
(1959) 04 AHC CK 0021

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 988 of 1956

Bir Pratap Singh

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 24-04-1959

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19(1)(f), 19(f), 226

Citation : (1960) 30 AWR 77

Hon'ble Judges : Roy, J;Gurtu, J

Bench : Division Bench

Advocate : S.C. Khare, for the Appellant;

Final Decision : Allowed

Judgement

Gurtu, J.—This is a petition under Article 226 of the Constitution of India.

2. The Petitioner swears in his affidavit that he was allotted 92 acres of Kham land by the Kham Department of Tarai and Bhabhar Kham Estate of the Government of U.P. in the year 1950 for agricultural purposes, that in the district of Naini Tal there are two kinds of land, namely, Kham land and Colonization land and Kham land is given to the public for agricultural purposes, that the land in question was given to the Petitioner on the payment of annual land rent and the Petitioner was regularly paying the said rent on demand by the Tehsil which was acting under the orders of the Kham Department, that the Kham Superintendent of the Kham Department after allotting the land to the Petitioner orally ordered him to use the land for agricultural purposes, that the Petitioner was using the land for agricultural purposes for the last five years or more that since 1950 the Petitioner had been cultivating the land and growing wheat, paddy, sugarcane crops etc., on that land and as such the Petitioner had acquired tenancy rights in the land under the U.P. Tenancy Act, that the Petitioner was recorded as tenant in the village papers, that the Petitioner had constructed a pucca well in the land by incurring an expenditure more than Rs. 1000, that originally upon the land stood dense jungle and the Petitioner at the instance of the then Superintendent, Kham

Department spent Rs. 20,000 in clearing and levelling the land and for bringing it under agricultural operation, that subsequently the then Superintendent Kham Department was transferred and the new Superintendent who was incharge of both the Kham and the Colonization department asked the Petitioner as to how he had been in possession of the land as it belonged to the Colonization Department, that actually the land in dispute belonged to the Kham Department and not to the Colonization Department, that under the circumstances the Petitioner made a representation to the then Agricultural Secretary of the U.P. Government and the Secretary sent it back to the Director, of Colonization with the remark that the Petitioner's case should be considered favourably and the land may be finally granted to the Petitioner, that the aforesaid application had been kept pending and no action had been taken on it by the Department.

3. According to the Petitioner's affidavit subsequently on 1-2-1955 the Petitioner was served with a notice u/s 4(1) of the U.P. Govt. Land (Eviction and Recovery of Rent) Act of 1953, that the Petitioner objected to the aforesaid notice on the ground that he had occupied the land as duly authorised by the Kham Department, that notwithstanding the Petitioner's objections proceedings u/s 4(1) of the U.P. Govt. Land (Eviction and Recovery of Rent) Act were started against the Petitioner in the court of the Addl. Distt. Magistrate, Naini Tal; that the Addl. Distt. Magistrate was pleased to pass an order against the Petitioner on 25-8-1955 ordering the eviction of the Petitioner from the land, that in pursuance of the aforesaid order possession has been taken from the Petitioner of 41 acres of land the rest of the land measuring 52 acres is in the occupation of the Petitioner; and that the opposite parties to the petition are threatening to evict the Petitioner from the 52 acres of the land also.

4. The Petitioner states in his affidavit that he challenges the validity of the order dated 25-8-55 and the action proposed to be taken on its basis on the following grounds:

(1) Because the U.P. Act of 1933 is unconstitutional as contravening Article 14 of the Constitution.

(2) Because the Petitioner was not given, any opportunity of hearing and was not allowed to produce evidence.

(3) Because the order of the Competent Authority ordering eviction of the Applicant is nullity.

(4) Because the Applicant has acquired tenancy rights and cannot be evicted.

(5) Because the opposite parties are estopped and cannot evict the Petitioner after having made him to spend a huge amount on improving the land.

5. The Petitioner prayed that a writ of certiorari or order or direction in the nature of certiorari be issued quashing the order dated 25-8-1955, or that a writ of mandamus or order or direction in the nature of mandamus be issued directing the opposite parties not to evict the Petitioner from 52 acres of land situate in

village Kishunpur, Tehsil Kichhna, district Naini Tal, that a writ of mandamus be issued directing the opposite party to restore back the land (41 acres) of which they have already taken possession.

6. The opposite parties appeared upon this petition and tiled a counter affidavit. It was sworn in that counter affidavit that the disputed area about which the Petitioner had filed his writ petition lay within the area under the management of the Colonization Department, that the Colonization Department did not allot any part of the land to the Petitioner and the Supdt. Tarai Bhabhar had no jurisdiction whatsoever to deal with the area which lay within the jurisdiction of the Colonization Department nor had he allotted the land in question to the Petitioner nor did the Petitioner pay any rent to the Colonization Department. The counter affidavit states that the disputed land was banjar land till May-June 1952 when 52 acres out of it were reclaimed by the Colonization Department which cleared further areas of banjar land constituting the 93 acres in 1952-53.

7. It was denied in the counter affidavit that the Petitioner was using the disputed land for agricultural purposes. It was denied that the Petitioner had any right as a tenant and it was asserted that he was a trespasser and that his name was recorded as a trespasser and not as a tenant. It was sworn that the well had stood over the disputed land since 1950 and that for the repairs of the well a subsidy was given by the Planning Department to the Kishanpur Co-operative Land Settlement Society. It was sworn that there was no paper regarding representation made by the Petitioner in the Colonization Circle Rudrapur in which the disputed land lies and it was denied that the Petitioner's application had been kept pending. It was specifically sworn, that the Petitioner was neither allotted nor was he a lessee of the Government land, but that he was a trespasser. It was sworn in the counter affidavit that a notice was served on the Petitioner u/s 4(1) of the U.P. Govt. Land (Eviction and Rent Recovery) Act of 1953 and he was asked to vacate the land within 30 days or show cause before the Addl. District Magistrate and that the Petitioner appeared before the Addl. District Magistrate and he was given full opportunity to give such evidence as he liked. It was asserted that it was wrong to say that no evidence was taken into consideration and that the real fact was that the Applicant was not able to produce any and that the order of the Addl. District Magistrate was passed on the merits.

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7. Their Lordships then quoted the Addl. District Magistrate's impugned order dated 25-8-1958 which is Annexure A to the petition.

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8. In order to appreciate the points raised by the Petitioner it is necessary to set out the scheme and the provisions of the U.P. Govt. Land (Eviction and Rent Recovery) Act No. XXIX of 1953 under the provisions of which action has been taken against the Petitioner. That Act was passed in order to provide for a

speedier process for eviction from Government land of persons occupying the same without authority and for recovery of arrears of rent in respect of such land. The Preamble states:

It is expedient to provide for a speedier process for eviction from Govt. land of persons occupying the same without authority and for recovery of arrears of rent in respect of such land.

9. Section 2 of the Act defines certain terms used in the Act and then Section 3 defines who shall be considered to be in unauthorised occupation of Govt. land. That section runs as follows:

3. Unauthorised occupation of Govt. land. For purposes of this Act a person shall, save as otherwise provided in this Act, be deemed to be in unauthorised occupation of any Govt. land--

(a) Where he has entered into possession of any Govt. land otherwise than under and in pursuance of any allotment, lease or grant.

Explanation.--A person shall not merely by reason of the fact that he has paid any amount of rent be deemed to have entered into possession as allottee, lessee or grantee.

and (b) Where being an allottee, lessee or grantee he has, by reason of determination or cancellation of an allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased to be entitled to occupy or hold such land.

Thereafter follows Section 4 where the power to evict from Govt. land for breach of the terms of tenancy or for unauthorised occupation is given. The section is as follows:

(1) If the competent authority is satisfied--

(a) that the person authorised as allottee, lessee or grantee to occupy any Govt. land has, whether before or after the commencement of the is Act--

(i) sublet without the permission of the State Govt. or the authority appointed in that behalf by the State Govt., the whole or any part of such land, or

(ii) failed to comply with or otherwise acted in contravention of any term or condition, express or implied, under which he is authorised to occupy such land; or

(b) that any person is in unauthorised occupation of any Govt. land, the competent authority may, by notice served in such manner as may be prescribed, require that person as well as any other person who may be in occupation of the whole or any part of the Govt. land to vacate it within thirty days of the date of service of notice.

(2) If any person refuses to comply with any requisition under Sub-section (1),

the competent authority may, in accordance with the provisions of Sub-section (2) of Section 7 of the U.P. Govt. Premises (Rent Recovery and Eviction) Act of 1952, order his eviction from Govt. land and if the order is not complied with, may evict such person from the Govt. land and the provisions of Sections 8 to 12 of the said Act including provisions relating to appeals and damages for unauthorised occupation therein contained shall apply as if for the words "Government Premises" the words "Government Land" have been substituted.

10. It will be observed from Sections 3 and 4 that power is given only to evict unauthorised occupants and to evict persons who have committed breaches of terms of tenancy. The Act thus not being of a confiscatory nature; it only aims at speedier process of eviction.

11. Inasmuch as Section 4 of the U.P. Govt. Land (Eviction and Rent Recovery) Act refers to Section 7 of the U.P. Government Premises (Rent Recovery and Eviction) Act No. XXXIX of 1952 and to Sections 8 to 12 thereof and incorporates those sections in the Act, it is necessary to go to the premises Act and quote the relevant sections which will be described later as incorporated sections. Section 7 of the Premises Act runs as follows:

7. Power to evict from Government Premises for breach of the terms of tenancy or for unauthorised occupation:

(1) If the competent authority is satisfied--

(a) that the person authorised as lessee or allottee in Government premises has, whether before or after the commencement of this Act-

(i) sublet without the permission of the State Government or the authority appointed in that behalf by the State Government the whole or any part of such premises, or

(ii) otherwise acted in contravention of any of the terms, expressed or implied, under which he is authorised to occupy such premises, or

(b) that any person is in unauthorised occupation of any Government premises,

(1) the competent authority may by notice served in such manner as may be prescribed require that person as well as any other person who may be in possession of the whole or any part of the premises to vacate it within thirty days of the date of the service of the notice.

(2) If any person refuses or fails to comply with any requisition under Sub-section (1) the competent authority may, except in cases provided for in Section 10 and after considering the objection, if any of the person required order his eviction from the premises within a time to be fixed. A notice of the order shall be given to the person to be evicted.

(3) If the order passed under Sub-section (2) is not complied with within the time fixed, the competent authority may evict the person who may be in

occupation of the premises.

It will be observed that Section 4 of the Land Act and Section 7 of the Premises Act overlap to a certain extent. Section 8 of the Premises Act provides for an appeal. The section runs as follows:

8. Appeals.--Any person aggrieved by an order Under Sub-section (2) of Section 7 may, within 15 days of the receipt of the notice in respect thereof, appeal in writing to the District Judge who may, after calling for a report from the competent authority and after making such further enquiry if any, as may be necessary pass such order as he thinks fit and the order of the District Judge shall be final.

Section 9 provides for a stay order. The section runs as follows:

9. Stay of orders.--Where an appeal is preferred u/s 8 the District Judge may stay enforcement of the order of eviction issued u/s 7 for such period and on such conditions as he thinks fit.

Provided that no such order for stay shall be made where the premises concerned is a stall kiosk or other similar construction, but the District Judge may, if the appeal is allowed, direct that the person evicted be restored into possession of premises.

Section 10 provides for a procedure where questions about Government title are raised. The section runs as follows:

10. Objection as to the nature of the Premises-

(1) Where objection is made on the ground that the premises in question are not Government premises the competent authority shall make a reference to the District Judge, stating the facts of the case including facts showing that the premises are Government premises.

(2) Upon receipt of the reference the District Judge shall proceed to investigate the objection and shall direct the objector to adduce evidence to show that the premises in question are not Government premises.

Provided that no such investigation shall be made where the District Judge considers that the objection is frivolous or prima facie baseless.

(3) Where upon the said investigation the District Judge is satisfied that the premises were Government premises on the date of occupation by the objector, he shall dismiss the objection and where he is not so satisfied, he shall accept the objection and set aside the order of the competent authority under Sub-section (2) of Section 7.

(4) Subject to the result of the suit, if any, filed under Sub-section (5), the order of the District Judge under Sub-section (3) shall be final and conclusive and no appeal shall lie against it.

(5) The party against whom an order is made, under Sub-section (3) may, within six months of the date of the order, institute a suit to establish the right which he claims to the premises in dispute in the court having jurisdiction.

Section 11 provides for power to secure compliance with the order made u/s 3 of the Premises Act; and Section 12 gives the power to recover damages.

12. The contention of learned Counsel for the Petitioner is that the U.P. Govt. (Eviction and Recovery of Rent) Act of 1953 is ultra vires Article 14 of the Constitution of India as it denies equality before the law or equal protection of the law. It is argued that whereas when ejection takes place under the ordinary process of law the person sought to be ejected has a right of having his case heard and disposed of by an impartial person after a full judicial trial, the procedure provided by the Act denies to a person whose eviction is sought thereunder even quasi judicial procedure and does not provide for an independent tribunal. It is argued moreover that the procedure prescribed offends against the principles of natural justice. On that ground it is argued that we should declare the U.P. Government Land Eviction and Rent, Recovery Act of 1953 as ultra vires.

13. It is said that the Act prevents access, to persons to whom the Act is applicable, to the Civil Courts and therefore, the Act is ultra vires. No doubt, Article 14 lays down a rule of equal access, but that rule is subject to limitations: (1) It does not prevent adjudication of special class of cases or disputes by special tribunals, for example, agricultural debts. Right of equal protection guarantees the benefit not of the same laws or same remedies, but that of equal laws. Hence if, there is a reasonable basis for classification, special tribunals may be created for the trial of cases of special nature provided no differentiation is made between cases belonging to the same class or nature; and (2) when a right is created by a statute the statute may provide for special remedy and special forum for the determination of such a right in each case. There is then no right to take the matter to the ordinary courts except in certain special cases, e.g., where the special tribunal set up by the statute, acts ultra vires the statute upon which its jurisdiction rests.

14. The first question in this case is whether the classification that has undoubtedly been made by the U.P. Government Land (Eviction and Rent Recovery) Act of 1953 has been made upon a reasonable basis. For, if the classification is unreasonable the statute which undoubtedly makes a discrimination would, be invalidated for being in conflict with the equal protection clause of the Constitution.

15. The Act states that it has been enacted because it is expedient to provide a speedier process for eviction from Government land. Therefore the basis for classification so far as the Act is concerned is merely speedier process of eviction, the object being that the Government land should be speedily put back in the possession of the Government. The statute applies to all Government

lands subject to certain exceptions. The definition of "Government land" is given in Section 2(a) and is as follows:

"Government land" means land belonging to or owned by the State Government but does not include land--(i) which has vested in the Gaon Samaj in pursuance of the provisions of the U.P. ZA and LR Act, 1950; or (ii) for the time being held and occupied by a bhumidhar, sirdar, asami, or adhivasi as such under and in accordance with the said Act; or (iii) for the time being occupied by any building not being a dwelling-house, cattle shed, store house or other construction referred to in Sub-Clause (1) of Clause (8) of Section 3 of the U.P. T. Act, 1939 and land appurtenant to it.

16. The prefatory note of the Bill no doubt states as follows:

The existing procedure for ejecting of and realisation of dues from persons who occupy Government land without authority or continue to occupy it after the right of occupation has ceased, involves delays to the detriment of public interest. Their continued occupation of such land interferes with its planned use. The object of the Bill is to provide summary procedure for eviction of such persons and also for recovery of dues from them.

17. (Vide Statement of Objects and Reasons published in the U.P. Gazette Extraordinary 20-8-1953); but it will be observed that the preamble has dropped reference to planned use and there is no reference to public interest in the preamble either. Nor is there anything in the body of the Act from which it can be concluded that the Act was meant to be applied only to land of which immediate possession was required for planned use or of which expeditious recovery was required in the public interest. It can not be said therefore that there is any indication in the Act to suggest that the procedure laid down in the Act is to be availed of only in the case where expeditious recovery is desired with a view to doe planned use of the land or because of public interest. Inasmuch as the Preamble and the Act clearly indicate that the Act may be applied to all Government land as defined by the Act it must be taken that the Legislature intentionally granted wide powers irrespective of whether the land was needed for a planned use or in the public interest otherwise the Statute would have made it clear that the use of the Act was designed to be of a limited character.

18. In The State of West Bengal Vs. Anwar Ali Sarkar, it has been observed:

The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of Article 14. To get out of its reach it must appear that not only a classification has been made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection.

19. A rule of procedure, according to the law laid down in the above case, comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that the litigants who are similarly situated are able to avail

themselves of the same procedural relief and for defence with like protection and without discrimination. It has been observed there that the West Bengal Special Courts Act (Act X) of 1950 laid down a procedure which was less advantageous to the accused than the ordinary procedure and this fact, it was held, must in all cases be the root-cause of the discrimination which may result by the application of the Act. Then it was pointed out that speedier trial of offences may be the reason and motive for the legislation, but it does not amount either to a classification of offences or cases. The necessity of a speedy trial is too vague, uncertain and elusive a criterion to form the basis of a valid and reasonable classification.

20. No doubt, here the U.P. Govt. Land Eviction and Rent Recovery Act has been made applicable to Government land and it is not left to the executive discretion to determine the kind of land to which the Act would apply. The land has undoubtedly been classified by the legislature; but the question is whether the necessity of a speedy eviction of Government land is too uncertain and elusive criterion to form the basis of a valid and reasonable classification. In the case of Syed Qasim Razvi Vs. The State of Hyderabad and Others, Bose, J. observed as follows:

Now, looking to the surrounding circumstances, I can only conceive of two objects: (1) speedier trial (2) more convenient disposal of certain unspecified cases. The first has been condemned as discriminatory in the West Bengal Case in the following words:

Assuming that the Preamble throws any light on the section, the necessity of speedier trial is too vague uncertain and elusive a criterion to form a rational basis for discrimination.

21. By parity of reasoning the second is even more objectionable.

22. The next point on which the West Bengal Special Courts Act was considered objectionable by at least four of the seven Judges was that the Act did not lay down any basis for classification of the cases which could be sent to the Special Court for trial under procedure which varied substantially from that of the Code of Criminal Procedure and that it left the selection of the offences and the cases to the uncontrolled discretion of the State Government.

23. It will be seen therefore that in the West Bengal case the Act in that case was held to be invalid not merely for the reason that the offences which were to be tried under the West Bengal Special Courts Act were not classified and enacted and remained unspecified, but also because even the second object with which the Act was passed, namely, to obtain speedier trial, was independently held to be no basis of classification. The preamble of this Act only says that it has been enacted to provide for a speedier process for eviction and it therefore seems that this Act is hit by the decision in the case of The State of West Bengal Vs. Anwar Ali Sarkar, . Therefore despite the fact that the classification of the land which is to be vacated by this Act has expressly been made by the

Legislature and that it has not been left to the Government to decide as to which land this Act will apply and to which it will not apply, inasmuch as the object sought is merely to obtain speedier eviction from all such land, it cannot be said that there is classification in any real sense if the necessity of speedier trial be, as it has been held to be, too vague, uncertain and elusive a criterion to form the basis of a valid and reasonable classification. There might have been some justification in the classification based on the necessity of speedier trial if the Act had been applied only to Government land which was needed for immediate planned use or was necessary in the public interest. But that is not the case here, the Act equally applies whether the land from which eviction is to take place is or is not needed for immediate planned use provided it is Government land. Speed in eviction appears to be the only criterion.

24. We will now deal with the question whether the procedure provided by the U.P. Government Land Eviction and Rent Recovery Act provides a quasi-judicial procedure by an independent tribunal or not and whether the procedure prescribed offends against the principles of natural justice.

25. The criteria for ascertaining whether a particular act is a judicial act or an administrative one has once again been considered by their Lordships of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . Subba Rao, J.'s judgment from which the following passages are quoted has observed that-

The criteria to ascertain whether a particular act is a judicial act or an administrative one, have been laid down with clarity by Lord Justice Atkin in *King v. The Electricity Commissioner* 1924 1 KB 171 elaborated by Lord Justice Scrutton in *The King v. London County Council* 1931 2 KB 215 and authoritatively restated by this Court in *Province of Bombay Vs. Kusaldas S. Advani and Others*, . They laid down the following conditions; (a) the body of persons must have legal authority; (b) the authority should be given to determine questions affecting the rights of subjects and (c) they should have a duty to act judicially. In the last of the cases cited supra, Das, J., as he then was, analysed the scope of the third condition thus at page 725:

(i) that if a statute empowers an authority not being a Court in the Ordinary sense to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect a subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to the act and the subject opposing it, the final determination of the authority will yet be a quasi-

judicial act provided the authority is required by the statute to act, judicially.

26. In the case *In re. Banwarilal Roy* 48 CWN 766, Das, J., as he then was said much to the same effect at p. 800:

A judicial or quasi judicial act, on the other hand implies more than mere application of the mind or the formation of the opinion. It has reference to the mode or manner in which the opinion is formed. It implies "a proposal and a opposition" and a decision on the issue. It vaguely connotes "hearing evidence and opposition" as Scrutton L.J., expressed it. The degree of formality of the procedure as to receiving or hearing evidence may be more or less according to the requirements of particular statute, but there is an indefinable yet an appreciable difference between the method of doing an administrative or executive act and a judicial or quasi-judicial act. This statement is practically in accord with the first proposition extracted above. This Court again, in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, in the context of the provisions of Eastern Bengal and Assam Excise Act, 1910 (Act I of 1910) considered the scope of the concept of "Judicial act". Sinha, J. who delivered the judgment of the Court, made the following observations at p. 408:

Whether or not an administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity must be determined in each case, on an examination of the relevant Statute and the rules framed thereunder.

27. In *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, this Court again reviewed the law on the subject to ascertain whether the Wage Board functioning under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Act XLV of 1955) was only discharging administrative functions or quasi-judicial functions. Bhagwati, J., made the following observation at p. 613:;

If the functions performed by the Wage Board would thus consist of the determination of the issue as between a proposition and an opposition on date and materials gathered by the Board in answers to the Questionnaire issued to all parties interested and the evidence led before it there is no doubt that there would be imported in the proceedings of the Wage Board a duty to act judicially and the functions performed by the Wage Board would be quasi-judicial in character.

The aforesaid three decisions, observed Subba Rao, J., lay down that whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially.

28. Applying the aforesaid tests let us scrutinize the provisions of the U.P. Govt.

Land (Eviction and Rent Recovery) Act 1953. A perusal of Section 4 of the said Act makes it clear that when the competent authority, which term has been defined in the U.P. Govt. Premises (Rent Recovery and Eviction) Act 1952 and of which the meaning is the same in this Act, being any person authorised by the State Govt. by notification in the Official Gazette to perform the functions of a competent authority under the Act, is satisfied that the conditions mentioned in Section 4(a)(i) and (ii) of the Land Eviction Act are fulfilled and that a person is in unauthorized occupation of any Govt. land then the competent authority may by notice served in such manner as may be provided require that person as well as any other person who may be in occupation of the whole or any part of the Govt. land to vacate it within 30 days of the date of service of notice. This notice as will appear is framed in the form of an order requiring vacation of the land; but Sub-section (2) of Section 4 makes it clear that in substance the aforesaid notice is a show cause notice for if the person served does not want to comply with it, then he can make an objection and the competent authority after considering the objection if any of the person, can order his eviction from the premises within a time to be fixed and notice of the latter order will be given to the person to be evicted. If the order so given is not complied with by the time fixed, the competent authority may evict the person or any other person who may be in occupation of the premises.

29. Now, no doubt in the first instance the competent authority requires the person concerned to vacate upon a subjective satisfaction that the requirements of Section 4 of the Land Eviction Act have been fulfilled; but after the person concerned has shown cause and has filed his objections then the competent authority has to consider the objections before ordering his eviction from the premises. The incorporated Section 7 Sub-section (2) of the Premises Act whereunder the objections are to be filed no doubt does not state that the competent authority should orally hear the parties or should take evidence, but having regard to the fact that an appeal under incorporated Section 8 is provided from the order of eviction passed by the competent authority u/s 7 Sub-section (2) to the District Judge and that the District Judge in such a case is empowered to call for a report from the competent authority and after making such further enquiry if any as may be necessary has to pass a final order, there can be no doubt that the competent authority, acting under incorporated Section 7 Sub-section (2) has also to act quasi-judicially. In the first place the order of the competent authority has been made subject to an appeal. The word "appeal" is different from the word "representation" and connotes a judicial approach at the hearing of the "appeal" and from that it follows that the District Judge must be provided with the material on which he can apply his mind which means that the record of the competent authority must be of a quasi-judicial nature. Although it is not stated in incorporated Section 7 Sub-section (2) that any evidence is required to be recorded, none the less incorporated Section 8 makes it perfectly clear that the competent authority is required to enquire because the appellate authority is given power to make "such further enquiry", which means that there

has been already an enquiry and the appellate authority may make additional and further enquiry if it so desires. The word "further" implies that there has been an enquiry upto a certain point. Therefore under incorporated Section 7, Sub-section (2) not only is the party served with a notice for ejectment given the right to object but the competent authority is clearly by implication called upon to make an enquiry. The making of enquiry involves that the competent authority should permit evidence to be recorded. Of course that does not mean that the competent authority is to act completely in a judicial way but there can be no doubt that the legislature intends that the objections shall be considered quasi-judicially. The objections represent the submission of the party against whom the order of eviction has been given. The other party to the objection is necessarily the Government whose property the person against whom an order of eviction has been passed is required to vacate. Therefore even though prior to the filing of objections the competent authority acts subjectively none the less subsequently when objections are filed it is clear to our mind that it is required to act quasi-judicially so that the object of incorporated Section 7 Sub-section (2) may be fulfilled and the party objecting should get a quasi-judicial determination of his representation which would be considered again quasi-judicially when the appeal permitted under incorporated Section 8 is preferred by the person ordered to be evicted.

30. Coming now to incorporated Section 8 itself one finds that the aggrieved person can file an appeal within 15 days in writing to the District Judge who may then call for a report from the competent authority and after making such further enquiry if any as may be necessary pass such order as he thinks fit and the order of the District Judge then becomes final. It is obvious that the competent authority must have provided itself with materials previously when hearing the representation u/s 7(2) to be able to send the report when it is called for by the appellate court. That means that the pros and cons of the matter are required to have been already considered by the competent authority before the ejectment order is passed by it. It may be that the competent authority is not required to write a full order and even that it is not clear because the right to appeal presupposes the existence of an order giving the reasons which are the foundation of it otherwise the party evicted would not be able to formulate its grounds of appeal. In case a sufficient enquiry has been made by the competent authority no doubt the further enquiry envisaged under incorporated Section 8 will not be necessary and the District Judge will not hold any such enquiry. It is evident that Section 8 contemplates a quasi judicial procedure. We may point out that although the District Judge is not an appellate court in the same way as under the Bengal and Assam Civil Courts Act for purposes of this Act, yet as the legislature has designated a person who has a trained judicial mind, it is obvious that the intention of the legislature was that the parties, namely the Government and the person to be evicted should have their dispute quasi-judicially adjudicated by a person who is familiar with the judicial process and has a trained judicial mind. It will be seen that the incorporated Section 9 empowers

the District Judge to pass a stay order although the power is limited by a proviso. The power of granting stay is also a judicial power given to an appellate authority. When we come to incorporated Section 10, we find that it deals with a situation which arises when the objection filed under incorporated Section 7(2) raises the question that the land in question is not Government land. Once such an objection is raised the competent authority u/s 7(2) has to make a reference at once to the District Judge stating the facts of the case including the facts showing that the premises are Government premises. Sub-section (2) of incorporated Section 10 then says that the District Judge has to proceed upon his investigation and is expressly required to permit the production of evidence. If after such investigation the District Judge is satisfied that the premises are Government premises he is called upon to dismiss the objection, but if he is not satisfied that the premises are Government premises then he has to accept the objection and set aside the order of the competent authority. It is further provided by Sub-section (5) of incorporated Section 10 that the party against whom an order is made Under Sub-section (3), may within six months of the date of order, institute a suit to establish the right which he claims to the premises in dispute in the court having jurisdiction.

31. It will therefore be observed that incorporated Section 10 expressly provides for a procedure approximating closely to judicial procedure. The section provides for at least a quasi-judicial procedure. It is evident both from the language of incorporated Section 7 Sub-section (2) and also because of the implication of the whole scheme of adjudication envisaged by incorporated Sections 7 to 10, all of which sections are inter-related, that the legislature has required that there should be a quasi judicial approach to the matter and that it considers that there is a his in which there has to be a hearing of both the parties interested at all stages except the initial one and such material as will be necessary for the proper disposal of the objection has to be considered.

32. We do not therefore think that incorporated Section 7, Sub-section (2) under which the impugned order has been passed is unconstitutional on the ground that it does not provide for a quasi-judicial machinery but only leaves the matter to the subjective satisfaction or discretion of the competent authority. In the view we have taken no question arises of the principle of natural justice being violated by the procedure laid down in incorporated Section 7 Sub-section (2), We have already quoted the impugned order. It shows that notice u/s 4 Sub-section (1) of the U.P. Government Land (Eviction and Rent Recovery) Act, 1953 was first issued to the Petitioner in respect of 93 acres of land, that he objected to the notice on the ground set out in that order that the objection was considered and further that as there was no evidence adduced whatsoever to show that the land had ever been allotted to the Petitioner the competent authority held that he was in unauthorised occupation of the land in question and he was therefore ordered to vacate immediately. It is evident therefore that it was owing to lack of evidence that the Petitioner was not able to establish his right to hold the land. The Petitioner was not shut out from producing evidence. In the counter-affidavit

filed it was stated that the Petitioner was allowed an opportunity to adduce evidence in support of his objection but that he failed to do so. It will therefore be observed that the competent officer followed a quasi-judicial procedure and he wrote a speaking order giving his reasons for rejecting the objection of the Petitioner and directing that he be evicted.

33. We will now proceed to consider certain cases which have been cited before us.

34. The first case is *Brigade Commander, Meerut Sub-Area and Anr. v. Sri Ganga Prasad and Anr.* 1956 AWR (HC) 253. In that case the competent authority had issued a notice for the eviction of the person concerned from open land under the provisions of Section 2(c) of the Government Premises (Eviction) Act 1950 (Central Act XXVII of 1950 as amended by Section 25(2)(b) of the Requisitioning and Acquisitions of Immovable Property Act (Act No. XXX of 1952). It was argued in that case that the aforesaid Government Premises (Eviction) Act 1950 contravened the provisions of Article 14 of the Constitution and was consequently void and of no legal effect Under Article 13 of the Constitution. That objection was upheld. u/s 3 of that Act the competent authority was entitled after issuing notice, to order that the person to whom notice was issued should vacate the premises in question within 15 days of the service of the notice, upon the competent authority being satisfied that certain prerequisites existed and if such person refused to vacate the competent authority could evict the person concerned and take possession of the premises and for that purpose use such force as should be necessary. u/s 5 any person aggrieved by an order of the competent authority u/s 3 or 4 could within 10 days of the date of the service of the notice u/s 3 or 4 prefer an appeal to the Central Government and the Central Government then after calling for a report from the competent authority and after making such further enquiry, if any, as was necessary, could pass such orders in the appeal as it thought fit and the order of the Central Government was final. Examining the above provisions of the said Act, the Division Bench held that under the impugned Act it had been left to the sweet discretion of the "competent authority" to determine firstly that the premises are Government premises and secondly that the occupation of the person in possession is unauthorised or that he had sub-let without the permission of the Central Government the whole or part of the premises or otherwise acted in contravention of any other terms, express or implied, under which he was authorised to occupy the premises. The Division Bench was of the view that all these points are to be determined by the "Competent authority" without hearing the person concerned and then, again, the "competent authority" can be any person irrespective of whether he has qualifications for evaluating title to the property or not. These provisions according to the Division Bench give such wide power to the "competent authority" that the competent authority may even evict a person who may not in truth be occupying government premises at all or who may not, if occupying Government premises, be in unauthorised occupation thereof. The Division Bench thought that all that the competent authority has to

do was subjectively to satisfy himself about these matters and then to issue a notice to the person concerned and if he did not vacate the premises within 15 days of the service of notice to forcibly evict him without giving him a hearing at all as to his right to remain in occupation of the property. The Division Bench held that such drastic provisions cannot by any stretch of imagination be called reasonable. Then the Division Bench considered the provision in regard to appeal and thought that it was an eye-wash because there again was no provision for an opportunity being given to the aggrieved person of being heard in support of his case. It pointed out that the Central Government may call for a report from the "competent authority", that such a report was not expected to be of any help to the aggrieved person as the report was bound to be in support of the action taken by the competent authority. No doubt it was recognised by the Division Bench that the Central Government could also make further enquiry, but this again was said to be absolutely discretionary with the Central Government. The Division Bench was of the view that the Central Government was not bound to pass the orders upon the merits of the case because the aggrieved person had been given no opportunity of placing his case before the Central Government and the order of the Central Government was merely arbitrary. It was then of the view that there was no justification in denying to persons in occupation of Government premises right which are considered fundamental in all civilised societies.

35. No doubt Section 5 of the Central Act and incorporated Section 8 of the Premises Act, which section Stands incorporated in the Land Premises Eviction Act, is in terms almost identical; but in the case of the Land Eviction Act, the appeal does not lie to the Central Government but lies to the District Judge, in other words to an independent person and not to the owner of the property itself. Moreover, as we have pointed out, Section 8 of the Land Eviction Act clearly envisages a quasi judicial procedure. There is no reason to think that the power which has been given by Section 8 of the Land Eviction Act to make further enquiry would be arbitrarily not exercised by the District Judges designated and that they would not quasi-judicially at least consider the grounds of appeal made by the aggrieved person, ordered to be evicted. We are of opinion that every Act must be construed upon its own provisions and that a ruling given on one Act necessarily does not cover an Act which in some respect may have identical provisions but in other respects may have different provisions. It does not appear that in the Central Act the competent authority after it had asked for the premises to be vacated is called upon to consider any objection filed by the person aggrieved and then to pass an order of eviction. There, straightaway upon the first order of vacation not having been carried out the person could be caused to be evicted by the competent authority.

36. There is substance in the criticism made by learned Counsel that the calling of a report from the competent authority by the Central Government would not necessarily be of no value in helping it to determine the appeal of the aggrieved person. There does appear to be uncontrolled discretion given to the competent

authority in the Central Act, though that criticism could not be made in regard to the powers conferred upon the Central Government by Section 5.

37. In *Jagu Singh v. M. Shaukat Ali and Anr.* 58 CWN 1066 the same Central Government Premises Act 1950 was considered and it was held to be ultra vires as infringing the provisions of Article 19(f) of the Constitution. It was held that under the provisions of the Act, the title of a citizen to property is to be decided upon the subjective satisfaction of the "competent authority" who may have no competence whatsoever to decide such a question and behind the citizen's back, without giving him any opportunity of vindicating his title and the jurisdiction of the civil court has been barred under the Act. Therefore the provisions of the Act, it was held, constitute a wholly unreasonable restriction on the fundamental right granted to a citizen of acquiring and holding property and as such are void. It will be observed that in the case of *Brigade Commander Meerut Sub-Area and Anr. v. Sri Ganga Prasad and Anr.* 1956 AWR (HC) 253 the question whether the Central Act contravened the provisions of Article 19(f) and of Article 31 as well was not considered.

38. In *Satish Chander and Another Vs. Delhi Improvement Trust, etc.*, the same Central Act came for examination and it was held that the Act was not unreasonable merely because it left it open to the Government to determine the question who was to be appointed as competent authority for it did not mean that the Government was likely to appoint unsuitable persons to be placed in such a responsible position. This Punjab case therefore differed from the Calcutta case in this respect, but it held at the same time that the powers given to the competent authority under the said Act are so wide and capable of abuse and the protection provided by the Act is so inadequate that the provisions of the Act as a whole amount to interference with the fundamental right of a citizen under Article 19(1)(f) of the Constitution which is not saved by Clause 5 of that Article. It was pointed out that the only right given to any person affected by an order of the Competent Authority is in Section 5 by way of appeal to the Central Government, which means to an officer appointed by the Central Government and the protection afforded by this so called appeal is almost illusory, that the section gave no right to the person affected to be heard by the appellate authority. Besides, it was held that there is no provision in Sections 3 and 4 of the Act for the issuing of any preliminary notice to show cause and the Legislature has expressly taken away the powers of civil courts to entertain any actions challenging any orders passed under the Act or to issue any injunctions.

39. From our examination of the Central Act and the Act impugned in this case it will be apparent that there are distinctive differences between the two Acts. It must be emphasized that the Land Eviction Act 1953 gives only power to evict from Government Land for breach of terms of tenancy or for unauthorised occupation. If the question of title of the land is raised the decision of the District judge is not final but the party can go to the Civil Court. It is only where the right of the State to the land is not questioned that its right to eject under the terms of

the tenancy are questioned or its rights to eject the person in occupation as a trespasser have been questioned that the jurisdiction of the civil court is barred. Moreover when a question of Government's title is raised Section 10 applies and a quasi-judicial procedure is provided for in the first instance also. Also the appeal provides a quasi-judicial procedure. The determination by the competent authority as we have shown also enjoins a quasi-judicial determination. It is only at the preliminary stage that the competent authority acts subjectively. No doubt the competent authority which has acted subjectively in the first instance may be the same competent authority which may determine the objections which are filed, but as the competent authority is not the Government, i.e. not the owner of the land, no question of bias will arise particularly if the competent authority has to perform its functions quasi-judicially in the first instance, when it issues the notice to vacate, it has no doubt only heard the Government's case and upon hearing it satisfied itself prima facie that an order to vacate should be made, but that by itself should not be a reason for disqualifying the competent authority from hearing the case on the merits after objection was raised. The first order that it makes, although not a quasi-judicial order, is in the nature of an ex parte order and there is no reason to think that when called upon to act quasi-judicially and not subjectively, the competent authority which, though it may be a servant of the Government, would not be able to act without bias.

40. Therefore even though we are of the view that a quasi-judicial procedure is provided under the impugned section of the Land Eviction Act we must hold the Act to be unconstitutional because it provides no reasonable basis for classification under Article 14 of the Constitution.

41. It seems to us that by providing a special procedure for ejectment from Government land by this Act and by providing the same procedure for ejectment from Government premise by another Act the legislature is creating something in the nature of a droit administratif so that dispute relating to occupation of Government property in contra-distinction to disputes arising in respect of title thereto should be decided by special authorities and by a special procedure though fortunately the decision is still amenable to the jurisdiction of this Conn. The ground for differentiation in this case is merely speedy ejectment from Government land. The classifications cannot be held valid under Article 14 of the Constitution.

42. Accordingly we hold that the U.P. Govt. Land (Eviction and Rent Recovery) (Act 1953 Act XXIX of 1953) is ultra vires the Constitution of India.

43. This petition is allowed, the impugned order dated 25-8-58 is quashed and a writ shall issue directing the opposite parties not to proceed to deal with the land in question under the said Act and an order shall issue to them to restore the land already taken possession of to the Petitioner.