

(1972) 05 SC CK 0031

In the Supreme Court Of India

Case No : Civil Appeal No. 493 of 1967 and 1456 of 1968

Hari Singh and Others

APPELLANT

Vs

The Military Estate Officer and Another
Bhartiya Hotel
and Others Vs Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-05-1972

Acts Referred:

Constitution of India, 1950 — Article 14
Public Premises (Eviction of Unauthorised Occupants) Act, 1958 — Section 5(1)
Punjab Tenancy Act, 1887 — Section 42, 43

Citation : AIR 1972 SC 2205 : (1972) 2 SCC 239 : (1973) 1 SCR 515

Hon'ble Judges : S. M. Sikri, C.J; M. Hameedullah Beg, J; J. M. Shelat, J; I. D. Dua, J; H. R. Khanna, J; D. G. Palekar, J; A. N. Ray, J

Bench : Full Bench

Advocate : Rameshwar Dial, Sharda Rani and S. D. Mathur, for the Appellant;
Jagadish Swarup, Solicitor-General of India, S. K. Bisaria, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Ray, J.—These two appeals raised originally the Constitutionality of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The challenge was on the ground that Section 5(1) of the 1958 Act violated Article 14 of the Constitution. Section 5(1) of the 1958 Act conferred power on the Estate Officer to make an order of eviction against persons who are in unauthorised occupation of public premises. The vice of Section 5(1) of the 1958 Act against Article 14 of the Constitution was this. The Government had two alternative remedies of eviction of persons in unauthorised occupation. One was to seek the remedy in a court of law by instituting a suit for eviction. The other was the remedy prescribed by the 1958 Act. The 1958 Act was attacked on the ground that there was the unguided discretion of the authorities to either of the remedies and to pick and choose some of them in occupation of public premises for the application of the drastic procedure under the 1958 Act.

2. The 1958 Act was amended in 1968. Section 10E was introduced into the

1958 Act. Section 10E created bar of jurisdiction of civil court to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable u/s 7(1) or damages payable u/s 7(2) or costs awarded u/s 9(5) of the Act. The appellants raised the contention that the amendment effected by Section 10E of the Act was not retrospective and therefore the proceedings forming subject matter of the appeals were not saved by the amendment.

3. In the appeal filed by Hari Singh one Behari Lal obtained lease from the President through the Military Estate Officer, Delhi Circle of 36.73 acres of land at Ambala Cantonment. The lease was for four years from 1 May, 1952. The annual rent was Rs. 3310/-. The rent was payable in advance. Behari Lal failed to pay rent. The lease expired on 1 May, 1957. The period of the lease was not extended. Behari Lal failed to surrender possession. There was an order dated 17 June, 1960 under the 1958 Act for eviction of Behari Lal. The appellants claimed to be sub-lessees of Behari Lal. The lease permitted subletting only with the permission of the competent authority. Notice was given under the 1958 Act to the appellants to show cause as to why they should not be evicted under the Act, because they were in unauthorised occupation of the land. The Estate Officer found that there was no sanction of the competent authority permitting sub-lease. On 25 July, 1961 an order was passed u/s 5 of the 1958 Act evicting the appellants. The appellants preferred on appeal to the District Judge, Ambala. On 18 April, 1962 the appeal was dismissed. Thereafter the appellants filed a writ petition in the Punjab High Court. The learned Single Judge dismissed the petition on 13 May, 1963. The appellants preferred Letters Patent appeal. The High Court dismissed the appeal on 5 September, 1966. The appeal filed by Hari Singh and others is by certificate against the decision of the High Court of Punjab.

4. The appeal filed by Bhartiya Hotel and Ors. is by certificate against the judgment dated 12 December, 1967 of the High Court at Patna. The appellants there are partners carrying on business under the name of Bhartiya Hotel at Ratanpura. One of the partners obtained lease of a plot of land at Chapra in Bihar. Ram Lakhan Prasad is the partner who obtained the lease. The Estate Officer, North Eastern Railway served a notice dated 12 June, 1964 u/s 4(1) of the 1958 Act on Ram Lakhan Prasad for eviction of the appellants on the ground that the appellants were in unauthorised occupation. The Estate Officer on 16 March, 1966 passed an order of eviction against the appellants. The appellants thereafter moved the High Court at Patna for quashing the order of eviction. The High Court on 21 December, 1967 dismissed the writ petition of the appellants. The appeal is by certificate from the decision of the High Court.

5. In the appeal filed by Hari Singh and others two contentions were raised in the High Court. First. it was said that the word 'premises' did not apply to agricultural land. Secondly, it was said that the legislation on agricultural land was within the exclusive legislative held of the State, and, therefore, the Central Act was unConstitutional. The High Court rejected both the contention.

6. In the appeal filed by Bhartiya Hotel and others the appellants raised the principal contention that the 1958 Act violated Article 14 of the Constitution. The High Court referred to the decision of this Court in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, . The High Court held that the decision of this Court in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, case was on the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 and the provisions of the 1958 Act which formed subject matter of the decision in the Patna High Court contained distinguishable features.

7. In this context the appellants raised the Constitutionality of the 1958 Act. During the pendency of these appeals the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 received the assent of the President on 23 August, 1971. The appellants were allowed to add a new ground. The new ground challenged the Constitutionality of the 1971 Act.

8. The decision in the present appeals turns on the question as to whether the 1971 Act is a Constitutionally valid piece of legislation. The 1971 Act is deemed to have come into force on 16 September, 1958 except Sections 11, 19 and 20 which came into force on 23 August, 1971. Section 11 of the 1971 Act speaks of offence under the Act. The offence is that if any person who has been evicted from any public premises under this Act again occupies the. premises without authority for such occupation, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. Section 19 enacts that the 1958 Act is repealed. The most important section is 20. Section 20 is as follows:-

Notwithstanding any judgment, decree or order of any court, anything done or any action taken (including rules or orders made, notices issued, evictions ordered or effected, damages assessed, rents or damages or costs recovered and proceedings initiated) or (sic) to have been done or taken under the Public Premises (Eviction of Unauthorised Occupants) Act. 1958 (hereinafter in this section referred to as the 1958 Act) shall be deemed to be as valid and effective as if such thing or action was Hone or taken under the corresponding provisions of this Act which, under Sub-section (3) of Section 1 sha11 be deemed to have come into force on the 16th day of September, 1958 and accordingly-

(a) no suit or other legal proceeding shall be maintained or continued in any court for the refund of any rent or damages or costs recovered under the 1958 Act where such refund has been claimed merely on the ground that the said Act has been declared to be unConstitutional and void; and

(b) no court shall enforce a decree or order directing the refund of any rent or damages or costs recovered under the 1958 Act merely on the ground that the said Act has been declared to be unConstitutional and void.

9. Another important section of the 1971 Act is Section 15. Broadly stated, Section 15 speaks of bar of jurisdiction of courts. Section 15 provides that no

court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable u/s 7(1) of the damages payable u/s 7(2) or the costs u/s 9(5).

10. The scheme of the 1971 Act is that it confers power on Estate Officer to issue notice to persons who are in unauthorised occupation of any public premises to show cause why an order of eviction should not be made. 'Unauthorised occupation' under this Act in relation to any public premises means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. 'Premises' are defined to mean any land or any building or part of a building and includes the garden, grounds and outhouses, appertaining to such building or part of a building and any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. 'Public premises' means any premises belonging to or taken on lease or requisitioned by, or on behalf of the Central Government as enumerated in Section 2(e) of the Act. The notice to show cause against order of eviction shall specify the grounds on which the order of eviction is proved to be made. The Estate Officers under the Act are appointed by the Central Government. The Estate Officers are Gazetted Officers or officers of equivalent rank. 'Corporate authority' under the Act means any company or Corporation or any committee or the Authority as mentioned in the Act. The Estate Officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the CPC. 1908 when trying a suit, in respect of matters mentioned in Section 8 of the Act. These matters are summoning and enforcing the attendance of any person and examining him on oath; secondly, requiring the discovery and production of document; and thirdly, any other matter which may be prescribed. Section 10 of the Act provides for finality of orders in circumstances mentioned in Section 10 of the Act therein.

11. It is necessary to notice that this Court on 4 April, 1967 decided the Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, case on the validity of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 and declared Section 5 of that Act to be violative of Article 14. In Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, case the State of Punjab leased the Mount View Hotel at Chandigarh for a period of six years from 24 September, 1953. The Estate Officer gave a notice requiring the appellants in that case to show cause as to why the order of eviction should not be made. Section 5 of the 1959 Punjab Act provided that if after considering the cause and the evidence produced by any person in unauthorised occupation of public premises and after giving him reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorised occupation he 'may make an order of eviction'. Section 5 of the

1959 Act was held to leave it to the discretion of the Collector to make an order of eviction in the case of some of the tenants and not to make the order in the case of others. It was found that Section 5 did not lay down any guiding principle or policy under which the Collector had to decide in which cases he should follow one or the other procedure. This Court found that the Government had two remedies open to it. One was under the ordinary law. The other was a drastic and 'more prejudicial remedy' under the 1959 Act. Consequently, Section 5 was held to violate Article 14 of the Constitution.

12. The 1971 Act came into existence to validate anything done or any action taken or purported to have been done or taken under the 1958 Act. In the first place, the 1971 Act is made retrospective with effect from 16 September, 1958 except Sections 11, 19 and 20. In the second place, Section 20 of the 1971 Act which is described as the section for validation provides that anything done or any action taken or purported to have been done or taken shall be deemed to be as valid and effective as if such thing or action was done or taken under the corresponding provisions of the 1971 Act. In the third place, the 1971 Act by Section 15 provided bar of jurisdiction of courts in respect of eviction of any person who is in unauthorised occupation of any public premises. It therefore, follows that under the provisions of the 1971 Act which had retrospective operation from 16 September, 1958 there is only one procedure available for eviction of persons in unauthorised occupation of public premises. That procedure is to be found in the Act. The other courts have no jurisdiction in these matters. The vice of Article 14 which was found by this Court in the decision of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, no longer appears under the 1971 Act.

13. Counsel for the appellants contended that orders made or eviction ordered under the 1958 Act are not and cannot be validated by Section 20 of the 1971 Act. The contention was amplified in this manner. Section 20 of the 1971 Act presupposes and postulates that the 1958 Act was in operation and in existence. The 1958 Act was violative of Article 14 of the Constitution and accordingly it never came into existence and was non-est. Accordingly there could be no eviction order under the 1958 Act. Secondly, Parliament cannot by ordinary legislation enact that eviction under the unconstitutional 1958 Act shall be deemed to be a valid eviction under the 1971 Act.

14. The validity of the 1971 Act depends on the legislative competence to validate anything done or any action taken or purported to have been done or taken under the 1958 Act. Validation is achieved by enacting that anything done or any action taken or purported to have been done or taken shall be deemed to be as valid and effective as if such thing or action was done or taken under the corresponding provisions of the 1971 Act. The result is that the 1971 Act is made retrospective with effect from 16 September, 1958. Anything done or any action taken under the 1958 Act is to be deemed as valid and effective under the provisions of the 1971 Act. The consequence is that the validity of action done or

taken is to be tested with reference to the provisions of the 1971 Act. This Court in *West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras*, held that it is within the competence of the legislature to enact a law and make it retrospective in operation. In the *West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras*, case the electric company vested in the State of Madras under an order dated 17 May, 1951 under the provisions of Section 4(1) of the Madras Electricity Supply Undertakings Act, 1949. The validity of the Act was challenged. This Court held that the Act of 1949 was ultra vires. After the decision was pronounced the Madras Legislature passed the Madras Act 29 of 1954. The 1954 Act incorporated the main provisions of the earlier Act of 1949 and validated action taken under the earlier Act. The *West Ramnad Electric Distribution Co. Ltd.* challenged the 1954 Act. It was contended that the validation section was ineffectual and inoperative. The submission in *West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras*, case was that the notification in the year 1951 was invalid and inoperative because it contravened Article 31 of the Constitution. It was therefore contended that by reason of the decision of this Court that the Act of 1949 was invalid, the notification was not supported by any authority of any pre-existing law. This Court did not accept that contention. This Court said that 'if the Act is retrospective in operation and Section 24 has been enacted for the purpose of retrospectively validating actions taken under the provisions of the earlier Act, it must follow by the very retrospective operation of the relevant provisions that at the time when the impugned notification was issued, these provisions were in existence. That is the plain and obvious effect of the retrospective operation of the statute. Therefore in considering whether Article 31(1) has been complied with or not, we must assume that before the notification was issued, the relevant provisions of the Act were in existence and so, Article 31(1) must be held to have been complied with in that sense".

15. In *West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras*, case this Court referred to the provisions of Article 20 of the Constitution to emphasise the instance where the Constitution prevented retrospective operation of any law. Accent was placed on the words "law in force at the time" occurring in Article 20. The words "by authority of law" in Article 31(1) were distinguished from the words occurring in Article 20. This Court said that if subsequent law passed by the legislature was retrospective in operation, it would satisfy the requirement of Article 31(1) and would validate the impugned notification in the *West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras*, case.

16. The ruling of this Court in *West Ramnad Electric Distribution Co. Ltd.*(1) case establishes competence of the legislature to make laws retrospective in operation for the purpose of validation of action done under an earlier Act which has been declared by a decision of the court to be invalid. It is to be appreciated that the validation is by virtue of the provisions of the subsequent piece of legislation.

17. An illustration of ineffective validation may be found in the case of *Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma*, . In that

case, there was the (sic). Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955. It was passed on 11 April, 1955. The Assam Acquisition of Land for Flood Control and Prevention of Erosion (Validation) Act, 1960 was passed validating the acquisition of lands of which possession had been taken. The Assam Government took possession of lands in that case in 1954. There was an order of acquisition under the 1955 Act. The owner of the land was asked to submit claim for compensation under the 1955 as well as 1960 Acts. Sarma challenged the validity of both the Acts. The High Court held that the 1955 Act was violative of Article 31(2) of the Constitution as it stood before the Constitution (Fourth Amendment) Act, 1955 and that the 1960 Act was not independent of the 1955 Act. This Court held that Section 2 of the 1960 Act which validated land taken under the 1955 Act by enacting that the same 'shall be deemed to have been validly acquired under the provisions of the 1955 Act failed to achieve the purpose of validation. The reason is this. The 1955 Act was found to be violative of Article 31(2) of the Constitution as it stood before the Constitution (Fourth Amendment) Act, 1955, because it did not ensure payment of a just equivalent of the land appropriated. The 1955 Act was also found to be violative of Article 14 of the Constitution. There was discrimination between owners of land similarly situated by the mere accident of some land being required for the purposes mentioned in the 1955 Act and some land being required for other purposes. The validation clause of the 1960 Act was held by this Court to be totally ineffective. The 1955 Act was invalid. The 1960 Act provided for validating acquisitions under the 1955 Act. This Court said that if the 1955 Act was invalid the deemed acquisition under the 1960 Act was equally invalid. The ratio is that the 1950 Act had no power to enact that an acquisition under a Constitutionally invalid Act was valid. The 1960 Act did not stand independent of the 1955 Act. The deeming provision of the 1960 Act was that land was deemed to be acquired under the 1955 Act. If the 1955 Act was unconstitutional the 1960 Act could not make the 1955 Act Constitutional.

18. The distinction between *West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras*, case and *Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma*, case is this. In the *West Ramnad Electric Distribution Co. Ltd.* case (supra) the 1954 Act validated actions and proceedings under the earlier Act by a deeming provision that acts or things were done by virtue of the provisions of the 1954 Act. The 1954 Act was not found to have any Constitutional infirmity. On the other hand *Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma*, validated by the 1960 Act acquisition under the 1955 Act. The acquisition was not by or under the 1960 Act. The acquisition was under the 1955 Act. The 1955 Act was Constitutionally invalid. Therefore, there was no validation of earlier acquisition.

19. The question of legislative competence to remove discrimination by a retrospective legislation came up for consideration before this Court in *The State of Mysore and Another Vs. D. Achiah Chetty, etc.,* . There were two Acts in Mysore for acquisition of private land for public purposes. One was the Mysore

Land Acquisition Act, 1894. The other was the City of Bangalore Improvement Act, 1945. A notification under the 1894 Act was issued for acquisition of Chetty's plots in Bangalore. Chetty challenged the acquisition on the ground that using the provisions of the Land Acquisition Act was discriminatory because in other cases the provisions of the Improvement Act were applied. The High Court accepted Chetty's contention. During the pendency of appeal to this Court the Bangalore Acquisition of Lands (Validation) Act, 1962 was passed. It validated all acquisitions made, proceedings held, notifications issued on orders made under the Land Acquisition Act before the 1962 Validation Act came into force. The 1962 Validation Act was challenged on the ground that the two Acts prescribed two different procedures. It was also said that the Improvement Act was a special law, and, therefore, the Acquisition Act was to give way to the special law. The validating section in the Mysore case (*supra*) provided that every acquisition of land for the purpose of improvement, expansion or development of the City of Bangalore by the State acting or purporting to act under the Mysore Land Acquisition Act shall be deemed to have been validly made, held or issued. The validating section was impeached on the ground that there were still two Acts which covered the same field but prescribed two different procedures. It was also said that the Acquisition Act was a more prejudicial procedure and was discriminatory. This Court found that the legislature retrospectively made a single law for the acquisition of these properties. It was contended that an acquisition hit by Article 14 or anything done previously could not be validated unless the vice of unreasonable classification was removed. The 1962 Validation Act was impeached on that ground. This Court did not accept the submission and said "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. Where, however, the legislative competence is not available, the discrimination that if there is legislative competence the legislature can put removed by a legislature having power to create a single procedure out of two and not by a legislature which has not that power."

20. The Mysore case (*supra*) is an authority for the proposition that if there is legislative competence the legislature can put out of action retrospectively one of the procedures leaving one procedure only available and thus removing the vice of discrimination. That is exactly what has happened in the 1971 Act in the present appeals. The 1958 Act was challenged on the ground that there were two procedures and the choice of either was left to the unguided discretion of the Estate Officer. The 1971 Act does not leave any such discretion to the Estate Officer. Under the 1971 Act there is only one procedure. The deeming provision contained in Section 20 of the 1971 Act validates actions done by virtue of the provisions of the 1971 Act.

21. The meaning of a Validation Act is to remove the causes for ineffectiveness

or invalidity of actions or proceedings which are validated by a Legislative measure. This Court in *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, dealt with the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. u/s 73 of the Bombay Municipal Boroughs Act, 1925 a municipality could levy a rate on building or lands or both situate within the municipality. This Court held in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, that the term 'rate' must be confined to an impost on the basis of annual letting value and it could not be validly a levy on the basis of capital value. Because of this decision the Gujarat Legislature passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. The 1963 Act provided that past assessment and collection of 'rate' on lands and buildings on the basis of capital value or a percentage of capital value was declared valid despite any judgment of a court or Tribunal to the contrary. The earlier decision of this Court was applicable to the meaning of the word 'rate' occurring in the 1925 Act. The Validation Act gave its own meaning and interpretation of the law under which the tax was collected. It was also said by this Court that a tax declared illegal could be validated if the ground of illegality was capable of being removed. Therefore, a validating law is upheld first by finding out whether the legislature possesses competence over the subject matter, and, secondly, whether by validation the legislature has removed the defect which the courts had found in the previous law.

22. The legislature had legislative competence to enact the 1971 Act. It means that it could legislate on the subject of providing a speedy procedure for eviction of persons in unauthorised occupation of public premises. The legislature has power to pass laws with retrospective operation. The challenge to the 1971 Act is that the 1958 Act is unConstitutional, and, therefore, there cannot be validation of anything done under an unConstitutional Act. The fallacy of the appellants' submission is in overlooking the crucial provisions in the 1971 Act that the 1971 Act is effective from 16 September, 1958 and the action done under the 1958 Act is deemed to be done under the 1971 Act. There is no vice of discrimination under the 1971 Act. There is only one procedure under the 1971 Act.

23. It was contended that the word 'premises' in the Act would not apply to agricultural land. The word 'premises' is defined to mean any land. Any land will include agricultural land. There is nothing in the Act to exclude the applicability of the Act to agricultural land. Reference was made to Sections 42 and 43 of the Punjab Tenancy Act, 1887. Section 42 of the 1887 Act speaks of restriction on ejectment. Section 43 provides for application to the Revenue Officer for ejectment. It was said on behalf of the appellants that Article 14 of the Constitution was offended because of the procedure under the Punjab Tenancy Act, 1887 being available. There is no substance in that contention. Section 15 of the 1971 Act provides only one procedure for ejectment of persons in unauthorised occupation of public premises.

24. The 1958 Act has not been declared by this Court to be unConstitutional.

Section 5 of the 1959 Punjab Act was held by this Court in the decision in Northern India Caterers Private Ltd. case (supra) to be an infraction of Article 14. Section 5 of the 1958 Central Act is in terms similar to Section 5 of the 1959 Punjab Act. The arguments on behalf of the appellants therefore proceeded on the footing that the 1958 Act will be presumed to be unconstitutional. It was therefore said that the 1971 Act could not validate actions done under the 1958 Act. The answer is for the reasons indicated above that the legislature was competent to enact this legislation in 1958 and the legislature by the 1971 Act has given the legislation full retrospective operation. The legislature has power to validate actions under an earlier Act by removing the infirmities of the earlier Act. The 1971 Act has achieved that object of validation.

25. For these reasons, the appeals fail and are dismissed. Parties will pay and bear their own costs.

Beg, J.

26. I entirely agree with my learned Brother Ray whose Judgment I have had the advantage of perusing. I would, however, like to add some observations about the contention, put forward with some vehemence by the learned Counsel for the Appellants, based mainly on Keshavan Madhava Menon Vs. The State of Bombay, ; Behram Khurshed Pesikaka Vs. The State of Bombay, Saghir Ahmad Vs. The State of U.P. and Others, Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another, M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, ; Deep Chand v. State of UP. and Ors. [1959] 2 Supp. S.C.R. 8; Mahendra Lal Jaini v. The State of H.P. and Ors. [1963] Supp. 1 S.C.R. 912; B. Shama Rao Vs. The Union Territory of Pondicherry, (1); Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma, , P. Bhima Reddy Vs. State of Mysore and Others,

27. I do not think that all the cases listed above really support the submissions made on behalf of the appellants. And, those from which learned Counsel for the appellants could derive some support for any proposition put forward by him do not really apply, for two broad reasons, to the position we have to consider in the cases before us : Firstly, this Court has not so far declared any part of the Public Premises (Eviction of Unauthorised Occupants) Act, 32 of 1958, to be a void piece of legislation, and, therefore, no question of applying Article 141 of the Constitution arose here before the High Courts. Secondly, the argument of the learned Counsel for the Appellants seems to me to rest entirely on the erroneous assumption that provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 32 of 1958 were void for a "contravention" of Part III of the Constitution covered by Article 13(2) of the Constitution, on the strength of which it was submitted that what was "non est" in the eye of law, or "stillborn" in popular language, cannot be legalised, validated, or given life and force. An examination of the cases which could be relied upon by the learned Counsel for the appellants, to support his submission on the effect of Constitutional invalidity, shows that each of these cases dealt with a situation in which either an ab initio

or per se void enactment or action taken under it was sought to be validated.

28. In *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, there was no difference of opinion in this Court on the question whether, in providing a separate procedure for eviction of unauthorised occupants of public properties, there was a reasonable relationship or nexus between the object of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, and the special procedure designed for achieving a valid object. Even the majority view in that case was based upon the assumption that the special procedure did not, by itself, infringe Article 14 of the Constitution. This meant that the special procedure u/s 5 of the Punjab Act was not held to constitute per se a "contravention" contemplated by Article 13(2) of the Constitution. There was, however, a difference of opinion between learned Judges of this Court on the question whether this special and more drastic procedure, when viewed in the context of the less drastic procedure permissible under the ordinary law, for filing suits against unauthorised occupants, did or did not become unconstitutional. It was held that the "additional" drastic remedy, together with the option to proceed otherwise also, left room for discrimination between unauthorised occupants against whom either of the two procedures may be utilised. Therefore, the majority view was that, although, the procedure provided u/s 5 of the Punjab Act may be otherwise valid, yet, it became invalid or incapable of being used because of the option left to adopt another procedure existing under the ordinary law of the land which lay outside the Act. If there was a defect or lacuna left in framing the Punjab Act, which invalidated Section 5, it was that it did not contain a prohibition against the alternative procedure left open and not that it contained something which was, in itself, prohibited. And, what the Act did not contain was still something outside the Act. The unconstitutionality of Section 5 of the Punjab Act thus really arose from matters extraneous to the Act.

29. It is true that in *Northern India Caterer's case* (supra), it was held by this Court that Section 5 of the Punjab Act was "void", but, it seems clear that this consequence followed from examining the more drastic statutory procedure in the context of ordinary procedural law. I am, therefore, inclined to interpret the majority view in that case as laying down nothing more than that, although the more drastic procedure may be otherwise valid, yet, it became merely incapable of adoption or "unenforceable" in the situation emerging from the totality of provisions of law considered there. I do not find that anything was held in that case to justify the view that Section 5 of the Punjab Act was per se or ab initio void. This question was not discussed in *Northern India Caterers' case* (supra), because no method of validating a provision which could be assumed to be valid but which became "void" only in the context of other ordinary law of the land was under consideration there.

30. The result of the Act of 1971 "appears to me to be nothing short of a "re-enactment" retrospectively so that no ground is left open for the argument that

there is any possibility of discrimination between unauthorised occupants of public premises since the date from which the Act of 1971 became applicable. The validity of any past action, even under the old Act 32 of 1958, will have to be judged in the light of provisions of the Act 40 of 1971. If some proceeding taken under Act 32 of 1958 is still pending, as it is in the case of the appellants M/s. Bhartiya Hotel, Chopra, Bihar, its correctness and validity will be governed by the requirements laid down by Act 40 of 1971 as it would be "deemed" to be a proceeding under the new Act. In the case of the other Appellants Hari Singh and Others, from Punjab, the eviction took place in accordance with the procedure under Act 32 of 1958. But, even these appellants could not complain that any of the rights protected by the procedure found in Act, 40 of 1971 were infringed, because the procedure for eviction, including a right to appeal to the District Judge, is identical under both the Acts. Indeed, the judgments under appeal before us were given before the Act 40 of 1971 came into force. The Act of 1971 became relevant for these cases only because the objection to the validity of the procedure under the Act of 1958 was no longer available to the appellants after the retrospective filling up of the previous lacuna retrospectively.

31. Learned Counsel had urged that the legislative incompetence to violate rights conferred by Part III of the Constitution could not be cured by any law short of a valid amendment of the Constitution. But, it seems to me that there was no per se "void" or "unenforceable" (a term which I would employ in preference to "void" in such a context) law before us which was validated. Even if there was a "validation" and not a re-enactment, in substance, it also made invalid any possible discriminatory acts which may have been committed during the currency of the Act of 1958, of which there is no evidence before us, by the Governmental authorities, in proceeding under the ordinary law against some unauthorised occupants.

32. It was submitted that the effect of Section 20 of Act 40 of 1971 was really to validate what was merely "purported" to have been done in the past, so that it was assumed to be legally "non est", and, therefore, it could not be "deemed" to be as good as action taken under the Public Premises (Eviction of Unauthorised Occupants) Act 40 of 1971. To accept this view would make the deeming provision meaningless. I think that the view which we have taken involves that the deeming provision would not cure illegality in any past action which may still be there when tested by the standards and the procedure provided by Act 40 of 1971. That is a logical and natural consequence of using the word "deemed". The word "purported" was used only to describe or identify past action taken under a repealed Act and it had no effect beyond that. That action would now be deemed to have taken place under Act 40 of 1971.

33. It has not even been contended before us that any action against the appellants is invalid tested by the provisions of Act 40 of 1971. The more fact that the procedure adopted under Act 32 of 1958 was attributable to a past enactment when that procedure, taken by itself, did not infringe a Constitutional

guarantee, did not make its shortcoming or deficiency incurable. The invalidity of that procedure, if any, could only result from the operation or effect upon it of the extraneous factors of an omission from the statute and of the procedure under the ordinary law. I would equate the legal position, which may thus emerge, with one in which the drastic procedure was merely under a shadow or in a state of suspension or unenforceability due to reasons falling outside the Act 32 of 1958. Once those reasons are eliminated by the new enactment, the shadow is removed and the old procedure becomes operative and effective retrospectively in a new garb without a change in the substance beneath it. If no one can have a vested right in a procedure which does not, by itself, violate a Constitutional guarantee, one could not, a fortiori, insist that it should not bear a particular descriptive label which is there to elucidate the meaning only. Afterall, we are concerned with the real meaning and effect of the words used and not with what they may be made to appear to convey by a merely clever play with words. The unmistakable effect of what was laid down by the Act 40 of 1971 was simply that the option to proceed to evict unauthorised occupants of public properties in any way outside the Act was shut out retrospectively. This was clearly within the legislative competence of Parliament.

34. For all the reasons given by my learned Brother Ray as well as for a few more given above I respectfully agree with orders made by my learned Brethren.