
(1970) 01 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No. 2188 of 1970

M.K. Khan

APPELLANT

Vs

Competent Authority, Assistant Housing Commissioner
(Estate Management), Maharashtra Housing Board

RESPONDENT

Date of Decision : 22-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 14, 226, 227, 329
Transfer of Property Act, 1882 — Section 108

Citation : (1970) 72 BOMLR 630 : (1971) MhLj 61

Hon'ble Judges : Madon, J;Chandrachud, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Chandrachud, J.—By this petition under Articles 226 and 227 of the Constitution, the petitioner challenges an order dated September 12, 1967 passed by respondent No. 2, the State of Maharashtra, confirming in appeal an order dated September 28, 1966 passed by respondent No. 1 the Competent Authority, u/s 53A of the Bombay Housing Board Act, 1948 (Act LXIX of 1948) hereinafter called "the Act."

2. By a letter dated February 10, 1961, the Estate Manager of the Maharashtra Housing Board informed the petitioner, a hutment dweller, that it was decided to allot to him a two-room tenement at Motilal Nagar, Goregaon Colony, under the Slum Dwellers Rehabilitation Scheme. The petitioner executed a tenancy agreement in favour of the Chairman of the Board and gave the necessary undertakings in the prescribed form. Clause 17 of the agreement provides that the tenancy would be terminable by one calendar month's notice on either side. Clause 20 provides that the tenancy shall be subject to the provisions of the Act, the Rules, Regulations and bye-laws for the time being in force.

3. On April 8, 1965, the Estate Manager gave a notice to the petitioner

terminating his tenancy and calling upon him to hand over vacant possession of the tenement on the expiry of the month commencing on May 1, 1965. The notice stated that-in default of compliance, the petitioner would be evicted as an unauthorised occupant under the provisions of the Act. On the following day, a letter was written by the Estate Manager to the petitioner stating that his continuance as a tenant of the Board was "not felt desirable by the Board," that he should therefore surrender vacant possession of the tenement allotted to him and that his tenancy was being separately terminated. On September 17, 1965, the Assistant Housing Commissioner, acting as the Competent Authority under the Act, gave a notice to the petitioner to show cause why he should not be evicted from the premises on the ground that his tenancy having been terminated, he was in unauthorised occupation thereof. On September 23, 1966, the Competent Authority passed an order asking the petitioner to vacate the premises within one month of the date of the service of the order, on the ground stated in the show cause notice. The order purports to be passed under "sub-section (") of section 53A" of the Act.

4. The petitioner filed an appeal to the State Government against that order, u/s 58C of the Act. The appeal was dismissed on September 12, 1967 by an order which states that the petitioner had constructed an unauthorised structure of galvanised iron-sheets between two blocks of the Housing Colony, that he had done electrical wiring in the unauthorised structure, that he was running a grain and grocery shop in another shed constructed by him behind the tenement allotted to him, and that calling himself a social worker he was carrying on an agitation against the Board asking people not to pay rent and electricity charges due to the Board. The order further states that when the petitioner was called upon to remove the unauthorised structure, rather than do so he gave it a permanent shape by plastering it and that, in his capacity as the President of the Maharashtra Talim Islam Committee, he stated that the shed was being used for the benefit of the Muslim residents of the Colony. The appellate order concludes by saying that the Director of Anti-Corruption and Prohibition Bureau had given information on July 19, 1965 that the petitioner earned his living by conducting a Bidi shop in front of his tenement and that thereby he had violated the agreement of tenancy.

5. Two affidavits have been filed before us on behalf of the respondents-one by the Special Officer, Urban Development, Public Health and Housing Department, Government of Maharashtra and the other by the Assistant Housing Commissioner who is appointed by the State Government as the Competent Authority u/s 53A1 of the Act. The Special Officer states in his affidavit that the Government came to the conclusion that the petitioner had constructed unauthorised structures, that he was carrying on business in one of the structures, that he was inciting the tenants of the Housing Board not to pay rent and electricity charges to the Board, that he had thus acted in breach of the terms and conditions of his tenancy and that it was for these reasons that the petitioner's tenancy was terminated by the Estate Manager. The affidavit also

refers to the report of the Anti-Corruption and Prohibition Intelligence Bureau that the petitioner was earning his livelihood by conducting a Bidi shop in front of his tenement.

6. The affidavit of the Competent Authority says that the petitioner was a habitual defaulter in payment of rent, that he had constructed unauthorised structures, that he was running a shop unauthorisedly and that the unauthorised structures were being used as a Masjid. According to the Competent Authority, the Board decided in view of these circumstances to terminate the petitioner's tenancy.

7. Two points have been urged before us on behalf of the petitioner : (i) That the notice terminating his tenancy and the order of eviction passed against him are bad because they are contrary to the provisions of Section 53A of the Act, and (ii) that Chapter V-A of the Act is unconstitutional as it offends against the guarantee contained, in Article 14 of the Constitution. We will consider these points in the same order.

8. Section 53A on the construction of which the validity of the first contention rests reads thus :

53A. (1) If the competent authority is satisfied,-

(a) that the person authorised to occupy any Hoard premises has,

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months, or

(ii) sub-let, without the permission of the Board, the whole or any part of such premises, or

(iia) committed, or is committing any act contrary to the provisions of Clause (b) of section 108 of the Transfer of Property Act, 1882, or

(iib) made, or is making, material additions to, or alterations in, such premises without the previous written permission of the Board, or

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

(b) that any person is in unauthorised occupation of any Board premises the competent authority may, notwithstanding anything contained in any law for the time being in force, by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (Hi) in such other manner as may be prescribed, order that that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.

(1A) Before an order under Sub-section (i) is made against any person the competent authority shall inform the person by notice in writing of the grounds for which the proposed order is to be made and give him a reasonable

opportunity of tendering an explanation and producing evidence, if any, and to show cause why such order should not be made, within a period to be specified in such notice. If such person makes an application to the competent authority for extension of the period specified in the notices the competent authority may grant the same on such terms as to payment and recovery of the amount claimed in the notice as he deems fit, Any written statement put in by such person and documents produced in pursuance of such notice shall be filed with the record of the case and such person shall be entitled to appear before the officer proceeding in this connection by advocate, attorney or pleader. Such notice in writing shall be served in the manner provided for service of notice under Sub-section (1).

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

(3) If a person, -who has been ordered to vacate any premises under Sub-clause (i) or (Hi) of Clause (a) of Sub-section (1) within one month of the date of service of the notice or such longer time as the competent authority may allow, pays to the Board the rent in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent authority, as the case may be , the competent authority shall, in lieu of evicting such person under Sub-section (2), cancel its order made under Sub-section (1) and thereupon such person shall hold the premises on the same terms on which he held them immediately before such notice was served on him.

Explanation.-For the purposes of this section and section 53B, the expression "unauthorised occupation", in relation to any person authorized to occupy any Board premises, includes the continuance in occupation by him or by any person claiming through or under him of the premises after the authority under which ho was allowed to occupy the premises has been duly determined.

9. The question for consideration is whether by reason of the Explanation to the section ii is open to the Competent Authority to treat the petitioner as an unauthorised occupant by giving him one month"s notice to quit or whether the petitioner having been an authorised occupant initially can be evicted on the grounds mentioned in Section 53A(1)(a) only. On this question, it is necessary to bear in mind the provisions contained in Sub-section 1A which was introduced by Amending Act 25 of 1055. Under that sub-section, the Competent Authority must, before passing an order of eviction, convey in writing to the person concerned the grounds on which the proposed order is to be made and give him a reasonable opportunity of tendering an explanation, producing evidence and of showing cause why the order should not be made. It is clear from the provision that an order of eviction cannot be made against an authorised occupant by merely giving him a month"s notice to quit and by treating him as an unauthorised occupant for the reason that such a notice has been given to him.

10. The scheme of Section 53A is clear. Sub-section (1) thereof is divided into two clauses, Clause (a) expressly dealing with persons authorised to occupy the Board premises and Clause (b) expressly dealing with persons who are in unauthorised occupation of the premises. The section envisages that persons who are in occupation of the Board premises under the authority of the Board can be evicted only if they have committed one or more of the acts mentioned in Clause (a). In other words, a lawful occupant can be evicted only if he has not paid the rent lawfully due from him for more than two months or if he has sub-let without the permission of the Board the whole or any part of the premises or if he has committed or is committing any act contrary to the provisions of Clause (o) of Section 108 of the Transfer of Property Act or if he has made or is making material additions to, or alterations in, the premises without the previous written permission of the Board or if he has otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy the premises. He cannot be evicted on any other ground.

11. Persons who are in unauthorised occupation of the Board premises, in the sense that the Board had not authorised them initially to occupy the premises, can be asked to vacate by a mere one month's notice. It is of course true that even such persons are entitled under Sub-section (1A) to a reasonable opportunity to show cause why the order of eviction should not be passed. The distinction however between the two classes of cases under Clauses (a) and (b) is that whereas persons falling under Clause (b) can be asked to vacate by a simple notice to quit, the right of lawful occupants who fall under Clause (a) cannot be determined similarly. They have a higher right than the unauthorised occupants falling under Clause (b) and the nature of that right is that they can be asked to vacate on the grounds mentioned in Clause (a) only.

12. Sub-section (3) lends further support to this view. It provides, briefly, that if an authorised occupant who has been asked to vacate the premises under sub-cl. (i) or (in) of cl. (a) of Sub-section (1), (that is, on the ground of arrears of rent or contravention of the terms of tenancy) pays the arrears of rent or carries out the terms contravened by him within a certain period, the Competent Authority shall, in lieu of evicting him, cancel the order made under Sub-section (1) and thereupon, the occupant is entitled to hold the premises on the same terms on which he held them before the notice of eviction was served on him. If the tenancy of an authorised occupant, like the occupation of an unauthorised occupant, could be terminated by a mere notice to quit, that is to say without reference to the limiting grounds mentioned in Clause (a), Sub-section (3) might well become a dead letter. A tenant who has fallen in arrears or has contravened any of the terms or conditions of his tenancy has been given a valuable right by Sub-section (3) to remedy the breach complained of. If his tenancy could be terminated by a simple notice to quit, it would, in the very nature of things, be impossible for him to remedy the breach, if the case fell under sub-cl. (i) or (in). The valuable right conferred by Sub-section (3) on lawful occupants cannot be permitted to be taken away by allowing the Competent Authority to evict them

without reference to the grounds mentioned in Clause (a).

13. The learned Counsel for the respondents strongly rely on the Explanation to Section 53A in support of their submission that the tenancy of an authorised occupant can also be terminated by a mere notice to quit, that is, without reference to the grounds mentioned in Clause (a). Now the Explanation (which was added by Amending Act 25 of 1955) says, to the extent it is material, that for the purposes of Section 53A and Section 5813, the expression "unauthorised occupation", in relation to any person authorized to occupy any Board premises, includes the continuance in occupation by him after the authority under which he was allowed to occupy the premises has been duly determined. It is urged that once the tenancy of an authorized occupant has been terminated by a notice to quit, he becomes an unauthorized occupant by virtue of the Explanation and an unauthorized occupant can, under Clause (b) of Sub-section (1), be asked to vacate the premises by a simple notice to quit. It is impossible to accept this contention. It assumes that the tenancy of an authorised occupant can be terminated by a mere notice to quit. It is undoubtedly true that by virtue of the Explanation, once the tenancy of an authorised occupant is "duly determined", he would become an unauthorized occupant. If he thereafter refuses to vacate the premises, which at one time he was lawfully occupying, it would be open to the Competent Authority to evict him under Sub-section (2), without taking recourse to a Court of law. What is however important is to bear in mind the salutary requirement of the Explanation, that an authorised occupant can become an unauthorized occupant only "after the authority under which he was allowed to occupy the premises has been duly determined".

14. It is urged by Mr. Andhyarujina, who appears on behalf of the State, that a due determination of the tenancy merely postulates a determination in accordance with the terms and conditions of the tenancy agreement and since the agreement in the instant case provides that the tenancy can be terminated by one month's notice on either side, it is sufficient to give such a notice to an authorised occupant in order to terminate his tenancy. We cannot accept this submission. By "duly determined", what is meant is that the tenancy must be determined in accordance with the provisions of the Act which confers upon the Competent Authority the right to terminate tenancies. The tenancy of a lawful occupant cannot, therefore, be said to have been "duly determined" unless the notice to quit is founded on one or more of the grounds mentioned in Clause (a). Any other view would lead to an obliteration of the salient distinction between the status of an authorised occupant and that of an unauthorized occupant. The former holds the premises as a tenant of the Housing Board and is entitled to continue in occupation so long as he performs the terms and conditions of the tenancy and does not commit any of the breaches mentioned in Clause (a). The latter is a trespasser and all that he is entitled under the law is an opportunity to show that the allegation that he is in unauthorised occupation is not true.

15. Beside, clause 20 of the statutory agreement between the authorised

occupants and the Housing Board stipulates that "The tenancy shall be subject to the provisions of the Bombay Housing Board Act, 1948 and the Rules, Regulations and bye-laws thereunder for the time being in force." Clause 17 of the agreement which provides that "The tenancy will be terminable by either side giving to the other one clear calendar month's notice", is in the nature of a procedural provision and it cannot detract from the important rights conferred upon authorised occupants by Sub-section (I) of Section 53A of the Act.

16. It is urged that if the right to treat an authorised occupant as an unauthorized occupant after terminating his tenancy is denied to the Board, the Explanation, which was especially introduced in 1955, will be denuded of its meaning. It is said that unless we give to the Explanation the meaning which is put upon it on behalf of the respondents, it would be difficult to envisage a case to which the explanation would at all apply. This argument makes it necessary to examine briefly the circumstances in which the Explanation was introduced.

17. Chapter V-A. in which Section 53A occurs was itself inserted by Bombay Act No. 82 of 1952. Sub-section (1A) of Section 53A, under which both classes of occupants are entitled to be heard before an order of eviction is passed, was introduced by Amending Act No. 25 of 1955. Until then, there was no provision in the Act under which even an authorised occupant was entitled to be heard before an order of eviction was passed against him. The Explanation was added by the same Amending Act, namely, Act No. 25 of 1955. As there has been some controversy before us as to why the Explanation was introduced and what classes of cases it was intended to cover, it would be useful to refer, though for a limited purpose, to the Statement of Objects and Reasons to the bill under which the Explanation was introduced. Clause (c) of that statement says that in Miscellaneous Petition No. 240 of 1954 the Bombay High Court (Nensey Pasoo Shah v. The State of Bombay) had held that a person, whose tenancy was terminated but who continues in possession of the premises cannot be considered as "a person in unauthorized occupation" within the meaning of Section 53A(1)(b) and that therefore it had become necessary to introduce the Explanation, so that the Act will cover persons whose tenancies were terminated by the Housing Board. We have seen the judgment of Coyajee J. dated August 27, 1954 in the aforesaid Miscellaneous Petition and the record of that petition, from which it would appear that a large plot of land on Dr. Annie Besant Road, Worli, was purchased by the Housing Board from the Municipal Corporation, as a part of a scheme to construct houses for the needy. One of the structures standing on the open plot was in a ruinous condition and had to be pulled down. The petitioner before Coyajee J. was in occupation of that structure as a tenant of the Municipal Corporation and on the purchase of the land together with the structures by the Housing Board, he became the tenant of the Board. As the Board wanted to evict him, it gave him a simple notice to quit alleging that he was an unauthorised occupant of the Board premises. It was held that a lawful tenant could not become an unauthorized occupant merely because of the notice to quit and that therefore the Housing Board had no right to evict the petitioner

without resorting to a Court of law.

18. These facts and the Statement of Objects and Reasons would show what class of cases the Explanation is designed to cover. We are not suggesting that this is the only class of cases covered by the Explanation, but it is clear that by adopting the construction which we have, the Explanation will not be robbed of all its content.

19. It was urged by Mr. Andhyarujina that under the Act no obligation is expressly cast on the Competent Authority to mention the grounds on which 1 lie tenancy of an authorised occupant was proposed to be terminated but that since the Housing Board is a public Corporation created for the benefit of the public, the grounds of termination would be required to be disclosed. Such grounds, according to the learned Counsel, need not be any of the grounds mentioned in Clause (a) but could be any other grounds germane to the object and purpose of the Act. We see no substance in this contention, because Sub-section (1) provides in terms by Clause (a) that the Competent Authority may order "the person authorised to occupy any Board premises" to vacate the premises within one month of the service of the notice, if it is satisfied that the person has committed any of the acts specified in Sub-clauses (i), (ii), (ia), (ib) or (iii). The other sub-sections of Section 53A also, to which we have already referred, leave no doubt that the right of the Competent Authority to ask an authorised occupant to vacate the premises allotted to him can be exercised only if the conditions mentioned in el. (a) are satisfied and not otherwise,

20. Mr. Munshi, appearing on behalf of the Competent Authority, went further than Mr. Andhyarujina and argued that the right to show cause conferred by Sub-section 1A is not a right to show cause against the grounds on which the order of eviction was proposed to be passed but was a limited right to show cause why a period longer than one month should not be given for vacating the premises. As an extension of this argument, he urged that even in the appeal before the State Government all that could be argued by the tenant is that a period longer than a month should be afforded to him for vacating the premises. This argument is wholly devoid of substance. Sub-section (1A) speaks of a reasonable opportunity to tender an explanation and confers a right to show cause by producing evidence why the proposed order of eviction should not be made. What constitutes a reasonable opportunity must, of course, depend on the facts and circumstances of each case, but to allow an occupant to controvert an order of eviction not by showing that the grounds on which the order was proposed to be made are untenable but that the time afforded to him for vacating the premises was inadequate, cannot possibly be said to be a reasonable opportunity of showing cause against the order of eviction. Again, the right of producing evidence in the exercise of the right to show cause why the order should not be made is meaningless, save in the context that the right extends to showing cause not merely against the period of one month afforded to the tenant for vacating the premises but against the grounds on which the order of eviction was

proposed to be made.

21. We are, therefore, of the opinion that it is not open to the Competent Authority to treat an authorised occupant as an unauthorised occupant by serving a bald, notice of eviction on him. On this ground alone the impugned order is liable to be set aside.

22. There are further reasons which also render the order of eviction bad. On April 8, 1965, the Estate Manager of the Housing Board gave a notice to quit to the petitioner on the ground that he was an unauthorised occupant. On April 9, 1965, the Estate Manager wrote a letter to the petitioner stating that he was being asked to surrender possession of the premises allotted to him as his continuance as a tenant of the Board was not felt desirable by the Board. On September 17, 1965, the Assistant Housing Commissioner, acting as a Competent Authority, served a notice on the petitioner calling upon him to show cause why he should not be evicted on the ground that his tenancy having been terminated, he was an unauthorised occupant. By an order dated September 23, 1966, the Competent Authority passed an order of eviction against the petitioner on the ground that he was in unauthorised occupation of the premises as his tenancy had been terminated.

23. It is clear from these proceedings that the tenancy of the petitioner was being terminated on the ground really that his continuance as a tenant of the Board was not felt desirable by the Board. The letter of the Estate Manager dated April 9, 1965 says so in terms. Though this was the true reason for terminating the tenancy of the petitioner, the Competent Authority afforded an opportunity to him to show cause against the proposed order of eviction only on the ground that his tenancy having been terminated, he had become an unauthorised occupant. The petitioner was not given any opportunity to show cause against the allegation that he was not a desirable person which was the real basis of the proposed order of eviction.

24. That the order of eviction was proposed to be passed against the petitioner not for the reason that he had become an unauthorised occupant but for the reason that his continuance as a tenant of the Board was deemed undesirable by the Board is clear from the affidavit which has been filed before us by the Competent Authority. In para. 4 (a) of that affidavit it is stated that the petitioner was a habitual defaulter and that at least on one occasion he was called upon to tender an apology as he had abused and threatened the Rent Collector of the Board. In para. 4 (d) it is stated that the Rent Collector had reported that the petitioner was a source of trouble and nuisance to the Board and to the residents of the colony. Further, that calling himself a social worker, the petitioner was urging the tenants of the Board not to pay rent and electricity charges to the Board.

25. Paragraph 4 (e) of the affidavit says that the petitioner had constructed an unauthorised structure, that he was conducting a shop on the rear of his

tenement, that the unauthorised construction was being used for the purposes of a Masjid and rather than remove it on being called upon to do so, he gave it a permanent shape. The affidavit also refers to a law other allegations against the petitioner which were the real reason of the notice to quit.

26. The petitioner filed an appeal to the State Government against the order of eviction passed by the Competent Authority and the appellate order dated September 12, 1967 also points in the same way. It refers to the unauthorised structure constructed by the petitioner and to the fact that the petitioner was conducting a shop in another shed constructed by him. The order further says that the petitioner called himself a social worker, that he was found carrying on an agitation against the Board and what is more, the appellate order relies upon a report of the Director of the Anti-Corruption and Prohibition Intelligence Bureau dated July 19, 1965 stating that the petitioner used to earn his living by conducting a Bidi shop in front of his tenement. It is for these reasons that the appellate authority confirmed the order of eviction.

27. Thus, the order of eviction was passed by the Competent Authority for a reason against which the petitioner was not given any opportunity to show cause. The State Government dismissed the petitioner's appeal for reasons which the petitioner had no opportunity to meet. The case which he was called upon to answer was that his tenancy having been terminated he had become an unauthorised occupant and therefore he was liable to be evicted. The order of eviction is therefore bad as it does not comply with the mandatory requirements of Section 53A (1A) which entitles an occupant to a reasonable opportunity of tendering his explanation against the proposed order of eviction.

28. u/s 53C (2) of the Act, the State Government, on receipt of an appeal, can call for a report from the Competent Authority and decide the appeal after making such further inquiries as it thinks fit. That such a report was called for is clear from the appellate judgment dated September 12, 1967. It is common ground that the report was not disclosed to the petitioner, which again shows that he was not afforded a reasonable opportunity to meet the case made out against him. The appellate order shows that the report was not called for by the State Government as a matter of idle formality. There is a recital in the order that the appeal was being dismissed after a "careful consideration of the said report" and other circumstances. In our opinion, if the Act permits the State Government while hearing an appeal u/s 53C to call for a report from the Competent Authority and if such a report is in fact called for, it must be disclosed to the person against whom it is intended to be used. One of the basic principles of natural justice is that you cannot rely upon a document to the prejudice of a person without giving him an opportunity to meet the document. If the report was disclosed to the petitioner, he might have been able to meet the allegations contained therein and the State Government, sitting as it does in appeal against the decision of the Competent Authority would be entitled to re-appreciate the facts and re-assess their value for itself.

29. Turning to the contention regarding the constitutionality of Chapter V-A, it was urged that Section 53A, around which the other provisions of the Chapter revolve, is unconstitutional as it violates the guarantee contained in Article 14 that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This point was argued before us by Mr. Shetty, who appears in a companion petition, in which a similar challenge has been made. In fact, we have before us a large group of petitions challenging the vires of Chapter V-A of the Act, particularly Section 53A thereof. Counsel appearing for the various petitioners adopted Mr. Shetty's arguments.

30. Section 53A is said to offend against Article 14, because it provides for a supplemental remedy and it confers an unfettered discretion on the Competent Authority to pick and choose tenants, so that he can evict some of them summarily u/s 53A and others by taking recourse to regular civil Courts. It is said that no guiding principles for the exercise of the summary powers are furnished by the statute, nor can any guidance be extracted from the surrounding circumstances, or the history of the legislation or the object, purpose and the policy of the Act. The procedure prescribed by Section 53A is alleged to be more drastic and prejudicial than the one under the ordinary law.

31. There is no doubt that the procedure prescribed by Section 53A is more drastic than the procedure which is followed by a civil Court of law. Under that section an order of eviction can be passed against an occupant on the satisfaction of the Competent Authority, though under Sub-section 1A, the Authority is under an obligation to inform the occupant as to the ground on which the proposed order is intended to be made and to give him a reasonable opportunity of tendering an explanation and producing evidence to show cause why such an order should not be made. If the occupant is unable to show satisfactory cause against the proposed order and the Competent Authority passes an order of eviction against him, he can file an appeal to the State Government u/s 53C of the Act but this right of appeal is of an entirely different nature than the right of an appeal to a Court of law or to a designated judicial authority, as, for example, the right which is available u/s 105 (/) of the Bombay Municipal Corporation Act. Under that section, an appeal from every order of the Commissioner in regard to the Corporation premises lies to the Principal Judge of the City Civil Court or such other judicial officer in Greater Bombay of not less than 10 years" standing as the Principal Judge may designate. An appeal to an executive authority cannot be an adequate substitute for an appeal to a judicial authority.

32. Though however the procedure prescribed by Chapter V-A is more drastic or onerous in comparison with the procedure which obtains in a regular Court of law, we are unable to accept the challenge made to the constitutionality of Section 53-A. If one has regard to the various provisions contained in Chapter V-A, it would be clear that the summary remedy prescribed for evicting occupants of Board premises is exclusive and not supplemental to the ordinary remedy

which is available under the law of the land. Before referring to those provisions, it would be useful to look at the Statement of Objects and Reasons relating to the main Act and the Statement relating to Chapter V-A which was inserted subsequently.

33. In so far as is material, the Statement of Objects and Reasons leading to the main Act is in these terms :

For the purpose of dealing with and satisfying the need of housing accommodation which has been acutely felt during and since the last war, particularly in urban and industrial areas, Government set up a Provincial Housing Board, with the duty to formulate a long-range housing policy and undertake an immediate programme of direct construction and assisted construction by Government Resolution in the Political and Services Department, No. 459/16, dated 18th January 1947. Government also set up the necessary housing organisation under a Housing Commissioner, A Post-war Reconstruction Scheme of housing for direct Government construction of houses for the industrial and low income groups and assistance to co-operative housing societies etc. was formulated and works worth 3-4 crores of rupees have been partly undertaken and partly projected. The housing programme is being accelerated and will have to be vigorously pursued for several years in order to overcome the present acute shortage of housing.

34. Chapter VA containing Sections 53A to 53D was inserted in the Act by Section 6 of Amending Act No. 32 of 1952. The Statement of Objects and Reasons leading to the insertion of Chapter VA is significant. It says in so far as is material :

The arrears of rent in respect of the tenements of the Bombay Housing Board are over Rs. 4 lakhs. In paragraph 81 of the Report of the Public Accounts Committee on the Appropriation Accounts of the Government of Bombay for the year 1948-49 and the Audit Report thereon, the Committee had expressed the view that it was essential that vigorous steps should be taken to recover these arrears of rent, if necessary, by the enactment of suitable legislation. The Bombay Housing Board has taken all action possible to recover the "arrears) through suits and distress warrants. In spite of this, the arrears are growing especially because in some colonies of the Board, namely, Sion-Dharavi and I.R.B.S.P., Borovli, most of the tenants have stopped payment of rent altogether for the past several months. The Housing Board cannot manage its estates under the ordinary law like other private landlords, because the Housing Board's tenants are taken on the lottery system without too detailed check on their financial capacity to pay rents, and the estates which are raised by Government funds are of enormous proportions. The Board cannot, therefore, be compared with private landlords. Loans advanced by Government to the Bombay Housing Board for direct construction of tenements under the housing programme of Government are repayable with interest charges to Government at regular intervals. The only revenues of the Board from which it would be able to repay Government loans

are those accruing from monthly rents. If arrears of rent cannot be recovered regularly, the Board will be unable to repay Government loans and interest thereon and ultimately public revenues would suffer. In the absence of any effective powers with the competent authorities of the Bombay Housing Board, early recovery of arrears is not possible. Besides, the Board also wants statutory powers of summary inquiry and eviction of unauthorised occupants so that it may be able to take quick and effective action against them. Filing of suits against unauthorised tenants involves a very lengthy process and a lot of revenue may also be lost. It is, therefore, necessary to arm competent authorities with effective powers of summary inquiry and eviction on the lines of the Central Act XXVII of 1950, namely, "The Government Premises (Eviction) Act 1950."

35. These Statements of Objects and Reasons cannot of course be used as aids to the construction of the statute (See *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*,), but we can refer to them "for the limited purpose of ascertaining the conditions prevailing at the time the bill was introduced" and the purpose for which the new Chapter was inserted in the Act (See *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*,). This purpose clearly was to arm the Competent Authority with powers of summary eviction, for the reason that recourse to Courts was a dilatory and inexpedient remedy.

36. We might notice Section 53D of the Act before pursuing the point whether Section 53A provides for an exclusive or a supplemental remedy.

37. Section 53D provided originally as follows :

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

This section was amended, by Amending Act No. 28 of 1969 which came into force on May 31, 1969. The section as amended reads thus :

No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Board premises under this Chapter or the recovery of the arrears of rent or damages for use or occupation of such premises, or in respect of any order made or to be made or any action taken or to be taken by the competent authority or the State Government in the exercise of any power conferred by or under this Chapter, or to (sic) grant any injunction in respect of such order or action.

By this Amending Act, the words "notwithstanding anything contained in any law for the time being in force," occurring in Sub-section (1) of Section 53A, were deleted. There can be no doubt that after the amendment of Section 53D, the

remedy prescribed by Section 53A for evicting occupants of Board premises is the only remedy which can be adopted, that is, that the ordinary remedy available under the general law has been taken away. The question which falls for consideration is whether the amendment of Section 53D merely makes clear what was not sufficiently clear before the amendment or whether, as contended on behalf of the petitioner, it became necessary to amend Section 53D in order to take away an additional remedy which was available under the unamended provision.

38. In support of his submission that Section 53A provides for a supplemental remedy, Mr. Shetty relied upon a decision of the Supreme Court in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, . In that case the Punjab Legislature had passed an Act called "Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959". It was held by the Supreme Court, after citing the Objects and Reasons of the Act, that the Legislature had intended to provide an additional remedy to the Government, a remedy which was speedier than the one by way of a suit under the ordinary law of eviction. Shelat J. speaking for the majority, observes in his judgment that there was nothing in the Punjab Act to warrant the conclusion that it impliedly took away the right of suit by Government or that the remedy under that Act was substitutive and not supplemental. The co-existence of the two remedies was not likely to lead to any inconvenience or absurdity and therefore, the Supreme Court did not feel compelled to infer that the Punjab Act had resulted in an implied deprivation of Government's right to sue in the ordinary Courts.

39. This judgment, in our opinion, can have no application to the case before us. In the first place, the Punjab Act applied to all Government premises. The property which was involved in the case before the Supreme Court was a hotel called "Mount View Hotel" at Chandigarh which was given on lease by the Punjab Government to the Northern India Caterers (Private) Limited. The Government wanted to sell the hotel to the appellants and since they did not accept the offer, they were called upon by the Government to hand over vacant possession before a certain date.

40. The Punjab Act was passed with a view to "provide for the eviction of unauthorised occupants from public premises and for certain incidental matters." The reason which led to the passing of the Act was stated to be :

There is no provision in the Land Revenue Act or in any other Act providing for the summary removal of unauthorised encroachments on or occupation of Government Nazul properties including agricultural lands and residential buildings and sites; and for recovery of rent. The only procedure laid down for the purpose is to sue the party concerned in a Civil Court which is a very cumbersome procedure and often involves considerable delay. To keep all Government owned lands whether put to agricultural or non-agricultural use, free from all encroachers and unlawful possessions, it is necessary to provide speedy machinery for this purpose. Hence, this Bill.

41. The Bombay Housing Board Act, as its long title shows, is "an Act to provide for measures to be taken to deal with and satisfy the need of housing accommodation." Its preamble shows that the Act was passed because it was "expedient to take such measures, to make such schemes and to carry out such works as are necessary for the purpose of dealing with and satisfying the need of housing accommodation", and with that object it was necessary to establish a Board. -The Statement of Objects and Reasons leading to the Act and to the insertion of Chapter VA, the relevant portions of which we have set out above, show that the Act was passed for the purpose of satisfying the need for housing accommodation which was acutely felt during the last war and that Chapter VA was introduced in the context of a frustrating and inconvenient situation. Arrears of rent due from tenants were in the neighbourhood of Rs. 4 lakhs, the Public Accounts Committee had expressed the view that it was essential to take vigorous steps to recover the arrears, tenants in some of the colonies of the Housing Board had stopped paying rent altogether for several months, the Board had taken all possible steps to recover arrears through suits and distress warrants and that the Board could, not manage its estates under the ordinary law like other private landlords, because its tenants were selected by a lottery system without reference to their capacity to pay rent. Further, if the Board was unable to recover the arrears of rent, it would also be unable to repay Government loans and the interest on those loans. Early recovery of rent was imperative but was otherwise difficult as the ordinary remedy of a suit was dilatory and expensive. It therefore became necessary to arm Competent Authorities with effective powers of summary inquiry and eviction.

42. Thus, an important point of distinction between the JV. / . Caterers" case and the one before us is that whereas the Punjab Act was passed in order merely to provide for a speedier inquiry and investigation into certain claims, Chapter V-A was introduced because it was realised that taking recourse to regular Courts of law for the purpose of recovering arrears of rent or for evicting occupants was likely to frustrate the very purpose for which the Housing Board was established under the Act, The Act is a beneficent measure of legislation and it promotes public welfare by fulfilling a crying public need, the need for shelter.

43. The second point of distinction between the two cases is that there is no provision in the Punjab Act corresponding to Sub-section (1) of g. 53A. Under this sub-section, putting it briefly, if the Competent Authority is satisfied that the person authorised to occupy any Board premises has not paid rent for more than two months, or has sub-let the premises or has committed any act contrary to the provisions of Section 108(o) of the Transfer of Property Act or has made material additions to, or alterations in the premises or has otherwise acted in contravention of any of the terms of his tenancy, the Authority may order that the person shall vacate the premises within one month from the date of the service of a notice on him. The scheme of Chapter VA and the implication of this sub-section have been considered by us in some details in the earlier part of this judgment and we have taken the view that Section 53A creates a plurality of

rights and obligations. An authorised occupant is entitled to continue in occupation so long as he has not done any of the acts mentioned in the five sub-clauses of el. (a) of Sub-section (1). If he commits any one of these acts, the Competent Authority becomes entitled to evict him after hearing him. Even after an order of eviction is passed, which roughly approximates to a decree of eviction in a Court of law, a tenant, who has been ordered to vacate the premises on the ground that he was in arrears of rent or that he had acted in contravention of any of the terms of his tenancy, is given a statutory right under Sub-section (3) to remedy the breach. If the arrears of rent are paid within a certain time or if the terms contravened are complied with to the satisfaction of the Competent Authority, an obligation is cast on the Authority to cancel the order of eviction and thereupon the tenant holds the premises on the same terms on which he held them immediately before the notice was served on him. These provisions have been made because the object of the Act is to provide houses to the homeless and to give them a sense of security in their tenure.

44. As special rights and obligations have been created by Section 53A, it is only apposite that a special and exclusive forum was created before which to assert those rights and enforce those obligations. This feature of the Act is conspicuously absent in the Punjab legislation.

45. It was urged by Mr. Shetty that we should prefer the construction that the ordinary remedy is kept intact by Section 53A, because there are no express words of repeal in Chapter V-A and Courts are not favourably inclined towards the theory of implied repeal. Mr. Shetty also relies on the concession contained in the affidavits filed on behalf of the Housing Board and the State Government, that two remedies were alternatively available under Chapter V-A. We might recall that in these affidavits, the challenge to the constitutionality of Section 53A is met by saying that the Act does not confer an unguided or unfettered discretion on the Competent Authority to pick and choose tenants arbitrarily and that, in any event, the procedure envisaged by Section 53A is not more prejudicial or onerous than the procedure which obtains in a regular Court of law.

46. The affidavits filed on behalf of the respondents undoubtedly contain a concession that Chapter VA provides for a supplemental and not a substitutive remedy. But the constitutionality of a statute cannot depend on concessions made by parties. The question whether Section 53A offends against the equality clause contained in Article 14 has to be decided by us apart from the view expressed in the affidavits filed on behalf of the respondents.

47. Counsel is right that there were no express words in Section 581) repealing the ordinary remedy, prior to May 31, 1969 when the section was amended by Act No. 28 of 1969. It is also true that Courts do not view with favour the theory of implied repeal. But having regard to the nature of the new rights and obligations created by Section 53A, we are of the opinion that the remedy provided by the section is exclusive and not additional. The Statement of Objects and Reasons leading, particularly, to the insertion of Chapter VA by Amending

Act No. 32 of 1952 confirms this view.

48. The learned Counsel appearing on behalf of the respondents have in this behalf drawn our attention to certain texts and cases to which we must refer. In his Commentary on Section 9 of the Civil Procedure Code, 13th Ed., pages 40-41, Sir Dinshah Mulla says that one of the principles governing the determination of the question how far the jurisdiction of the ordinary Civil Courts is taken away with respect to matters which are entrusted to special tribunals constituted by the Legislature, is :

Where a statute creates a new right not existing at common law and specifies a particular mode in which it is to be enforced, that bars by implication the jurisdiction of civil Courts.

In the view we have taken that Section 53A creates new rights, which did not exist apart from it, and provides that those rights can be enforced before a particular Tribunal, the jurisdiction of the Civil Courts must be held to have been taken away. The rights created by Section 53A in the tenants of the Housing Board are new rights which were not, for example, available under the Transfer of Property Act. Section 3A of the Act provides that the Bombay Rent Act of 1947 shall not apply to the buildings belonging to or vesting in the Housing Board. The protection of the Rent Act having been withdrawn from the tenants of the Housing Board, they were liable to be evicted by a mere notice to quit u/s III (a) of the Transfer of Property Act. But the object of the Act is to provide houses for the homeless and to confer upon them a certain amount of security in their tenures. New rights were therefore created in the tenants of the Board by providing that they can be evicted only for the reasons mentioned in cl. (a) of Section 53A (1). But a corresponding right was also created in the Board that if Clause (a) was applicable, the tenant could be evicted by the summary remedy. As Section 53A creates new rights which were not available apart from it and specifies a particular mode by which they are to be enforced, the jurisdiction of the Civil Courts to entertain and try matters between the Board and the occupants of Board premises would be excluded. That has now been made clear by the amendment of Section 53D.

49. Maxwell says in his book "On the Interpretation of Statutes", 12th Ed. pages 157-158, that ouster of jurisdiction can be effected by implication. In support of this proposition, the learned author has cited the decision in *Barraclough v. Brown* [1897] A.C. 615, where the statutory undertakers of a harbour were empowered to remove any vessel sunk in the harbour, and to recover the expenses of doing so from the owners in a Court of summary jurisdiction. It was held that they could not recover the expenses as damages at common law in the High Court, nor could they have a declaration that they were entitled to their expenses. An extract from Lord Herschell's judgment which has been quoted by the learned author runs thus: "I do not think the appellant can claim to recover by virtue of the statute and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right," This

statement of law is apposite to the case in hand, because if special rights conferred by Section 53A are intended to be enforced, it cannot be done by means other than those prescribed by the statute which confers the rights.

50. A similar statement can be found in "Craies on Statute Law," 6th Ed. page 247. It says :

If a statute creates a new duty or imposes a new liability, and prescribes a specific remedy ...the general rule is "that no remedy can be taken but the particular remedy prescribed by the statute".

The result of the application of this rule, according to the learned author, may even be to oust the jurisdiction as in *Barraclough v. Brown*, A part of Lord Watson's judgment in that case has been referred to at page 248 of the book which says:

"...The right and the remedy are given *uno flatu*, and one cannot be dissociated from the other...the legislature has, in my opinion, committed to the summary court exclusive jurisdiction, not merely to assess the amount of expenses to be paid to the undertaker, but to determine by whom the amount is payable, and has therefore by plain implication enacted that no other court has any authority to entertain or decide these matters."

51. As page 248 of Craies' book, reference is made to the judgment of Asquith L.J. in *Wilkinson v. Barking Corporation* [1948] 1 K.B. 721, which says that

It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.

52. In a case before a Division Bench of this Court in *Bhaishankar v. The Municipal Corporation of Bombay* ILR (1907) Bom. 604 : 9 Bom. L.R. 417, an election to the Bombay Municipal Corporation was challenged in a suit filed in the High Court. Section 33 of the City of Bombay Municipal Act, 1888 provided, to the extent it is material, that if the validity of any election is questioned, the aggrieved person may apply to the Chief Judge of the Small Cause Court for appropriate relief. Sub-section (3) provided that the Chief Judge's order shall be conclusive and Sub-section (5) provided that every election not called in question in accordance with the provisions of Section 33 shall be deemed to have been to all intents a good and valid election. While delivering the judgment of the Bench (which heard the suit under Rule 63 of the High Court Rules), Sir Lawrence Jenkins observed that (p. 609):

....where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive.

53. Further, that:

It is an essential condition of those rights that they should be determined in the manner prescribed by the Act to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts, for they never had any; there is no change of the old order of things; a new order is brought into being.

It was held that if the High Court were to entertain the suit and hold that the election was not valid, the order passed by the Chief Judge, Small Cause Court, would have to be brushed aside though the Act expressly provided that the Chief Judge's order shall be conclusive. In the result, the suit was dismissed for want of jurisdiction.

54. It is important that in the instant case also, the order passed by the State Government in appeal u/s 53C is given finality. Besides, even under the unamended Section 53D, that is, as it stood prior to May 31, 1969, no order made by the State Government or the competent authority in the exercise of any power conferred by Chapter VA could be called in question in any Court and no injunction could be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by the Chapter. If the jurisdiction of the ordinary Courts of the land were to be concurrent with the special jurisdiction created u/s 53A, the provision that the appellate order of the State Government shall be final or the provision in Section 53D would be devoid of any meaning. It is therefore clear, to borrow the formulation of Sir Lawrence Jenkins, that it is an essential condition of the rights created by Section 53A that they should be determined in the manner prescribed by the section to which they owe their existence.

55. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , the appellant, who was a candidate for election to the Madras Legislative Assembly and whose nomination paper was rejected by the Returning Officer, applied to the High Court of Madras under Article 226 of the Constitution for quashing that order. Article 329(b) of the Constitution provides, in so far as is material, that no election to a Legislature of a State shall be called in question, except by an election petition. The Representation of People Act, 1951 also provided by Section 80 that no election shall be called in question, except by an election petition presented in accordance with the provisions of the Act. While disposing of an appeal from the judgment of the High Court, Fazl Ali J., who spoke for the Full Court said that :

It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of, (p. 231).

In support of this statement, reference is made to the rule enunciated by Willes J. in the *Wolverhampton New Waterworks Co. Hawkesford* (1859) 6 C.B. (N.S.) 336 to the effect that (p. 356):

...Where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it...the remedy provided by the statute must be followed,...

At page 232 of the report, Fazl Ali J. says that the rule laid down in Wolverhampton's case was approved by the House of Lords, the Privy Council and the other Courts and that it has also been held to be equally applicable to enforcement of rights.

56. There is a recent judgment of the Supreme Court in *Dhulabhai v. State of M.P.* A.I.R [1909] S.C. 78 in which the learned Chief Justice has summarised in seven propositions the principles regarding exclusion of jurisdiction of Civil Courts. The first proposition says that (p. 89) :

Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

The second paragraph of the second proposition says that

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intended remedy becomes necessary and the result of the inquiry may be decisive.

57. In such a case.

It is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

58. As stated by us earlier, Section 53C of the Act gives finality to the order passed by the State Government in appeal and the unamended Section 531) (with which we are concerned), put the orders of the State Government and the competent authority beyond the pale of challenge in a Civil Court. Then again, though the procedure prescribed by Chapter VA is onerous in comparison with the procedure which obtains in a Civil Court, the opportunity which Section 53A (1) envisages is a reasonable opportunity, for it entitles the occupant against whom an order of eviction is proposed to be passed to tender his explanation, to adduce evidence and to show cause why the order should not be passed. Thus, in addition to the fact that the statute gives finality to the orders passed by the State Government and the Competent Authority, it provides an adequate opportunity to the occupants of Board premises to show cause against the proposed order of eviction. The remedy therefore prescribed by Section 53A must be held to be substitutive and not supplemental.

59. The decision of a Division Bench of this Court in *Umar Habib v. J.R. Vimadalal* (1967) Special Civil Application No. 1110 of 1906, decided by Mody and Chanrachud JJ.. on August 21, 22, 23, 1967 (Unrep.) (to which one of us, namely, Chandrachud J., was a party) cannot apply to the instant case. There, the challenge to the Constitutionality of Chapter VA of the Bombay Municipal Corporation Act, 1888 was repelled on the ground that the statute provided for an appeal against a summary order of eviction to a judicial officer of some standing. Counsel for the petitioner contends that as the Corporation Act is in part materia and as the appeal in the instant case lies to the State Government and not to a judicial authority, Chapter VA of the Act should be struck down as being discriminatory. This argument must fail because in *Umar Habib v. J.R. Vimadahd*, it was assumed that an option to pick and choose was available under Chapter VA of the Corporation Act. Such an option is not available under Chapter VA of the impugned Act and therefore all occupants falling within the same class have to be treated alike.

60. We must make it clear that we are not inclined to accept the submission made on behalf of the respondents that oven apart from the new rights and obligations created by Section 53A (1), the remedy provided for by Section 53A(1) is an exclusive remedy, that, is, a remedy which ousts the jurisdiction of Civil Courts. It was urged that Sub-section (3) of Section 53A and Sections 58B, 58C, and 58D-contain provisions which would justify the view that the jurisdiction of Civil Courts has been taken away. We cannot accept this contention because, provisions corresponding to these sections were substantially contained in the Punjab Act which has been considered by the Supreme Court in the *JV. I. Caterer's* case. In spite of those provisions, the Supreme Court held that the remedy provided by the Punjab Act was supplemental and not substitutive. Our reason for holding that Chapter VA prescribes an exclusive remedy is that Section 53A creates new rights and obligations, it provides for a special forum for their adjudication and affords a reasonable opportunity to the occupants to show cause why they should not be evicted.

61. There is one more aspect of Section 58A to which we would like to refer and it is this. If the remedy prescribed by Section 53A (1) was not exclusive, a strange consequence would ensue. If a tenant of the Housing Board commits any of the defaults mentioned in Clause (a) of Sub-section (1), the Competent Authority is clearly required to give him a reasonable opportunity under Sub-section (1A), before passing an order of eviction. A class of such persons, falling under Sub-clauses (i) and {in) of Section 53A (1)(a) are entitled under Sub-section (3) to remedy the breach within a certain time. If the argument that occupants not falling within Clause (a) can be proceeded against in a Civil Court were correct, it would mean that occupants who have committed defaults of the kind mentioned in Sub-clauses (i) and {Hi) would be entitled to higher rights than those who by reason of the fact that they have not committed any of the defaults in Clause (a) are required to be sued in a regular Court. In other words,

an occupant who has committed no default would have to suffer an order of eviction following upon a mere notice to quit, while a defaulting occupant falling under Sub-clauses {i) and {Hi) would have a locus penitential under Sub-section (5) even after an order of eviction is passed. That is an additional reason for holding that Section 53A is a self-contained code and contains an exhaustive enumeration of the rights and obligations of the parties.

62. We must now refer to the decision of a Division Bench of this Court consisting of Patel and Wagle, JJ., in *Ramraj Sink v. The State* (1968) 71 Bom. L.R. 168. In that case, petitions were filed by tenants of the Housing Board under Article 226 of the Constitution, challenging orders of eviction passed by the Competent Authority and the orders passed by the State Government dismissing their appeals. The orders were assailed on the ground that the provisions of Chapter VA of the Act are violative of Article 14 as they confer a "unfettered discretion on the Housing Board to evict its tenants either by proceeding u/s 53A or by filing suits in a regular Court. The petitions were dismissed summarily by the Division Bench, but it delivered a judgment while doing so. It has taken the view that the provisions of Chapter V-A are not violative of Article 14, notwithstanding the fact that it is within the discretion of the Board to evict its tenants either u/s 53A or by filing a regular suit, because the option available to the Board to adopt this or that remedy was only technical. According to the learned Judges, it is well-nigh impossible that any suit would ever be filed having regard to the circumstances under which powers of summary eviction were conferred. As there was no chance of a suit being filed, there could be no chance of discrimination and therefore, according to the learned Judges, the provisions of Chapter VA were valid.

63. Now, in the first place, it would appear from the judgment that the contention that Chapter VA was discriminatory was dealt with by the learned Judges on the assumption that the Housing Board had a choice of two alternative remedies. It was contended before them by the petitioners that the Housing Board had such a choice and the other side was not before the learned Judges to controvert that position. The decision therefore is not an authority for the proposition that Section 53A gives to the Board a choice of two remedies.

64. It was urged in that case that the provision of an appeal to the State Government made the procedure more onerous than the one available under the ordinary law. This argument was negatived on the ground that the appeal under the Rules of Business is required to be heard by a Deputy Minister, "the chosen representative of the people", and "he would, therefore, approach the question with greater sympathy than an executive officer, which was the case under the Punjab Act". With great respect, we are unable to agree with this observation. Except for the fact that Section 53A (1) creates new rights and obligations and provides for an exclusive forum for their adjudication, we might have been compelled to conclude, following the *N. I. Caterer's* case, that the provisions of Chapter VA violate Article 14, We do not, however, think it necessary to refer this

matter to a larger Bench, because the ultimate conclusion of the Division Bench was that Chapter VA is not violative of Article 14. We have reached the same conclusion, though by a different process of reasoning.

65. For these reasons, we uphold the constitutionality of Chapter VA of the Act but set aside the order of eviction passed by the Competent Authority on September 23, 1966 and the order passed by the State Government in appeal on September 12, 1967.

66. The petitioner will get his costs from the respondents.