
(1968) 07 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 99 and 100 of 1964 and W.P. No. 1994 of 1964

Mohammed Fiazuddin Khan

APPELLANT

Vs

Custodian Evacuee Property Andhara Pradesh and Others

RESPONDENT

Date of Decision : 19-07-1968

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 1, 2
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 31(2)
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 13

Citation : AIR 1969 AP 158

Hon'ble Judges : Narasimhan, J;Kuppuswami, J

Bench : Division Bench

Advocate : C. Narasimhacharya, for the Appellant; Prl. Govt. Pleader, for the Respondent

Judgement

Kuppuswami, J.—The appellant in the Writ Appeals and the petitioner in the writ petition is Mohd. Fiazuddin khan. By an order D/- 18-9-1951 the Deputy Custodian, Hyderabad, acting under the provisions of the Administration of Evacuee Property Act declared him as an Evacuee and notified his property consisting of a residential building known as Golden Lodge situated in Red hills and an extent of Ac. 350-00 of land situated in the village of Atteli, Tahsil Medchal of Hyderabad District, as evacuee property. On appeal by the petitioner, the Custodian of Evacuee Property confirmed the order of the Deputy Custodian. On a further revision petition to the Custodian-General of Evacuee Property, the orders of the Custodian and the Deputy Custodian were set aside on the ground that the notice issued to the petitioner u/s 7(1) of the Act was invalid. The matter was remanded to the Deputy Custodian with a direction to issue a fresh notice, conduct a fresh enquiry and give a decision in accordance with the law. After remand, the Assistant Custodian again passed an order D/- 8-3-1954 declaring the petitioner to an evacuee and all his property as evacuee property. An appeal by the petitioner to the Additional Custodian was dismissed, as also a

further revision to the Custodian-General of Evacuee Property. While dismissing the revision, the Custodian-General made the following observation in his order dated 17-8-1954:

"Mr. Ali has very earnestly urged before me that his client has never been to Pakistan, except on that occasion and that all the members of his family are residing in Hyderabad and the petitioner himself has been in Hyderabad ever since his return. He fears that the effect of my order would be that the petitioner would be thrown out of his property. In this he is right, but I have no doubt that the Custodian would not dispossess the petitioner from the house and the holdings but would, in the peculiar circumstances of this case allot the house and the holdings to him".

The petitioner filed a review petition before the same authority which was ultimately dismissed on 22-8-58. The petitioner, thereupon, filed a writ petition under Art. 226 of the Constitution in the High Court of Punjab for quashing the order of the Custodian General and all the prior proceedings. The Writ Petition was dismissed by a single Judge and a Letters Patent Appeal against that order was also dismissed by a Division Bench of the Punjab High Court even at the stage of admission. Thereafter, the petitioner preferred an appeal to the Supreme Court after obtaining special leave.

2. The only question that was raised before the High Court and before the Supreme Court was whether the notice issued by the Assistant Custodian to the appellant under S. 7(1) of the Act was in conformity with the provisions of the section and was valid. The Supreme Court by its judgment dated 21-3-1961 rejected that contention and dismissed the appeal. The appellant sought to contend before the Supreme Court that even if the notice was good, on the facts of the case it could be held that the appellant had not left India on account of partition within the meaning of Section 2-D(i) of the Act and hence he was not an evacuee. But, the Supreme Court refused to allow the appellant to raise this point for the first time before them as it was not even raised before the High Court. After the dismissal of the appeal by the Supreme Court, the Custodian issued a notice to the petitioner on 5-4-61 to surrender possession of the property. The petitioner, thereupon filed W. P. No. 638/61 seeking a writ of mandamus directing the Custodian of Evacuee Property to allot him the properties in pursuance of the order of the Custodian-General dated 17-8-1954 passed on the revision petition preferred by the petitioner. More than a year later he filed another petition W. P. No. 534/62 in which he again challenged the validity of the notice issued by the Asst. Custodian u/s 7 of the Act and also complained that the principles of natural justice had been violated in the proceedings taken by the authorities under the Act. He prayed that this Court may be pleased to call for the record relating to all the proceedings referred to earlier and quash the same by issuing a writ of certiorari or any other appropriate writ.

3. Both the writ petition were heard together and by a common judgment,

Justice Basi Reddy, dismissed the writ petitions with costs. W. A. No. 99/64 is preferred against the judgment and order in W. P. No. 638/61 and W. A. No. 100/64 is preferred against the judgment and order in W. P. No. 534/62.

4. While disposing of the writ petitions it was brought to the notice of our learned brother Basi Reddy, J. that the Central Government had issued notification on 20-1-1962 u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954) where-under the Central Government acquired all the properties which had been declared as evacuee properties of the petitioner for the public purpose connected with the relief and rehabilitation of displaced person. In addition to various other reasons given by Basi Reddy, J. , for dismissing the writ petition he also held that by reason of the above notification the property had vested in the Central Government absolutely free from all encumbrances and the petitioner's remedy, if any is only to claim compensation u/s 13 of that Act and for that reason also the writ petition was not maintainable. The petitioner has now filed W. P. No. 1994/64 challenging the above notification as unconstitutional and pray for the issue of a writ of certiorari quashing the said notification. As the notification sought to be challenged in W. P. No. 1994/64 is based on the assumption that the property is evacuee property and the question whether the orders declaring the petitioner as an evacuee and his property as evacuee property are themselves the subject-matter for consideration in Writ Appeal Nos. 99 and 100 of 1964, it is convenient to take up the writ appeals in the first instance for consideration.

5. In W. P. No. 638 of 1961 which is the subject-matter of W. A. No. 100/64 the question for consideration was whether the petitioner was entitled to ask for the issue of a writ of mandamus directing the Custodian of Evacuee Property to allot him the properties in pursuance of the order of the Custodian-General dated 17-8-1954. Our learned brother, Basi Reddy, J., held that while dismissing the revision petition all that the Custodian-General said was "that he had no doubt that the Custodian would not dispossess the petitioner from the house and the holding but in the peculiar circumstances of this case, allot the house and holdings to the petitioner" and this was nothing more than a recommendation and could not construed as a direction by the Custodian-General to the Custodian to allot the property conferring on the petitioner any legal right claim allotment. He held there was no legal duty on the Custodian to allot the properties to the petitioner. We agree entirely with this view. No other provision of law or statute has been placed before us whereunder there is a duty cast upon the authorities to allot the property declared as evacuee property to the evacuee himself. There is, therefore, no substance in the writ appeal which is dismissed with costs.

6. In W. P. No. 534/62 the petitioner sought once again to challenge the entire proceedings in spite of the fact that he had on an earlier occasion taken up the matter upto the Supreme Court which dismissed his appeal by its judgment D/- 21-3-1961. Basi Reddy, J., dismissed this writ petition on three grounds. He held that this court had no jurisdiction to quash the orders passed by the Custodian-

General of Evacuee Property who was outside its territorial jurisdiction, that the Constitution 15th Amendment Act 1963 which came into force on 5-10-1963, which enabled any High Court to issue a writ even in respect of orders of authorities situated outside the territory in which a High Court exercises its jurisdiction, had no retrospective operation and therefore, the petitioner could not rely upon that amendment to invoke the jurisdiction to quash the order passed by the Custodian-General long before the said amendment came into force. Secondly he held that the same point viz., the validity of the notification under the Evacuee Property Act had been agitated by the petitioner before all the authorities culminating in appeal to the Supreme Court and he cannot raise the same question once again in this writ petition. Finally he held that as the Central Government had issued a notification on 20-1-1962 u/s 7 of the Displaced Persons (Compensation and Rehabilitation) Act acquiring the property of the petitioner, the petitioner had no locus standi to maintain this writ petition, his only remedy being to claim compensation u/s 13 of that Act.

7. Mr. Narasimhachari challenges the correctness of all the three reasons given for dismissing the writ petition. In our view the second reason given by our learned brother, Basi Reddy, J., with whom we agree for dismissing the writ petition is sufficient to dispose of the writ Appeals. It is, therefore, unnecessary to consider the validity of the other two reasons.

8. From the facts stated earlier, it is clear that the petitioner had attacked the correctness and validity of the very same orders which he is now challenging in prior proceedings and ultimately his appeal before the Supreme Court was dismissed on 21-3-1961. Mr. Narasimhachari, however, contends that the only question which fell for consideration before the Supreme Court was whether the notice u/s 7 of the Evacuee Property Act was valid, whereas in the writ-petition he is seeking to challenge the order of the Tribunal under the Act on various other grounds including the ground that he is not an evacuee within the meaning of Section 2-D(i) of the Act, and as this aspect was not considered by the High Court of Punjab or the Supreme Court on an earlier occasion it is open to him to file a fresh writ petition questioning the orders on grounds different from those which he urged on a prior occasion. As a matter of fact, even before the Supreme Court he sought to raise the contention that even if the notice was good, on the facts the appellant was not an evacuee as he had not left India on account of partition within the meaning of Section 2-D(i) of the Act. The Supreme Court observed that:

".....This question was not raised before the High Court and we would not be justified to allow the appellant to raise it for the first time before us."

The question for consideration is whether the petitioner can be permitted to raise this objection in a fresh writ petition. We are of the opinion that he cannot be so permitted in view of the decision of the Supreme Court in *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, . The facts in that case are also similar to the facts in the present case.

In that case the assessee challenged the validity of sales tax imposed upon him for particular year by a petition under Article 226. The petition was rejected upon merits. An appeal also was dismissed by the Supreme Court upon merits. The assessee had attempted to raise two additional grounds before the Supreme Court. But the Supreme Court did not allow them on the ground that they had not been raised in the High Court and had not been raised before the Supreme Court at an earlier stage. Subsequently by writ petition under Article 226 before the High Court the assessee once again challenged the same assessment order but on grounds which the Supreme Court had not permitted to be raised by the assessee in the appeal before them in the previous writ petition. High Court reject the petition on merits. The Supreme Court on appeal held that the second writ petition was barred by constructive res judicata. Their Lordships of the Supreme Court observed as follows:

"The result of the decision of this court in the earlier appeal brought by the appellant before it, is clear and unambiguous, and that is that the appellant had failed to challenge the validity of the impugned order which had been passed by the Asst. Commissioner against him. In other words, the effect of the earlier decision of his court is that the appellant, is liable to pay the tax and penalty imposed on him by the impugned order. It would, we think, be unreasonable to suggest that after this judgment was pronounced by this court, it should still be open to the appellant to file a subsequent writ petition before the Madhya Pradesh High Court and urge that the said impugned order was invalid for some additional grounds. In case the Madhya Pradesh High Court had upheld these contentions and had given effect to its decision, its order would have been plainly inconsistent with the earlier decision of this court, and that would be inconsistent with the finality which must attach to the decisions of this court as between the parties before it in respect of the subject matter directly covered by the said decision. Considerations of public policy and the principles of the finality of judgments are important constituents of the rule of law and they cannot be allowed to be violated just because a citizen contends that his fundamental rights have been contravened by an impugned order and wants liberty to agitate the question about its validity by filing one writ petition after another".

Applying that principle to the present case we hold that the learned Judge was right in holding that the petitioner should not be permitted to agitate the same question again in this writ petition even if it be on different grounds. The writ petition was rightly dismissed.

9. It is pointed by Mr. Narasimhachari that the first reason given by Basi Reddy, J., that as the order of the Custodian-General was passed before the amendment when the High Court had no jurisdiction to issue writs in respect of authorities outside the territory of the Andhra Pradesh, the Constitutional 15th Amendment had no application and the writ petition was not maintainable, is not correct, and cited a decision in Anwar Mohammad Vs. Managing Officer, cum custodian of Evacuee Property, Jaipur and Others, where a different view was taken and the

decision of Basi Reddy, J., in this writ petition was dissented from. In that case, the Rajasthan High Court had to consider whether the writ petition could be filed after the Constitution (15th Amendment Act) to quash the order of an authority outside the territory of Rajasthan which had been passed before the coming into force of the Constitutional amendment. In this case the position is different. On the date of the filing of the writ petition, this Court had obviously no jurisdiction to issue a writ to the authority outside the territory over which it has jurisdiction. The real question is whether any order can be passed in such a writ petition after the coming into force of the Constitutional amendment. It is however, unnecessary for us to go into that question, as we have taken the view that the petitioner is prevented on the principles of constructive res judicata from reagitating the same question in a fresh Writ Petition.

10. The third reason given by Basi Reddy, J., is based upon the notification under the Displaced Persons (Compensation and Rehabilitation) Act. It is unnecessary again to rely on this circumstance in view of the above conclusion of ours. As, however, the validity of that notification is now challenged in a separate W. P. No. 1994/64, we are considering that question in that writ petition. In view of our decision on the question of res judicata and finality of the orders in the previous proceedings, the judgment and the orders in the writ petitions are confirmed. The writ appeals fail and are dismissed with costs. Advocate's fee Rs. 100 in each case.

11. The impugned notification dated 20-1-1962 is in the following terms:

"Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties specified in the Schedule hereto annexed in the State of Andhra for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons including payment of compensation to such person.

Now, therefore, in exercise of the powers conferred by Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, Act 1954 (44/54), it is notified that the Central Government had decided to acquire, it hereby acquires, the evacuee properties specified in the Schedule hereto annexed".

12. Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 is in the following terms:

"12 Power to acquire evacuee property for rehabilitation of displaced persons.

(1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

(2) On the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property, specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.

(3) It shall be lawful for the Central Government, if it so considers necessary, to issue from time to time the notification referred to in sub-section (1) in respect of -

- (a) all evacuee property generally; or
- (b) any class of evacuee property; or
- (c) all evacuee property situated in a specified area; or
- (d) any particular evacuee property.

(4) All evacuee property acquired under this section shall form part of the compensation pool".

13. Section 13 refers to compensation for evacuee property and provides that -

"There shall be paid to an evacuee compensation in respect of his property acquired u/s 12 in accordance with such principles and in such manner as may be agreed upon between the Governments of India and Pakistan."

It is admitted by Sri Ramachandra Reddy, appearing for the Union of India that till now no principles have been agreed upon between the Government of India and Pakistan according to which compensation may be paid, and no compensation has been fixed for being paid in respect of the petitioner's properties. The case was adjourned on a number of occasions extending over a period of several months in order to enable Sri Ramachandra Reddy to obtain, information from the Union of India, if there is any proposal at all to pay compensation in respect of the property acquired under that notification. We are informed by Sri Ramachandra Reddy that the Union of India had not given a definite reply as to whether any compensation will be and if so, what is the amount that will be paid. We have, therefore, to consider this petition on the basis that the property was acquired under S. 12, without any compensation u/s 13 of the Act.

14. Mr. Narasimhachari contends that Section 12 and 13 will have to be read together and no effect can be given to Section 12 unless and until the principles according to which the compensation is to be paid to the evacuee are agreed upon between the Governments of India and Pakistan and in accordance with those principles the compensation in respect of the property is to be determined. In support of this contention, the relief upon the well-known principle of statutory interpretation which succinctly set out in the following passage of 'Maxwell on the Interpretation of Statutes', 11th Edition, p. 276.

"Proprietary right should not be held to be taken away by Parliament without provision for compensation unless the legislature has so provided in clear terms. It is presumed, where the objects of the Act do not obviously imply such an intention, that the legislature does not desire to confiscate the property or to encroach upon the right of persons, and it is therefore expected that, if such be its intention, it will manifest it plainly if not in express words at least by clear implication and beyond reasonable doubt. It is a proper rule of construction not to construe an Act of Parliament as interfering with or injuring persons' rights without compensation, unless one is obliged so to construe it".

In this case we are of opinion that the terms of Section 12(2) of the Act are clear that on the publication of a notification u/s 12(1) the right, title and interest of any evacuee in the evacuee property shall be extinguished and the property shall vest absolutely in the Central Government free from all encumbrances. This is unconditional and is not made to depend upon the fixation or payment of compensation u/s 13. If the legislature intended that the extinguishment rights of the petitioner or the vesting of the property in Central Government is conditional upon the fixation of compensation u/s 13, provision would have been made to that effect. In view of the clear terms of Section 12 we have to accept the contention of Sri Ramachandra Reddy that the property vests in the Central Government, notwithstanding the fact that the principles of compensation have not been agreed upon between the two Governments of India and Pakistan and has not therefore been fixed.

15. In *Basant Ram Vs. Union of India (UOI)*, it was held by the Supreme Court that the consequence of the notification u/s 12 is that all rights, title and interest of the evacuee in the property ceased, with the result that the property no longer remained evacuee property. The property became part of compensation pool after the notification and could only be dealt with under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

16. An earlier decision of the Supreme Court in *Major Gopal Singh and Others Vs. Custodian, Evacuee Property, Punjab*, to the same effect was followed. No doubt, these two decisions as pointed out by Mr. Narasimhachari do not deal with the exact contention raised by him, namely, that the vesting will not take place until or unless compensation is fixed u/s 13 of the Act, but it is significant to note that their Lordships observed that on the making of notification u/s 12 the property vests in the Central Government.

17. It was next contended that if Section 12 is so construed as to enable the Central Government to acquire the property of a person even without the necessity of payment of compensation u/s 13, Section 12 would violate Article 31(2) of the Constitution which is in the following terms:

"31(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the

compensation or specifies the principles on which, the manner in which, the compensation is to be determined and given".

In this case it is seen that the Act in question does not fix the amount of compensation, nor does it specify the principles on which and the manner in which the compensation is to be determined and given. On the other hand, it leaves the principles on which and the manner in which the compensation is to be determined to form the subject-matter of agreement between the Governments of India and Pakistan. Thus, it is clear that the Act infringes Article 31(2) of the Constitution. In fact, no serious attempt was made by Mr. Ramachandra Reddy to argue that the Act did not violate Article 31(2) of the Constitution, but he relied upon Article 31(5)(b)(iii) which says:

"Nothing in clause (2) shall affect the provisions of any law which the State any hereafter make in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property".

It is contended that as this is a law with respect to the property declared by law to be evacuee property, its provision cannot be attacked on the ground that they infringe Article 31(2) of the Constitution. In *Bawa Harigir Vs. Assistant Custodian, Evacuee Property, Bhopal*, it was held that clause (iii) of Article 31(5) (b) of this Constitution cannot be limited to a law which itself declares any property to be evacuee property. It also includes a law which empowers an authority to declare any property evacuee property. The words "property" declared by law to be "evacuee property" in the clause, would necessarily include property which could be declared as evacuee property. A law relating to evacuee property would concern itself with laying down the criteria for determining what property is to be considered as evacuee property and could not be expected to specify the particular properties which are to be treated as evacuee properties. The protection afforded by Art. 31(5)(b) (iii) therefore, extends to the provisions of the Administration of Evacuee Property Act".

The language in Art. 31(5)(b) (iii) is very wide. It refers to a law with respect to the property declared to be evacuee property. It cannot be said that the Displaced Persons (Compensation and Rehabilitation) Act, 1954 is not a law with respect to evacuee property. It is clear therefore that Art. 31(5)(b)(iii) applies to this Act.

18. It is, however, urged that in order to attract the provisions of Art. 31(5)(b) (iii) of the Constitution, the law should not only be one with respect to the property declared by law to be evacuee property, but also should be one made in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country and as admittedly this Act was not passed in pursuance of any such agreement, the provisions of Article 31(5)(b)(iii) are not attracted. It is true

that the Act was not made in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country as contemplated by first part of the Article 31(5)(b)(iii), but the argument ignores the presence of the expression "or otherwise" in the Article. This expression is sufficiently wide in our opinion, to include the laws not only passed in pursuance of an agreement but in any other manner.

In *Dhirajlal Vithalji Vs. Dy. Custodian of Evacuee Property, South Kanara, Mangalore*, dealing with the same argument, the Madras High Court observed as follows:

"But a law in pursuance of such an agreement would be law "otherwise" with respect to evacuee property. The impugned section is one such law."

In *Mohan Kaur v. Custodian MEP Patiala No. 1*, AIR 1956 Pep 58 it was observed that -

"The parenthesis "or otherwise" connotes that the law need not necessarily be based on an agreement with a foreign country but may be made unilaterally by the Government of India".

A decision to the same effect in *Sampuran Singh v. Competent Officer*, AIR 1955 Pep 148 was followed. It was contended that in the context of Article 31(5)(b)(iii) the expression "or otherwise" should be given a meaning ejusdem generis with the portion occurring earlier, namely, "in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country". In other words, it was argued that the law must have been made in pursuance of some transaction which approximates an agreement.

19. In *Lilavati Bai Vs. The State of Bombay*, dealing with the explanation to Section 6(a) of the Bombay Land Requisition Act, 1948 which was in the following terms:

"For the purpose of this section, -

(a) premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his transfer in any other manner of his interest in the premises or otherwise".

Their Lordships of the Supreme Court observed:

"The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words "or otherwise" must be construed as ejusdem generis with the words immediately preceding them: and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. In the first place,

as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the petitioner can possibly have no application. The Legislature has been cautious and thorough-going enough to bar all avenues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur.....But the Legislature, when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clause, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature and those words in all inclusive sense".

"The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the Legislature presumed to use the general words in a restricted sense that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give these words their plain and ordinary meaning."

20. We are of the opinion that in the context of Art. 31(5)(b) (iii) also there is no scope for the application of the principle of ejusdem generis. By the time the Article was enacted there were already laws relating to evacuee property which were not made in pursuance of any agreement. It is apparent that the intention of the framers of the Constitution could not have been that the protection of Art. 31(5) (b)(iii) should be confined only to laws made in pursuance of an agreement or laws passed in similar circumstances. On the other hand, the intention seems to be clear that all laws relating to evacuee property should be covered by the said Article.

21. For the reasons above stated we accepted the contention of Sri Ramachandra Reddy that the impugned law is protected from attack on the ground that it infringes Article 31(2), by Article 31(5)(b) (iii).

22. It was next contended that Section 12 violates Article 19(1)(f) of the Constitution as it is an infringement of the right of the petitioner to hold and dispose of his property and the provision enabling the Government to acquire his property without payment of compensation cannot in any sense be regarded as a reasonable restriction in the interests of the general public within the meaning of Article 19(5).

23. The question whether Article 19 applies to a law relating to deprivation of

property coming under Article 31(1) or a law relating to acquisition of property coming under Article 31(2) has been considered in several decisions of the Supreme Court. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, it was held that Article 19(1)(f) would continue until the owner was, under Article 31 deprived of such property by authority of law. Again in *The State of Bombay Vs. Bhanji Munji and Another*, dealing with the contention that Section 5(1) and 6(4)(a) of Bombay Land Requisition Act, 1948, violate Article 19(1)(f) of the Constitution, the Supreme Court observed as follows:

"In our opinion, Article 19(1)(f) does not apply to them. In *The State of West Bengal Vs. Subodh Gopal Bose and Others*, and *Dwarkanadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, the majority of the Judges were agreed that Articles 19(1)(f) and 31 deal with different subjects and cover different fields. There was some disagreement about the nature and scope of the difference but all were agreed that there was no overlapping. We need not examine those differences here because it is enough to say that Article 19(1)(f) read with C1. (5) postulates the existence of property which can be enjoyed and over which rights can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by clause (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be placed on the exercise of the right to acquire, hold and dispose of it, and as clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that the Article postulates the existence of property over which these rights can be exercised. In our opinion, this was decided in *A.K. Gopalan Vs. The State of Madras*, where it was held that the freedoms relating to the person of a citizen guaranteed by Article 19 assume the existence of a free citizen and can no longer be enjoyed if a citizen is deprived of his liberty by the law of preventive or punitive detention. In the same way, when there is a substantially total deprivation of property which is already held and enjoyed, one must turn to Article 31 to see how far that is justified".

This was followed in *Lilavati Bai Vs. The State of Bombay*, . However, in *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, Justice Subbarao who delivered the judgment of the majority observed:

"The decision of this court in *The State of Bombay Vs. Bhanji Munji and Another*, no longer holds the field after the Constitution (Fourth Amendment) Act, 1955".

In that case the Supreme Court had to deal with the validity of Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) which abolished a class of sthanams and converted them into tarwads and their properties into tarward properties and deprived sthanees of their right to the property. It was held by the Supreme Court that a law depriving a person of his property is invalid if it infringes Art. 19(1)(f) unless it imposes reasonable restrictions on the person's fundamental rights. In other words, even a law dealing with deprivation of property could be challenged on the ground that it contravenes Article 19. It

may, however, be noted that the case in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, did not involve any question of acquisition or requisition of property under Art. 31(2) but a mere deprivation of the property under Art. 31(1) which by the express provision of Art. 31(2A) was not be deemed to be acquisition or requisition of property. This decision was rendered on the 4th May, 1960. On 8th May, 1960 the Bench of five Judges of the Supreme Court of whom four were parties to the judgment in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, had to consider in Babu Barkya Thakur Vs. The State of Bombay and Others, the argument that the notification under the Land Acquisition Act violated Art. 19(1) (f) of the Constitution. This argument was summarily rejected in the following words:

"The other attack under Art. 19(1)(f) of the Constitution is equally futile in view of the decision of this Court in The State of Bombay Vs. Bhanji Munji and Another, and Lilavati Bai Vs. The State of Bombay, ."

Thus, it would appear that the Supreme Court itself considered the law coming under Art. 31(2) could not be attacked as offending Art. 19. Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, was not referred to as perhaps they were of the view that the decision should be confined to a law under Art. 31(1). This was made clear in an unreported decision in Sitabati Devi v. State of West Bengal, C. A. No. 322 of 1961 (SC) where the petitioner of the West Bengal Land (Requisition and Acquisition) Act 1948. In rejecting this contention Sarkar J., said:

"Kavalapprao Kochuni's case held that after the amendment, Cl. (2) of the Art. 31 alone dealt with acquisition and requisition of property by the State and Cl. (1) dealt with deprivation of property in other ways. This case did not deal with a law of acquisition or requisition of property by the State but was concerned with a law by which deprivation of property was brought about in other ways, which law, it held, had to satisfy Article 19 and the principle in The State of Bombay Vs. Bhanji Munji and Another, which could have saved that law before the amendment could not save it after the amendment. The observation in Kavalapprao Kochuni's case that The State of Bombay Vs. Bhanji Munji and Another, 'no longer holds the field' has, therefore, to be understood as meaning that it no longer governs by means other than requisition and acquisition by the State, Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, was not concerned of property governed by Art. 31(2), as it now stands, and did not decide that question".

24. In Kamala Bala Dassi and Others Vs. State of West Bengal and Another, also it was held that Kochuni's case was an authority for the proposition that Constitution (Fourth Amendment) Act, 1955 of Art. 31(1) did not exclude the operation of Art. 19(1) (f) and (5) but was not an authority for the proposition that Article 31(2) read with 31(2A) had not the effect of excluding Art. 19(1)(f). It is thus, clear that whatever may be the position so far as the law coming

under Art. 31(1) is concerned, with regard to a law falling within Art. 31(2) in view of the clear decision of the Supreme Court in Sitabati Devi's case. C. A. No. 322 of 1961 (SC) it cannot be challenged on the ground that it violates Art. 19(1) (f).

25. For the above reason we hold that it is not open to the petitioner to challenge the provisions of Section 12 of the Displaced Persons (Compensation and Rehabilitation Act) on the ground that it violated Art. 19(1)(f) of the Constitution.

26. It was further contended that there are instances both in Hyderabad and in various other States in India where the property of an evacuee was notified under S. 12 of the Act and compensation was paid in respect of such property. It was, therefore, argued that inasmuch as no compensation is being paid to the petitioner the discriminated against and therefore the notification violates Art. 14 of the Constitution. This point was not raised in the Writ Petition. Further no facts have been placed before us to show that compensation in similar circumstances was paid to other evacuees whose properties were notified u/s 12 of the Act. In the circumstances it is not possible for us to consider the contention based upon Article 14. It is open to the petitioner if he is so advised to challenge the notification on the ground that it violates Art. 14 after placing all the necessary material before the Court.

27. The writ petition is, therefore, dismissed.

28. We feel that this is an extremely hard case where the petitioner's property has been notified and even though the Act provides for compensation being determined, such compensation has not been determined and paid. The Union of India also has not provided any assistance to the court in the matter of providing information as to the steps that have been taken or being taken in fixing the amount of compensation u/s 13 of the Act. In those circumstances, we consider it a fit case where the petitioner should be given some time to surrender possession of the property. The petitioner is given four months time for surrendering possession of the property from today.

29. For the reasons stated above the respondents will not be entitled to any costs in this writ petition.

30. Petition dismissed.