect from the first day of January, 1968, and Ordinance 8 of 1970 was repealed.

(12) Before the learned Single Judge it was argued that section 6 introduced into the principal Act in 1957, was a "Law" within the meaning of sub-clause (a) of clause (3) of Article 13 of the Constitution, and was hit by clause (2) of that Article as it was enacted after the coming into force of the Constitution, and contravened the rights conferred on the appellants by Article 14 of the Constitution, inasmuch as the said law neither expressly nor impliedly took away the pre-existing right of the Collector to eject the lessees by recourse to a suit for ejectment, and the special law now enacted provided a more drastic remedy prejudicial to the lessees as compared with the ordinary remedy under the Tenancy Act, discrimination had resulted against the lessees as section 6 had left it to the arbitrary will of the Collector to resort to the more prejudicial procedure against the lessees in any case or cases and the Act did not contain any guidance for adopting one or the other of the two alternative remedies in any given case. It seems to have been next contended that the law in question was still-born, and no life could, therefore, be infused into the Act by the subsequent amendments made by the Haryana Amending Ordinance of 1970, and the Haryana Amending Act of 1971. After referring to the various decisions of the Supreme Court and other High Courts, the learned Single Judge held, while dismissing the writ petitions on November 26, 1970, that the doctrine of eclipse and revival which applied only in cases of pre-Constitution laws under Article 13(1), had no application to post-Constitution laws, the validity of which can be questioned under Article 13(2). The learned Judge observed that according to the doctrine of eclipse and revival, a still-born measure never breathed any fresh air, and was incapable of being revived as it had never come to life, but the same could not be true of a measure that was in good health when it came into being. The doctrine of eclipse and revival was, however, applied to section 6

on the finding that the said provision had become a part and parcel of the principal Act which was a pre-Constitution piece of legislation, and inasmuch as the insertion of section 14-A by the Haryana amendment had taken away with retrospective effect from a date prior to the passing of the impugned order the alternative remedy available to the Collector, and had left the Collector with the exclusive special remedy under the impugned provision, the validity of section 6 which had been eclipsed at the time of its enactment was resuscitated when that eclipse was removed by the Haryana amendment. In the alternative it was held that even without the subsequent amendments sectoin 6 was not unconstitutional as it seemed to create a jurisdiction of an exclusive type in the Collector which was far different from the general remedies in the civil or revenue Courts, and the creation of such exclusive jurisdiction seemed to create an implied if not an express bar to the exercise of jurisdiction by the Civil or Revenue Courts. In that view of the matter, it appeared to the learned Single Judge to be doubtful whether it had at all been necessary for the Legislature to insert section 14-A in the Act. The argument advanced on behalf of the writ-petitioners to the effect that section 6 was unconstitutional for the additional reason that it conferred on the Collector unbridled or unfettered power to determine the lease of a lessee under the Act at any time was repelled. The further argument to the effect that the alleged breaches of the terms and conditions of the leases were flimsy and, even if they had existed, there was no justification for the sudden and premature termination of the leases when almost the entire period of leases was about to run out, was not entertained on the ground that pleas of this type could be taken by the appellants before the Commissioner or the Financial Commissioner, and that in fact relief had been granted to some other lessees on those grounds by the Financial Commissioner in view of the policy of the Government to help the tillers of the soil in *Wadhawa Singh etc.* v. *The State of Haryana* (2). The learned Judge observed that all these cases showed that the writ-petitioners had every hope of securing the necessary relief if they had adopted the statutory remedies under the Act which were available to them. The contention about the Collector having acted as a Judge in his own cause was also negatived on the ground that the prohibition based on that maxim did not apply to an authority discharging official functions in a manner authorised by a statute. The impuged orders

(2) 1970 L.L.J. (Revenue Rulings) 43.

having been passed by merely filling in blanks in typed or cyclo-styled forms was justified on the ground that the Collector had to deal with a large number of cases of the same type in his official capacity. The objection as to respondent No. 2 not being the Collector of the district as required by clause (b) of section 2 of the Act was repelled on account of the delegation of the Collector's functions under section 12 of the Act to the Sub-Divisional Officer.

(13) The common question of law that has at the outset been argued by counsel for the appellants as well as by different counsel appearing in a large number of writ petitions which were heard by us along with these appeals relates to the constitutionality of section 6. Mr. Anand Sarup, who led the arguments in this connection submitted that the 1957 Act, the principal provision of which is the newly enacted section 6, was void *ab initio* as it was hit by Article 13(2) of the Constitution inasmuch as the said provision contravened and was repugnant to Article 14 as it provided for two alternative remedies for determining a lease granted under section 5, and for directing eviction of the tenant, one of which remedies is more drastic and more onerous than the other without providing any guidance as to the cases in which one or the other remedy should be followed, leaving it to the arbitrary and sweet will of the Collector to pursue the more drastic or less drastic remedy in any given case. The first point which calls for decision for disposing of this argument is whether the 1957 Act and for the matter of that section 6 introduced into the principal Act in 1957, is a pre-Constitution law as held by the learned Single Judge, or a post-Constitution law so as to attract the provisions of Article 13(2). Even the learned Advocate-General for the State of Haryana, who appeared for the respondents, was not able to support the findings of the learned Single Judge in this connection. As held by the earlier Division Bench of this Court in *Ladli Pershad Jaiswal's case* (1) (supra), there was no provision at all in the pre-Constitution Act corresponding to the present section 6. The original section 6 was an entirely different kind of provision. Even that had been deleted and omitted from the Act by the amending Act of 1951. The 1957 Act did practically nothing except to enact section 6. If section 6 is found to be invalid, the whole of the East Punjab Utilization of Lands (Amendment) Act (24 of 1957) has to be struck down. The said 1957 Act and section 6 introduced thereby into the principal Act amounted in my opinion, to a law within the meaning of Article 13(3)(a) of the Constitution. This law (section 6) is not comprised

of various parts which may be severable, but consists of a single indivisible complete provision. I have, therefore, no hesitation in holding that this is a post-Constitution law, the validity of which has to be judged in regard to its inconsistency, if any, with any fundamental right under clause (2) of Article 13.

(14) The second question which follows is whether before the enactment of the impugned provision any remedy for determining a lease (given under section 5) before its expiry by efflux of time existed or not. The decision of the Division Bench in *Ladli Pershad Jaiswal's case* (1), on that point is not only binding on us, but appears to us to be unexceptionable. There having been no provision in the Act for determining a lease given thereunder, the only remedy available to the Collector in case of violation of any of the vital conditions of the lease was to have resort to proceedings in a revenue Court under section 77 of the Punjab Tenancy Act. Was that right or remedy of the Collector then taken away by section 6? Obviously no part of section 6 has even purported to expressly take away that pre-existing remedy for determing the leases. Has the remedy by way of resort to section 77 of the Tenancy Act, then been impliedly excluded by anything contained in section 6? My answer to that question is also in the negative. Lengthy arguments were addressed before us by Mr. Jagan Nath Kaushal to the effect that the words "without prejudice to any other right or remedy" in section 6 did not refer to the remedy under section 77 of the Tenancy Act, but referred to the right of the Collector to charge double rent as penalty under section 8 of the Act and the remedy under secton 10 to enforce its payment. We are unable to agree with that contention. The *non-obstante* clause is not of a restricted nature. The right conferred on the Collector by section 6 is to determine the lease and to take possession of the land. The remedy which is sought to be not prejudiced by the new provision is not only in respect of any other right under the Act, but in respect of all the remedies available to the Collector before the enactment of section 6 including the remedy of resorting to proceedings for ejectment in the revenue Court. Had the contention of the Advocate-General been correct, the words "right" and "remedy" would have been joined by the word "and" and not "or". It could then be contended that the exclusion is intended to refer to any right other than the right to determine the lease or to take possession of the land and the remedy referred to in the provision is also confined to such civil

rights only. But the word "or" used to join the two words show that the Legislature clearly intended to convey that the conferment of the new powers on the Collector would not take away from him either any of the earlier rights of the Collector or any of the previous remedies available to him against the lessees before the enactment of the impugned provision. On behalf of the State it was contended by Mr. Kaushal that the imperative language used in section 6 necessarily excluded and impliedly repealed any other remedy available to the Collector for determining a lease or taking possession from a lessee. Great emphasis was laid by Mr. Kaushal, on the expression "shall have the power". Learned counsel contended that the use of the word "shall" denoted that the impugned provision enjoined on the Collector a duty to resort to the exclusive remedy provided by section 6. I regret my inability to agree with this contention. The section does not even say that the Collector shall proceed under the section. It only empowers the Collector to take action under that provision. He is not bound to do so. Nothing in the section compels the Collector to take action thereunder, and no part of the provision appears to me to take away the Collector's pre-existing right and remedy to proceed against the tenant under the normal law. It was argued that the special provision made by the impugned Act impliedly repealed the general provision relating to the law of ejectment of lessees insofar as the leases covered by the impugned Act are concerned. Such an argument was expressly repelled by J. M. Shelat, J., in the majority judgment of the Supreme Court in the *case of Northern India Caterers (Private) Ltd.* (3). To borrow the language of the learned Judge from that case, it is clear that the latter enactment being only in affirmative terms without any negative, it does not impliedly repeal the earlier law. Again to use the language of Shelat, J. "the impugned Act is neither in negative terms nor any such terms which result in negativing the right of the Government as a landlord to sue for eviction under the ordinary law. Nor is it possible to say that the co-existence of the two sets of provisions relating to eviction lead to inconvenience or absurdity which the legislature would be presumed not to have intended." On the contrary the historical back-ground and the express language used in the impugned provision shows that the Legislature intended to provide an alernative and speedier remedy to the Collector than the one by

(3) A.I.R. 1967 S.C. 1581.

way of suit before a revenue Court under the ordinary law. The distinction sought to be drawn by Mr. Kaushal between the *case of Northern India Caterers (Private) Ltd.* (3), and the present appeals on the ground that whereas the Collector had the option to resort to one or the other remedy in the case before the Supreme Court, the Collector has no such option in the present cases, has in these circumstances no basis whatever. We, therefore, hold that the pre-existing remedy of ejectment of a tenant under section 77 of the Tenancy Act was expressly preserved by conferring the power under section 6 on the Collector "without prejudice" to his previous remedies available against the lessees. Alternatively even if the phrase in question is not deemed to refer to the remedy under section 77 of the tenancy Act, then for the purpose of construing the section from the point of view I am discussing, we have to omit from consideration the words "without prejudice to any other right or remedy against him." If those words in the section are not read, there still remains nothing in the section from which any exclusion of the pre-existing remedy against the lessee could be inferred. The historical back-ground of the provision showing that it was enacted in terms of clause 11 of the lease-deed in the wake of the decision of the Division Bench in *Ladli Pershad Jaiswal's case* (1), and the subsequent promulgation of the Haryana Ordinance and the Haryana Amending Act showing that the Legislature itself felt the necessity of subsequently excluding the alternative remedies available to the Collector, leaves no doubt in my mind that the impugned provision merely provided a permissive remedy and not an exclusive one. From whichever of the two angles, therefore, the section is construed, there is no doubt that after the enactment of the impugned provision, the Collector had the discretion to resort to either the newly conferred power or to his previous authority to proceed against the lessee in a revenue Court.

(15) A somewhat half-hearted argument was advanced by the learned Advocate-General to suggest that the remedy under section 6 of the Act is in no way more drastic than the normal proceedings in the revenue Court under section 77 of the Punjab Tenancy Act. There is no force whatever in this submission. A suit by a landlord to eject a tenant is specifically mentioned in sub-clause (e) (under the second group) of clause (2) of sub-section (3) of section 77. Grounds for ejectment of a tenant for a fixed term are enumerated in section 40 of that Act. Clause (1) of that section states

that a landlord may claim ejectment on any ground which would justify ejectment under the contract. That provisions of section 40 are subject to section 42 which states that a tenant shall not be ejected otherwise then in execution of a decree for ejectment when a decree for arrears of rent in respect of his tenancy has been passed against him "and remains unsatisfied." Section 47 prohibits the execution of an order for ejectment under the Tenancy Act at any other time than between the first day of May and the 15th day of June, unless the order of ejectment otherwise provides. Again section 48 expressly authorises a revenue Court to grant relief against forfeiture in case of a claim for ejectment for non-payment of rent. Question of service of notice of ejectment also arises in the course of normal ejectment proceedings. No such express provisions have been made in section 6 of the Act. The cases before us show that according to the literal construction of the provision, a lease for twenty years could be determined overnight by just serving a notice on the lessee on the previous evening and passing an order terminating his lease the next morning even if he offered to pay the arrears of rent cash down. In the face of this and other distinctive features, it cannot, in our opinion, be successfully argued that the special remedy under the impugned provision is not more drastic than the ordinary remedy under section 77 of the Tenancy Act. The learned Advocate-General submitted that the remedy under the Act is not drastic as (i) the lessee has under that procedure full opportunity of being heard, and of producing his evidence, (ii) the lessee is entitled to prefer an appeal against the decision of the Collector, can go up in revision to the Financial Commissioner and then go to the High Court in a writ petition, and, therefore, a lessee faced with proceedings under section 6 of the Act cannot be said to have been denied the equal protection of the laws, merely because the Collector has the option of proceeding against him either by way of a suit before a revenue Court or under the Act. It was further contended that the lessee did not have the right to dictate to the Collector as to which of the two available procedures he should follow in case of violation of any condition of the lease. Suffice it to say that these are the precise arguments which appealed to Bachawat, J., in the course of the minority view expressed by the learned Judge on behalf of himself and Hidayatullah, J. in *Northern India Caterers (Private) Ltd. and another* v: *State of Punjab and another* (3), on the basis of which

the learned Judges did not agree with the majority view expressed in that case. These arguments cannot, therefore, be accepted, as they were rejected by the majority of the Judges in the case of Northern India Caterers (Private) Ltd.(3).

(16) Once it is held, as we have found, that the impugned provision is a post-Constitution law and confers on the Collector an absolute discretion in the matter of deciding which of the two alternative remedies one more drastic than the other—he may adopt in a particular case to eject a tenant, it appears to us to have been concluded by their Lordships of the Supreme Court in a series of cases that such a provision is void under Article 13(2) of the Constitution as being hit by Article 14. There is admittedly no indication in any provision of the Act and the rules framed thereunder as to the cases in which the Collector may choose one remedy or the other. Ignoring for the time being the amending Ordinance and the amending Act, we have first to decide whether section 6 of the Act when enacted in 1957 was or was not unconstitutional. In the *case of Northern India Caterers (Private) Ltd.* (3), it was held that the choice of the Collector to decide in which cases he should follow the special procedure for the eviction of an unauthorised occupant of Government premises and in which cases he should resort to the ordinary procedure of a civil suit to take possession from a trespasser not having been guided by any provision in the Act, section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959) was discriminatory and violative of Article 14 of the Constitution on the authority of the earlier judgment of the Supreme Court in the *State of West Bengal* v. *Anwar Ali Sarkar and another* (4). Their Lordships observed that discrimination would result in every case where there are two available procedures, one more drastic or prejudicial to the party concerned than the other, which may be applied at the arbitrary will of the authority. In that connection it was held:—

> "If the ordinary law of the land and the special law provide two different and alternative procedures, one more prejudicial than the other, discrimination must result if it is left to the will of the authority to exercise the more prejudicial against some and not against the rest. A person who is proceeded against under the more

(4) A.I.R. 1952 S.C. 75.

drastic procedure is bound to complain as to why the drastic procedure is exercised against him and not against the others, even though those others are similarly circumstanced."

It was further held:—

"There can be no doubt that section 5 confers an additional remedy over and above the remedy by way of suit and that by providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic procedure under section 5, that section has lent itself open to the charge of discrimination and as being violative of Article 14. In this view section 5 must be declared to be void."

The basic law in this respect had been laid down by their Lordships of the Supreme Court in *Shri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar and others* (5), wherein it was held that where a statute does not make any classification of persons for the purpose of applying its provisions, but leaves it to the discretion of the Government to select and classify persons to whom its provisions are to apply, and if such a statute does not lay down any principle or policy for the guidance of the exercise of the discretion by the Government in the matter of the selection or classification, such a statute must be struck down on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons similarly situate, and that, in such a case discrimination is inherent in the statute itself.

(17) The counsel for the lessees next referred to the judgment of the Full Bench of the Allahabad High Court in *Ram Gopal Gupta* v. *Assistant Housing Commissioner and others* (6), wherein the vires of section 21(1) of the Uttar Pradesh Industrial Housing Act (U.P. Act No. 23 of 1955) had been questioned on similar grounds on which section 5 of the Punjab Act had been struck down by the Supreme Court in the *case of Northern India Caterers*

(5) A.I.R. 1958 S.C. 538.
(6) A.I.R. 1969 All. 278.

(*Private*), *Ltd.* (3) (supra). In that case it was held that the constitutional right to equality extends also to procedural matters which safeguard substantial rights. Two ways were available to the Housing Commissioner in Uttar Pradesh to evict an allottee. He could file a civil suit for eviction or could evict the allottee himself by following the summary procedure prescribed in section 21 of the U.P. Act. It was held that the Act gave the Housing Commissioner no guidance as to the cases in which he should follow the summary procedure, which was from the allottee's point of view more drastic than a civil suit, and that, therefore, section 21 contravened Article 14 of the Constitution, and was void as it permitted discrimination between allottees.

(18) The last case cited on this subject was the Division Bench judgment of the High Court of Delhi (Himachal Bench at Simla) in *Raja Sahib of Nalagarh* v. *The Punjab State and others* (7). on the basis of the reasoning adopted by the Supreme Court in the *case of Northern India Caterers* (*Private*), *Ltd.* (3), it was held that section 7(2) of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959) was also violative of the guarantee of the equal protection of laws. It appears to me to be wholly unnecessary to multiply authorities on this subject. In view of the findings already recorded by me, I would, therefore, hold that section 6 of the Act was enacted in 1957 in contravention of clause (2) of Article 13 of the Constitution, and the whole of that provision was, therefore, void.

19. This takes me to the last point relating to the constitutionality of section 6 on which both sides argued at great length. Whereas it was contended on behalf of the appellants that in view of the judgments of the Supreme Court in *Keshavan Madhava Menon* v. *The State of Bombay* (8), *Saghir Ahmad and another* v. *State of U.P. and others* (9), *Behram Khurshid Pesikaka* v. *State of Bombay* (10), *Bhikkaji Narain Dhakras and others* v. *State of Madhya Pradesh and another* (11), *Deep Chand* v. *The State of Uttar Pradesh and others* (12), *Mahendra Lal Jaini* v. *State of Uttar Pradesh and others*

(7) A.I.R. 1969 Delhi 194.
(8) A.I.R. 1951 S.C. 128.
(9) A.I.R. 1954 S.C. 728.
(10) A.I.R. 1955 S.C. 123.
(11) A.I.R. 1955 S.C. 781.
(12) A.I.R. 1959 S.C. 648.

(13), and in the *case of Northern India Ceterers (Private), Ltd.* (3), (supra), and the judgment of the Delhi High Court in *P. L. Mehra, etc.* v. *D. R. Khanna, etc.* (14), no amount of amendment of section 6 could validate the provision as nothing existed in the eye of law which could be subsequently validated, it was contended on behalf of the State that the old conception of difference between cases of eclipse and cases of still-born statutes, i.e., the theory of difference between cases covered by clause (1) on the one hand and clause (2) of Article 13 on the other, no more holds the field after the decisions of the Supreme Court in *Messrs Devi Das Gopal Krishanan, etc.* v. *State of Punjab and others* (15), *Sudhindra Thirtha, Swamiar and others* v. *The Commissioner for Hindu Religious and Charitable Endowments, Mysore and another* (16). and in the *State of Mysore and another* v. *D. Achiah Chetty, etc.* (17). This is the crucial point on the decision of which depends the answer to the question relating to the validity of the impugned provision. According to the appellants though the word "void" occurring in clauses (1) and (2) of Article 13 may mean the same thing, the effect of voidness in one case or the other is entirely different. In *Keshavan Madhava Menon's case* (8), it was held by the majority that the word "void" in Article 13(1) so far as existing laws were concerned could not be held to obliterate them from the statute book and could not make such laws void altogether because Article 13 had not been given any retrospective effect; and that the American rule that if a statute is repugnant to the Constitution, the statute is void from its birth, has no application to cases concerning obligations incurred or rights accrued in accordance with the existing law that was constitutional in its inception but became void on the coming into force of the Constitution. It was further held that if on the other hand any law was made after the 26th of January, 1950, which was repugnant to the Constitution, then the same rule shall have to be followed in India as was followed in America.

(20) The law under consideration in *Saghir Ahmad's case* (19), (supra) had been passed after the coming into force of the Constitution and the judgment of the Supreme Court was unanimous. It was the effect of the Constitution First Amendment Act on the validity of the impugned Act which was considered in that case. It

13) A.I.R. 1963 S.C. 1019.
(14) A.I.R. 1971 Delhi 1.
(15) A.I.R. 1967 S.C. 1895.
(16) A.I.R. 1963 S.C. 966.
(17) A.I.R. 1969 S.C. 477.

was held that any amendment of the Constitution which came later could not be invoked to validate an earlier legislation which must be regarded as unconstitutional when it was passed. The observations of Professor Cooley in his work 'Constitutional Limitations' to the effect that a statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection, but must be re-enacted, were approved in that case. In *Behram Khurshid Pesikaka's case* (10), Mahajan, C.J., after referring to the judgment of the Court in *Keshavan Madhava Menon's case* (8), (supra), held as follows:—

> "For determining the rights and obligations of citizens the part declared void should be notionally taken to be obliterated from the section for all intents and purposes, though it may remain written on the statute book and be a good law when a question arises for determination of rights and obligations incurred prior to 26th January, 1950, and also for the determination of rights of persons who have not been given fundamental rights by the Constitution. Thus, in this situation, there is no scope for introducing terms like 'relatively void' coined by American Judges in construing a Constitution which is not drawn up in similar language and the implications of which are not quite familiar in this country.
>
> We are also not able to endorse the opinion expressed by our learned brother Venkatarama Ayyar that a declaration of unconstitutionality brought about by lack of legislative power stands on a different footing from a declaration of unconstitutionality brought about by reason of abridgement of fundamental rights. We think that it is not a correct proposition that constitutional provisions in Part III of our Constitution merely operate as a check on the exercise of legislative power. It is axiomatic that when the law-making power of State is restricted by a writen fundamental law, then any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus a nullity.
>
> Both these declarations of unconstitutionality go to the root of the power itself and there is no real distinction between them. They represent but two aspects of want of legislative power. The legislative power of Parliament and the State Legislature as conferred by Articles 245

and 246 of the Constitution stands curtailed by the fundamental rights chapter of the Constitution. A mere reference to the provisions of Article 13(2) and Articles 245 and 246 is sufficient to indicate that there is no competency in Parliament or a State Legislature to make a law which comes into clash with Part III of the Constitution after the coming into force of the Constitution."

Article 13(2) is in these terms:—

"The State 'shall not' make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

This is a clear and unequivocal mandate of the fundamental law prohibiting the State from making any laws which come into conflict with Part III of the Constitution. The authority thus conferred by Articles 245 and 246 to make laws subjectwise in the different legislatures is qualified by the declaration made in Article 13(2). That power can only be exercised subject to the prohibition contained in Article 13(2). On the construction of Article 13(2) there was no divergence of opinion between the majority and the minority in *Kashavan Madhava Menon's case* (8). It was only on the construction of Article 13(1) that the difference arose because it was felt that that Article could not retrospectively invalidate laws which when made were constitutional according to the Constitution then in force."

(21) In *Bhikaji Narain Dhakras and others* v. *State of Madhya Pradesh and another* (11), it was held by S. R. Das, A.C.J. (speaking for the Court) that the impugned provision having been enacted in 1948 was merely eclipsed on the coming into force of the Constitution on January 26, 1950, and the eclipse was removed on the passing of the Constitution First Amendment Act on June 18, 1951. That was a case under Article 13(1) and not under Article 13(2) of the Constitution, and need not, therefore, detain us any further.

(22) Before dealing with the other cases to which reference has already been made, it appears to be appropriate to refer at this very stage to the judgment of the Supreme Court in *M. P. V. Sundaramier & Co.* v. *The State of Andhra Pradesh and another* (18), as

(18) A.I.R. 1958 S.C. 468.

strong reliance was placed by the Advocate-General on certain observations made in the course of that judgment. Though the view of Venkatarama Aiyar, J. about the supposed difference in degree of voidness between a statute passed without legislative competence on the one hand, and a statute passed after January, 1950, contravening any of the fundamental rights had been expressly dissented from in *Behram Khurshid Pesikaka's case* (10), (supra), the learned Judge in the course of his judgment (paragraph 42 of the A.I.R. report) observed as follows:—

> "Now, in considering the question as to the effect of unconstitutionality of a statute, it is necessary to remember that unconstitutionality might arise either because the law is in respect of a matter not within the competence of the Legislature, or because the matter itself being within its competence, its provisions offend some Constitutional restrictions. In a Federal Constitution where legislative powers are distributed between different bodies, the competence of the Legislature to enact a particular law must depend upon whether the topic of that legislation has been assigned by the Constitution Act to that Legislature. Thus, a law of the State on an Entry in List I, Schedule VII of the Constitution would be wholly incompetent and void. But the law may be on a topic within its competence, as for example, an Entry in List II, but it might infringe restrictions imposed by the Constitution on the character of the law to be passed, as for example, limitations enacted in Part III of the Constitution. Here also, the law to the extent of the repugnancy will be void. Thus, a legislation on a topic not within the competence of the Legislature and a legislation within its competence but violative of Constitutional limitations have both the same reckoning in a Court of law, they are both of them unenforceable. But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes? This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the view that while a law on a matter not within the competence of the Legislature is a nullity, a law on a topic within its competence but repugnant to the Constitutional prohibitions is only unenforceable. This distinction has a material

bearing on the present discussion. If a law is on a field not within the domain of the Legislature, it is absolutely null and void, and a subsequent cession of that field to the Legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the Legislature but its provisions disregard Constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment."

Firstly no question of violation of any fundamental right was involved in *M.P.V. Sundararamier & Company's case* (18), secondly it is clear from the contents of paragraph 48 of the same judgment which are quoted below that the learned Judge did not at all want to revive his earlier view expressed as a member of the original Bench in *Behram Khurshid Pesikaka's case* (10) :—

"There is one other aspect of the question to which reference must be made. The decisions in *Behram Khurshid Pesikaka* v. *The State of Bombay* (10) (supra) *and Bhikaji Narayan Dhakras* v. *The State of Madhya Pradesh* (11) (supra) both turn on the construction of Art. 13 of the Constitution, which enacts that laws shall be void to the extent they are repugnant to the provisions of Part III. We are concerned in these petitions not with infringment of any of the provisions of Part III but of Art. 286(2), and the point for our decision is as to the effect of the infringement of that provision. Article 286(2) does not provide that a law which contravenes it is void, and when regard is had to the context of that provision, it is difficult to draw the inference that that is the consequence of contravention of that provision. Article 372(1) provides for the continuance in force of all laws existing at the date of the Constitution. The proviso to Art. 286(2) enacts that the President may by an order continue the operation of the Sales Tax Laws up to 31st March, 1951, and Art. 286(2) itself enacts that no law of a State shall impose a tax. In the context in which they occur, the true meaning to be given to these words is, as already observed, that no law of a State shall be effective to impose a tax; that

is to say, the law cannot be enforced in so far as it imposes such a tax. Whether we consider the question on broad principles as to the effect of unconstitutionality of a statute or on the language of Art. 286(2), the conclusion is inescapable that Section 22 of the Madras Act and the corresponding provisions in the other statutes cannot be held to be null and void and *non est* by reason of their being repugnant to Article 286(2) and the bar under that Article having been now removed, there is no legal impediment to effect being given to them."

The judgment of the Supreme Court in the *case of M.P.V. Sundararamier & Co.* (18) (supra) cannot in view of the abovequoted observations help us in deciding the main issue involved in these appeals. This is also clear from the fact that in none of the subsequent decisions of the Supreme Court to which reference is being presently made was any attempt made to spell out of the judgment of *Venkatarama* Aiyar, J. in the *case of M.P.V. Sundararamier & Co*: (18) anything now sought to be contended by the learned Advocate-General.

(23) In *Deep Chand* v. *The State of Uttar Pradesh and others*, (12) the Court was concerned with the effect of the Constitution (Fourth Amendment) Act, 1955, on a statute which was void under Article 13 of the Constitution. The majority view was expressed in the judgment of K. Subba Rao, J., and the dissenting judgment was written by S. R. Das, C.J., after having the advantage of perusing the judgment prepared on behalf of the majority. The law relating to the difference between the cases covered by clause (1) and clause (2) of Article 13 was laid down in the judgment of the majority in the following words :—

"There is a clear distinction between the two clauses. Under clause (1), a pre-Constitution law subsists except to the extent of its inconsistency with the provisions of Part III; whereas, no post-Constitution law can be made contravening the provisions of Part III, and therefore the law, to that extent, though made, is a nullity from its inception. If this clear distinction is borne in mind much of the cloud raised is dispelled. When clause (2) of Article 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred

by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to legislate or that it imposes only a check but not a prohibition. A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions; nor can we appreciate the argument that the words "any law" in the second line of Article 13(2) posits the survival of the law made in the teeth of such prohibition. It is said that a law can come into existence only when it is made and therefore any law made in contravention of that clause presupposes that the law made is not a nullity. This argument may be subtle but is not sound. The words "any law" in that clause can only mean an Act passed or made factually, notwithstanding the prohibition. The result of such contravention is stated in that clause. A plain reading of the clause indicates without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law ; the law made in spite of the prohibition is a still-born law."

It is interesting to know that Das C.J. in his dissenting note expressly refused to associate himself with the above decision in the following words :—

"As, however, our learned Brother has thought fit to embark upon a discussion of these questions, we desire to guard ourselves against being understood as accepting or acquiescing in the conclusion that the doctrine of eclipse cannot apply to any post-Constitution law. A post-Constitution law may infringe either a fundamental right conferred on citizens only or a fundamental right conferred on any person, citizen or non-citizen. In the first case the law will not stand in the way of the exercise by the citizens of that fundamental right and, therefore, will not have any operation on the rights of the citizens, but it will be quit effective as regards non-citizens. In such a case the fundamental right will, qua the citizens, throw a shadow on the law which will nevetheless be on the Statute Book as a valid law binding on non-citizens and if that shadow

is removed by a constitutional amendment, the law will immediately be applicable even to the citizens without being re-enacted."

Then comes the final pronouncement of the Supreme Court in **Mahendra Lal Jaini's case** (13) (supra). It was held in most unequivocal terms that the doctrine of eclipse would apply only to pre-constitutional laws which are governed by Article 13(1) and would not apply to post-Constitution laws contravening any of the fundamental rights which are governed by Article 13(2). The invalidity of the impugned provision of the U.P. Land Tenures (Regulation of Transfers) Act (15 of 1952) was sought on behalf of the State to have been removed by an amendment made in 1956. The contention of the State was repelled by K. N. Wanchoo, J., who prepared the judgment of the Court in the cases, to which reference has already been made by me, the difference between pre-Constitution and post-Constitution laws in the matter of their being void under Article 13 was brought out clearly in the following passages :—

"If, therefore, the Constitution makers intended that the provisions in Article 13(1) and (2) would only affect laws so long as inconsistency continued or contravention lasted, they could have provided specifically for it. On a plain construction of the clause, the element of time must be excluded. We cannot therefore accept the contention that the words "to the extent of" import any idea of time. In our opinion, they only import the idea that the law may be void either wholly or in part and that only such portions will be void as are inconsistent with Part III or have contravened Part III and no more."

"The meaning of the word "void" for all practical purposes is the same in Article 13(1) as in Article 13(2), namely, that the laws which were void were ineffectual and nugatory and devoid of any legal force or binding effect. But the pre-Constitutional laws could not become void from their inception on account of the application of Article 13(1). The meaning of the word "void" in Article 13(2) is also the same viz., that the laws are ineffectual and nugatory and devoid of any legal force or binding effect, if they contravene Article 13(2). But there is one vital difference

between pre-Constitution and post-Constitution laws in this matter. The voidness of the pre-Constitution law is not from inception. Such voidness supervened when the Constitution came into force; and so they existed and operated for some time and for certain purposes; the voidness of post-Constitution laws is from their very inception and they cannot, therefore, continue to exist for any purpose. This distinction between the voidness in one case and the voidness in the other arises from the circumstance that one is a pre-Constitution law and the other is a post-Constitution law; but he meaning of he word "void" is the same in either case, namely, that the law is ineffectual and nugatory and devoid of any legal force or binding effect."

The view of Mahajan, C.J. in *Behram Khurshid Pesikaka's case* (10) (supra) disapproving the earlier view of Venkatarama Aiyar, J. was expressly upheld in *Mahendra Lal Jaini's case* (13) (supra), and it was reiterated that even a purported removal of the constitutiona invalidity could not infuse life into a still-born law which was void under Article 13(2).

(24) An attempt was then made by the learned Advocate-General to draw distinction between cases like those referred to above wherein the invalidity in a post-Constitution Act contravening Article 13(2) was sought to be removed by the amendment of the Constitution itself, and cases like the one before us where there has been no amendment of the Constitution, but by an amendment of the impugned provision, the State Legislature has removed the defect. We are unable to see any relevant distinction between these two cases so far as point in issue before us is concerned. In the first place the impugned law in our case is section 6 or for the matter of that the 1957 amending Act. By the subsequent Haryana Ordinance and the Haryana Act neither the amending Act of 1957 has been interfered with nor section 6 has been amended in any manner. The alternative remedy available at the time of the enactment of section 6 in 1957 which invalidated the impugned law has been put out of the way by the Haryana amending Act of 1971, with effect from January 1, 1968. The State can succeed only if it can successfully argue that for our purpose section 6 should be deemed to have been on the statute book on January 1, 1968. In the face of the law laid down by the Supreme Court in the cases already referred to, we must

hold that in the eye of law section 6, the still-born provision, was notionally non-existent on the statute book of the State, and though there is nothing wrong with the enactment of section 14-A itself, its only effect would be that the only lawful remedy which was available to the Collector before January 1, 1968, that is of having resort to the normal proceedings for ejectment under the Punjab Tenancy Act ceased to be available to him with effect from that date. The judgments including at least one of the Supreme Court are not wanting in respect of cases where a similar attempt was made on behalf of the State to claim the removal of an alleged eclipse on a post-Constitution Act by a subsequent amendment of the Act itself. The most important of these cases is the authoritative pronouncement of the Supreme Court in *B. Shama Rao* v. *Union Territory of Pondicherry* (19). The question that called for decision in that case was whether the Pondicherry General Sales Tax Act (10 of 1965) which was declared to have been still-born had in law been revived and validated successfully by a subsequent retrospective amendment. J. M. Shelat, J., who prepared the judgment of the majority answered the question in the negative in the following words:—

> "But the question is can the Amendment Act be said to be an independent re-enactment of the Principal Act and has the Pondicherry legislature extended the Madras Act by this Act ? If that was what the legislature intended to do it would have either repealed the Principal Act or even without repealing it on the footing that it was void enacted the Amendment Act as an independent legislation extending the Madras Act retrospectively as from April 1, 1966. The Amendment Act, as is clear from its long title, was passed to amend the Principal Act. That can only be on the footing that it was a valid Act and still on the statute book. Under Section 2 what the legislature purports to do is to amend Section 1 (2) of the Principal Act by substituting the words "It shall come into force on the 1st day of April, 1966" in place of the words "It shall come into force on such date as the Government may by notification in the Official Gazette appoint." The only result is that instead of the Principal Act having been brought into force under the said notification, it is deemed to have come into force on April 1, 1966. This is done by a deeming provision as if the new clause was there from the beginning when

(19) A.I.R. 1967 S.C. 1480.

the Act was passed. That being so, it is as if the Pondicherry legislature had extended the Madras Act together with such amendments which might be made into that Act up to April 1, 1966. Since the Amendment Act was thus passed on the footing that there was in existence a valid Act viz., the said Principal Act, it is impossible to conceive that it was or intended to be an independent legislation extending thereunder the Madras Act. The Amendment Act was and was intended to be an amendment of the Principal Act and it would be stretching the language of the Amendment Act to a breaking point to construe it as an independent legislation whereby the Madras Act was retrospectively brought into operation as from April 1, 1966. That being so, and on the view that the Principal Act was still-born, the attempt to revive that which was void *ab initio* was frustrated and such an Act could have no efficacy."

The last sentence of the abovequoted passage from the judgment of the Supreme Court in *B. Shama Rao's case* (19), leaves no doubt in my mind that right up to 1967, their Lordships have been firmly of the view that if the principal Act was still-born, any attempt to revive that which was void *ab initio* would have no efficacy. Section 6, which is the principal Act for our purposes, having been held to have been still-born as being wholly void under Article 13(2) of the Constitution at the time of its enactment in 1957, the provision must be deemed to have been notionally non-existent on the statute book of the State on January 1, 1968. Things might have been different if the impugned provision had been enacted on January 1, 1968, or thereafter. In any event, if a provision like section 6 is enacted after the coming into force of the Haryana amending Act of 1971, it would certainly not suffer from the vice of invidious discrimination.

(25) The vires of the Government Premises (Eviction) Act, 1950, were challenged before the Allahabad High Court in *Brigade Commander, Meerut Sub-Area and another* v. *Ganga Prasad and another* (20), on the ground that it authorised the Estate Officer to make an order of eviction against an unauthorised occupant of public premises directing the same to be vacated by all persons, who may be in occupation thereof, and was held to be void as infringing Article 14 of

(20) A.I.R. 1956 All. 507.

the Constitution as it discriminated between unauthorised occupants of public premises *inter se* on the ground that the Act provided a procedure parallel to the ordinary law, but much more onerous, and the Act left it to the unguided discretion of the Estate Officer to take action against a particular unauhorised occupant either under that Act or under the ordinary law. The Public Premises (Eviction) Act, 1950, was replaced by Act 32 of 1958, by the Central Legislature. After a minor amendment introduced into the said Act in 1963 (which is not relevant for our purposes), Act 32 of 1958, was again amended by the Public Premises (Eviction of Unauthorised Occupants) Amendment Ordinance, 1968, which ordinance was promulgated on June 17, 1968. The ordinance introduced section 10-E into Act 32 of 1958, barring the jurisdiction of civil Courts to entertain any suit or proceedings in respect of the eviction of any person who is in unauthorised occupation of public premises. In order to meet the challenge against the vires of section 5 of Act 32 of 1958, in *Banwari Lal Tandon* v. *Military Estates Officer* (21), it was contended on behalf of the State that the alternative remedy having been subsequently taken away by the amending Ordinance of 1968, the vice in original section 5 had been removed. After finding that the principal provision (section 5 of the Central Act 32 of 1958) was void as offending Article 14 of the Constitution on the authority of the Supreme Court in the *case of Northern India Caterers (Private) Ltd.* (3), and in view of the judgment of a Full Bench of the Calcutta High Court in *Rajendra Prosad Singh* v. *Union of India* (22), as it vested unguided power in the Government to choose either the speedier remedy under the Act, or the ordinary remedy of suit, it was held (after referring to the judgments of the Supreme Court in *Bhikaji Narain Dhakras* v. *State of Madhya Pradesh* (11), and in *Deep Chand* v. *The State of Uttar Pradesh* (12)), that the ultimate judgment of the Supreme Court in *B. Shama Rao's case* (19) (supra) was fully applicable to the case before the Allahabad High Court, in the following words:—

> "The decision in this case (*B. Shama Rao's case* (19)), is fully applicable to the case before me. Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, offended Article 14 and was void under Article 13(2). It was still-born and dead. Since Article 14 applies to all persons, the section cannot be said to be alive in respect of

(21) *1969* A.L.J. *499.*

(22) A.I.R. 1968 Cal. 560.

any matters or any persons. It is as though the section did not exist at all. The Amending Ordinance or the Amending Act did not re-enact section 5, but merely purported to remove the vice of section 5 by introducing section 10-E. Since section 5 was still-born and did not exist, it could not be revived or resuscitated by the introduction of section 10-E. Section 5 could not be revived but could only be re-enacted but this has not been done. The Amending Ordinance and the Amending Act have completely failed to achieve their object to revive section 5 which was void *ab initio.*

Section 5 of the Act being void *ab initio* and the attempt to revive and to resuscitate it having failed, there is no valid provision of law under which the actions of the Military Estates Officer or the Cantonment Executive Officer in evicting the petitioner from the land in dispute can be sustained. The action is without the authority of any law."

The judgment of G. C. Mathur, J. in *Banwari Lal Tandon's case* (21) (supra) is on all fours. I am in respectful agreement with the reasoning on which the decision of Mathur, J. is based, and I am unable to see any distinction whatever between that case and those before us.

(26) Similar question arose before the Delhi High Court in *Dr. Bawa R. Singh* v. *Union of India,* (23). The argument advanced on behalf of the State in that case to the effect that section 10-E introduced in 1968 into the Central Act 32 of 1958, validated sections 4, 5 and 6 thereof as the vice of two remedies being open to the Government for getting eviction was removed by the impunged provision, was repelled by Ansari, J. after referring to the judgments of the Supreme Court *in Deep Chand' case* (12), in *Mahendra Lal Jaini's case* (13) and in *B. Shama Rao's case* (19) and to the judgment of the Allahabad High Court in *Banwari Lal Tandon's case* (21) in the following words :—

"Following the rule laid down in above cited cases the Allahabad High Court has held in *Banwari Lal Tandon* v. *Military Estates Officer,* (21) that 'since section 5 of the Act was still-born and did not exist, it could not be revived or

(23) 1970 P.L.R. (Delhi Section) 261.

resuscitated by the introduction of section 10-E and that the Amending Ordinance and the Amending Act have completely failed to achieve their object to revive section 5 which was void *ab initio*.' This Court also has taken the same view in the decision already cited, viz. in the case of *M/s. Trans Atlantic Airlines Inc.* v. *I.A.* 165/1970 in Executions Nos. 4 to 7 of 1967 decided on March 10, 1970. In view of all these decisions I think there is no longer any scope for the argument that section 10-E of the Act had removed the vice that had existed in sections 4 to 6 of the Act and that sections 4 to 6 of the Act are now valid. It follows that the action taken by the respondents under sections 4 to 6 of the Act is illegal."

(27) The question whether a statute which is void within the meaning of Article 13(2) of the Constitution is capable of being made valid by subsequent amendment was decided in the negative by a Full Bench of the Delhi High Court in *P. L. Mehra, etc.* v. *D. R. Khanna etc*,, (14). The majority of the members of the Full Bench held that a statute which is void under Article 13(2) of the Constitution has to be regarded as "still-born"; "dead" and "non-existent"; and unless it is re-enacted it would be wholly inoperative and of no legal effect. The learned Judges of the Delhi High Court enumerated the various ways in which a void statute may be rendered operative by the Legislature. The manner in which the Haryana Legislature has tried to validate the impugned provision by the Amending Act of 1971 does not fall within any of those categories. The provision in respect of which the Full Bench of the Delhi High Court was considering the point in issue was the same on which the Allahabad High Court had pronounced in *Banwari Lal Tandon's case* (21) (supra), and the learned Single Judge of the Delhi High Court had given judgment in *Dr. Bawa R. Singh's case* (23) (supra). It was held that as Central Act 32 of 1958, was merely amended in 1968 by the insertion of the additional section, namely section 10-E, taking away the alternative remedy of ejectment by resort to ordinary law, the amendment was ineffective and the principal Act of 1958 continued to remain void. The arguments which were sought to be advanced by Mr. Jagan Nath Kaushal in regard to this matter are more or less on the minority judgment of V. S. Deshpande, J. in the Full Bench decision of the Delhi High Court in *P. L. Mehra's case* (14) (supra).

(28) The learned Advocate-General ultimately sought to contend that the law laid down by the Supreme Court in *B. Shama Rao's case* (supra) has become obsolete in view of the subsequent pronouncement of the Supreme Court in *Messrs. Devi Das Gopal Krishanan, etc.* v. *State of Punjab and others*, (15), and the earlier observations of the Supreme Court in *Deep Chand's case* (12) (supra) and in the *case of Mahendra Lal Jaini* (13) (supra) do not hold the field in view of the subsequent pronouncement to the contrary in *State of Mysore and another* v. *D. Achiah Chetty etc.*, (17). In the *case of D. Achiah Chetty*, (17), the validity of a notification under section 4 of the Mysore Land Acquisition Act, 1894, was questioned before the Mysore High Court. It was urged that the notification gave no particulars and was followed by a notification under section 6 with the result that the opportunity under section 5-A of objecting to the acquisition was lost to Achiah Chetty and other petitioners. It was further contended that the scheme of layout was feasible only under the City of Bangalore Improvement Act, 1945, and that the action of the Government was discriminatory because whereas in other cases the provisions of the improvement Act were applied, in Achiah Chetty's case (17) resort had been had to the Land Acquisition Act. After the writ petition of Achiah Chetty was filed and before it came up for hearing, the Governor of Mysore promulgated an Ordinance called the City of Bangalore Improvement (Amendment) Ordinance introducing retrospectively section 27-A whereby compliance with the relevant provisions of the Improvement Act was dispensed with. Achiah Chetty then challenged the Amending Ordinance and the Amending Act which replaced the Ordinance. The High Court besides declaring the Ordinance and the Amending Act unconstitutional on the short ground that the Ordinance offended against clause (1) of Article 213 of the Constitution having been promulgated without the instructions of the President and the Amending Act offended against clause (2) of Article 254 of the Constitution as it had not been reserved for the consideration of the President and had not been assented to by him, held in addition that the shortened procedure for removing the vice of discrimination offended against the equality clause in the Constitution. In the State Government's appeal against the decision of the High Court it was held that Legislature could always have repealed retrospectively the Improvement Act rendering all acquisitions to be governed by the Mysore Land Acquisition Act alone, and inasmuch as the validating Act which had subsequently been passed removed altogether from consideration any implication arising from Chapter

III or section 52 of the Improvement Act in much the same way as if that Act had not been passed and the validating Act having provided that the acquisitions cannot be called in question on the ground that the State Government was not competent to make the acquisitions, the vice of unconstitutionality had been removed inasmuch as the supremacy of the Legislature in India within the constitutional limits of their jurisdiction is as complete as that of the British Parliament. Mr. Kaushal sought to argue that the judgment of the Supreme Court in D. *Achiah Chetty's case* (17) (supra) is not consistent with the law laid down in *Mahendra Lal Jaini's case* (13) and we should, therefore, follow the subsequent judgment and ignore the decisions in *Deep Chand's case* (12) *and in Mahendra Lal Janini's case* (13). This argument appears to us to be misconceived. At least one of the learned Judges (J. C. Shah, J.) was a member of the Bench which decided *Mahendra Lal Jaini's case* (13) as well as the Bench which decided *D. Achiah Chetty's case* (17). No reference at all was made to the earlier judgments of the Supreme Court in *Deep Chand's case* (12) *or Mahendra Lal Jaini's case* (13) or still earlier judgments on that subject, obviously because the questions involved in *Achiah Chetty's case* (17) were different from those decided in earlier cases. The observations of the Supreme Court in *Achiah Chetty's case* (17) on which Mr. Kaushal placed the strongest reliance are these :—

> "If two procedures exist and one is followed and the other discarded, there may in a given case be found discrimination. But the legislature has still the competence to put out of action retrospectively one of the procedures leaving one procedure only available, namely, the one followed and thus to make disappear the discrimination. In this way a Validating Act can get over discrimination."

Learned counsel has not, however, attached due importance to the following succeeding sentence in the very same judgment :—

> "Where, however, the legislative competence is not available, the discrimination must remain for ever since that discrimination can only be removed by a legislature having power to create a single procedure out of two and not by a legislature which has not that power."

Again in paragraph 16 of that judgment, their Lordships made it clear that the only curb on the powers of the Legislature was the requirement of President's assent and that admittedly was obtained

unlike the previous occasion when the Amending Act failed for want of such assent. It is, therefore, clear that in *D. Achiah Chetty's case* (17), there was no challenge to the legislative competence to make the law in question, either on account of its incompetence or on account of the law offending any fundamental right. Moreover, in the present case no validating Act has been passed as was done in the Mysore case. No provision in the Mysore Act was void under Article 13(2) of the Constitution. In any event, the retrospectivity given to section 14-A in our case does not date back to 1957 when the impugned provision was enacted. The retrospectivity having been confined to the extent of taking back the new provision to January, 1968, it could not possibly validate section 6 which was purported to have been enacted eleven years before that date, and was deemed to be notionally non-existent on the statute book. *D. Achiah Chetty's case* (17) does not, in our opinion, overrule or abrogate the earlier decisions of the Supreme Court in *Deep Chand's case* (12) or *Mahendra Lal Jaini's case* (13). The distinction between the two cases (one of passing a Validating Act and the other of seeking to remove the vice by amendment) is also apparent from the discussion on the subject in the Full Bench judgment of the Delhi High Court in *P. L. Mehra's case* (14).

(29) The second leg of this argument of Mr. Kaushal was that the effect of the judgment of the Supreme Court in *B. Shama Rao case* (19) (supra) has been substantially diluted by the observations of their Lordships in the case of *Messrs. Devi Das Gopal Krishanan, etc.* v. *State of Punjab and others* (15) (supra). We are unable to agree with the learned counsel as Subba Rao, C.J., who prepared the judgment of the Court in the case of *Messrs. Devi Das Gopal Krishanan* (15) was a member of the Bench which decided *B. Shama Rao's case* (19) also, and the learned Chief Justice unambiguously stated (in paragraph 20 of the judgment) that the earlier decision of the Court in *B. Shama Rao's case* (19) was clearly distinguishable. In the *case of Messrs. Devi Das Kopal Krishanan* (15), this Court had held that section 5 of the East Punjab General Sales Tax Act was void as it gave an unlimited power to the executive to levy sales-tax at a rate which it thought fit, but that the amendment of section 5 by Punjab Act 19 of 1952, introducing a ceiling within which the tax could be imposed, cured the defect in the principal Act and had the effect of giving a new life to it. In an appeal preferred by Messrs. Devi Das Gopal Krishanan etc. against that judgment of this Court, two questions were argued before the Supreme Court, viz. (1) whether section 5 of the principal Punjab Act of 1948, as it originally

stood was void, and (ii) if the said section was void, whether the amendment could give life to it. On the first question the Supreme Court held that under section 5 as it originally stood an uncontrolled power was conferred on the Provincial Government to levy tax at such rates as the Government might direct, and by making such a provision, the Legislature had practically effaced itself in the matter of fixation of rates and it had not given any guidance either under that section or under any other provision of the Act, and, therefore, section 5 as it stood before the amendment was void. On the second question, it was held that if section 5 was inserted in the Act by the Amending Act with the added words, there could possibly be no objection because that would be an amendment of an existing law, and that in substance the amendment brought about the same effect. It was observed that the words "shall be deemed always to have been so inserted" in the amending provision indicated that in substance section 5, as amended, is inserted in the Act with retrospective effect. No such thing has happened in our case. Section 6 remains as it was. It has not been amended in any manner. A provision has been inserted by which the vice which made section 6 unconstitutional is sought to be taken away. That procedure could indeed be adopted in the case of the Punjab General Sales Tax Act, 1948, which was pre-Constitution law hit by Article 13(1), but cannot be of any avail in the case of a provision like section 6 which was still-born. Moreover, as already stated, retrospective effect has not been given up to the time of enactment of the still-born provision. When the Supreme Court has itself said that its earlier decision in *B. Sharma Rao's case* (19) was on different facts (which were nearer to the facts of our case), it does not lie in the mouth of the State to urge that in fact their Lordships have impliedly overruled their earlier decision in the course of their judgment in the *case of Messrs. Devi Das Gopal Krishanan* (15).

For the foregoing reasons, it is held :—

(1) The other provisions of the Punjab Act 24 of 1957, are not severable from and cannot stand independent of and apart from section 2 thereof whereby section 6 was sought to be inserted in the principal Act of 1949;

(2) Section 2 of the 1957 Act and section 6 introduced thereby into the principal Act were laws enacted after the coming into force of the Constitution, and were, therefore, liable to be struck down under Article 13(2) of the Constitution

if they violate any fundamental right. Section 6 of the Act was itself a post-Constitution law;

(3) Before the enactment of the impugned provision contained in section 6 of the Act, the Collector had the authority to get a lease determined and to eject a lessee (in whose favour a lease had been granted under section 5 of the Act) by resort to the ordinary civil proceedings in a revenue Court under section 77 of the Punjab Tenancy Act;

(4) Section 6 of the Act made available to the Collector an alternative and more drastic remedy than the ordinary pre-existing one under section 77 of the Punjab Tenancy Act ;

(5) Section 6 of the Act was void under Article 13(2) of the Constitution as being violative of the guarantee of equal protection of laws enshrined in Article 14 of the Constitution for the reasons given in the judgment of the Supreme Court in the case of *Northern India Caterers (Private) Ltd.* (3) (supra) ;

(6) The impugned provision (section 6) being a post-Constitution law and having been made in contravention of the express prohibition contained in Article 13(2) of the Constitution was void *ab initio,* still-born and non-existent in the eye of law, and could not subsequently be validated by merely taking away with effect from a subsequent date the alternative remedy because of the presence of which section 6 suffered from the vice of invidious discrimination; and

(7) the Collector (respondent No. 2) had no lawful authority to proceed against the appellants under the void and non-existent provision of section 6, and, therefore, the entire proceedings purported to have been taken against the appellants under that provision are *non-est,* and the impugned orders passed against the appellants are liable to be quashed.

(30) Though all these appeals can be disposed of on the basis of the finding recorded by us above, it appears to be necessary, in order to be fair to the counsel, to take notice of another argument advanced by him in the alternative. Mr. Anand Sarup submitted that apart from the question of vires of section 6, the action of the Collector in the present cases was void *ab initio,* inasmuch as the same was not

bona fide. *Mala fides* were sought to be inferred from (i) the fact that the leases had continued for more than 15 years and the Government had been receiving and accepting rent after the 15th of January during the previous years, and, therefore, the real reason for determining the leases of the appellants and large number of other such persons must be some other than the apparent purported ground on which action had been taken: (ii) the speed with which the action was taken against a large number of persons during the same days, the time lag between the service of the notice and the date of hearing being only a day or two in most of the cases; (iii) the refusal of the Collector to accept the entire amount of rent when offered to him at the hearing and the action of the Collector in not at all considering the particular question of relieving the lessees of the forfeiture of the leases for delay in the payment of rent; (iv) the petty amounts for the non-payment of which valuable leases for the remaining period were cancelled, (v) the action for determination of the leases having been confined to the Kaithal area in Karnal district in which area most of the lessees were Punjabi-speaking; (vi) the routine manner in which the Collector disposed of the cases and the large scale preparation made in advance by preparing blank forms of orders in which only the blanks were filled in manuscript for different cases; and (vii) from the manner in which the Collector did not even care to read in some cases what the plea of the lessees was and passed the orders determining the leases without dealing with the precise defence of the lessees in some cases. According to Mr. Anand Sarup, the real reason for this wholesale drastic action against the lessees on account of an insignificant default, the kind of which had never been taken serious notice of before, was the attempt of the Haryana Government authorities to turn out as far as possible Punjabi speaking people from the area which was being claimed by Punjab on linguistic basis, for determination of which the question of appointment of a Boundary Commission was in the offing in those days. No such material has been placed before us which could enable us to pronounce on this submission of the learned counsel. In fact all that is stated in the writ petition in this respect is (paragraph 9) that the impugned order has been passed "as a matter of routine with a pre-determined object and not after due consideration of the relevant facts" and (paragraph 11-f) "that the order is *mala fide* inasmuch as it has ostensibly been passed on political considerations which are extraneous to the exercise of the power conferred by the Act and the Rules." By merely labelling the impugned order as *mala fide* and by merely suggesting that it has been passed with a pre-determined

object without stating as to what that pre-determined object was, and without saying what were the political considerations which were extraneous, the appellants cannot be held to have made out any case for scrutiny on this ground. The vague allegations referred to above have been denied by the respondents in the corresponding paragraphs of their return in the same vague manner. It has been stated that the order has been passed after fully considering the facts of the case and not as a matter of routine, and that the impugned order was not politically motivated. In this situation it is impossible to entertain and decide the question of *mala fides* in these appeals.

(31) In view of the findings recorded by me earlier, I would allow all these five appeals, reverse the decision of the learned Single Judge and grant the writ petitions of the appellants and quash the impugned order purporting to terminate their leases under section 6 of the Act, and restrain the respondents from taking any action against the appellants in pursuance of the order. Respondent No. 1 shall pay the costs incurred by the appellants in this Court including the costs incurred by them in the writ petition.

H. R. SODHI, J.—I agree:

K. S. K.

CIVIL MISCELLANEOUS.

Before A. D. Koshal, J

GURDIAL SINGH,—*Petitioner.*

versus.

THE STATE OF PUNJAB.—*Respondent.*

Civil Writ No. 2957 of 1970.

April 16, 1971.

Punjab Gram Panchayat Act (IV of 1953)—Section 102—Order of suspension of a Sarpanch—Whether should be passed after prior notice and opportunity of being heard afforded to such Sarpanch.

Held, that a bare perusal of section 102(1) of Punjab Gram Panchayat Act is enough to show that an order of suspension is in the nature of an interim order which does not finally determine the matter under enquiry but