

(1967) 09 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2948 of 1960

Ram Gopal Gupta

APPELLANT

Vs

Assistant Housing Commissioner and Others

RESPONDENT

Date of Decision : 12-09-1967

Acts Referred:

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

Transfer of Property Act, 1882 — Section 106

Uttar Pradesh Industrial Housing Act, 1955 — Section 12(2), 15, 19, 20, 21

Citation : AIR 1969 All 278 : (1967) 37 AWR 845

Hon'ble Judges : V.G. Oak, C.J;M.H. Beg, J;B. Dayal, J

Bench : Full Bench

Advocate : K.P. Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

V.G. Oak, C.J.—By this petition under Article 220 of the Constitution the petitioner has challenged certain proceedings under the Uttar Pradesh Industrial Housing Act, 1955 (U. P. Act No. 23 of 1955, here-after referred to as the Act or the U. P. Act). The petitioner is an employee in the Central Ordnance Department, Kanpur and is an industrial worker. He was allotted one house in the Industrial Colony, Babspurwa, Kanpur on a monthly rent of Rs. 10. He received from the Housing Commissioner a notice demanding excess water charge. The petitioner made a representation that he was not liable to pay excess water charges. The representation was rejected. On 23-8-1960 the Assistant Housing Commissioner issued a notice to the petitioner demanding Es. 30 on account of rent and Rs. 12.66 towards excess water charges. The same day the Assistant Housing Commissioner issued another notice to the petitioner cancelling the allotment in his favour and ordering him to vacate his house within one month of service of the notice. On 10-10-1960 the Assistant Housing Commissioner issued another order authorising the use of force for the petitioner's eviction. This writ petition is directed against these three orders of the Assistant Housing Commissioner, U, P. Annexures G, H and I to the petition are copies of the three

impugned orders.

2. The petitioner has raised two broad points. Firstly it is contended that he is not liable to pay excess water charges. Secondly, he is not liable to be evicted in a summary manner. These two points may be discussed separately.

3. The impugned orders have been issued under various provisions of the Act. It will, therefore, be convenient to examine the material provisions of the Act. The Preamble to the Act runs thus :

"Whereas houses have been constructed and may hereafter be constructed by the State Government of Uttar Pradesh or local authorities for purposes of housing industrial workers;

And whereas it is expedient to provide and set up an authority to administer and manage such houses;

It is hereby enacted as follows".

4. Section 4 of the Act provides for the appointment of a Housing Commissioner by the State Government. Assistant Housing Commissioners are appointed u/s 5 of the Act. Section 7 enumerates duties of the Housing Commissioner. Section 12 mentions conditions of occupation. Sub-section (2) of Section 12 states :

"Notwithstanding anything contained in any law for the time being in force, the Housing Commissioner may, after notice to the occupier and considering his explanation, if any, for reasons to be recorded, cancel any allotment under which a house is held or occupied by any person. A copy of the order cancelling the allotment shall be served upon such person".

Section 14 provides for execution of an agreement by every occupier. Section 15 deals with rates of rent and dates of payment. Section 21 provides for eviction from premises. Section 22 provides for appeals to the State Government from orders of the Housing Commissioner under Sections 12 and 21. u/s 28 the State Government has been authorised to make rules. By virtue of that authority, the State Government has framed Uttar Pradesh Industrial Housing Rules, 1959. Form C given in the rules prescribes the allotment agreement form.

5. The petitioner has no objection to the payment of rent at the rate of Rs. 10 P. M. But he objects to the demand for excess water charges. According to the opposite parties, the demand for excess water charges is justified u/s 15 of the Act, Section 15 states:--

"There shall be payable by every person in whose favour an allotment is made, rent and other charges at such rates and on such dates as may be fixed by the Housing Commissioner".

According to the opposite parties, excess water charges are covered by the expression "other charges" used in Section 15. Mr. K. P. Agrawal appearing for the petitioner urged that the expression "other charges" is vague, and confers

arbitrary power on the Housing Commissioner.

6. It is true that the expression "other charges" is very wide. But its scope is limited by the context. We find the expression "rent and other charges" in Section 15. The rule ejusdem generis, therefore, applies. "Other charges" mean charges analogous to rent, "Other charges" mentioned in Section 15 should be confined to charges, which have a bearing on the occupation of premises by an allottee. It is usual to collect from tenants electricity charges and water charges in addition to house rent. There is, therefore, no difficulty in bringing water charges under the description, "other charges" mentioned in Section 15.

7. The petitioner's contention is that excess water charges may be recovered from those allottees, who keep cattle and maintain a garden. But the petitioner does not keep cattle, and does not maintain any garden. So he ought not to be made liable to excess water charges. The opposite parties conceded that the petitioner does not keep cattle. But it is denied by the opposite parties that the petitioner has been charged for keeping animals or maintaining a garden. Their stand is that the petitioner must pay excess water charges like other allottees.

8. How the allottees become liable to pay excess water charges has been explained in Paragraph 13 of the counter-affidavit and Annexure "1" to the counter-affidavit. Excess water charges are levied by the Municipal Corporation on the actual consumption of water after deducting the free allowance permissible in lieu of water tax. Out of the excess water charges, Government bears 24 per cent of the amount on account of water consumed on common services. Out of the remaining amount, the amount payable by tenants, who maintain kitchen garden or keep cattle, is deducted. It is only the balance of the excess water charges that is distributed pro rata on the tenants.

9. The Housing Commissioner is not wrong in recovering excess water charges from the occupiers. It appears that there are no separate water meters for individual allottees. It is not, therefore, possible to ascertain the amount of water consumed by each occupier. Under these circumstances, the Housing Commissioner appears to be justified in demanding a portion of the excess water charges from all the occupiers.

10. The notice Annexure G was issued by the Assistant Housing Commissioner under Sections 1.7 and 19 of the Act. Section 17 deals with arrears of rent and other charges. Section 19 provides for recovery of arrears of rent.

11. Under the notice Annexure G, a sum of Rs. 30 was claimed on account of arrears of rent; and a sum of Rs. 22.66 was claimed on account of excess water charges. Liability for rent is not disputed. I have shown above that the demand for excess water charges seems reasonable. The notice (Annexure G) may, therefore, stand.

12. The main contention of Mr. K. P. Agrawal is that the petitioner is not liable to eviction in a summary manner u/s 21 of the Act. Section 21 provides for eviction

from premises, and states :

"(1) If the Housing Commissioner is satisfied that

(a) the person authorized to occupy any house -

(i) is in arrears of rent or other charges lawfully due from him in respect of such house for a period of two months, unless the period for payment of rent has been extended by the Housing Commissioner u/s 16, or

(ii) has sub-let the whole or any part of such house, or

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

(iv) has ceased to be an industrial worker as defined under the Act, or

(b) any person is in unauthorized occupation of any premises, the Housing Commissioner 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 house, or

(iii) in such other manner as may be prescribed,

order that such person, as well as any other person who may be in occupation of the whole or any part of the house, to vacate it within one month of the date of the service of the notice.

(2) If any person refuses, or fails to comply with an order made under Sub-section (1), the Housing Commissioner may order eviction of that person from, and take possession of, the house; and may for that purpose authorize the use of such force as may be necessary. A copy of the order shall also be served upon the person.

(3) If a person, who has been ordered to vacate any house under Sub-clause (i) or (iii) of Clause (a) of Sub-section (1) pays, within one month of the date of service of the notice or such longer time as the Housing Commissioner may allow, to the Housing Commissioner the rent or other charge in arrears or carries out or otherwise complies with the terms contravened by him, to the satisfaction of the Housing Commissioner, he may, instead of evicting such person cancel his order under Sub-section (1) and thereupon such a person shall hold the house on the same terms as those on which he held it immediately before such notice was served and on such other terms and conditions which may be laid down by the Housing Commissioner".

According to Mr. K. P. Agrawal, Section 21 of the Act involves discrimination, and is, therefore, hit by Article 14 of the Constitution. According to Mr. Agrawal,

Section 21 introduces discrimination in two ways. Firstly, the Housing Commissioner has been given summary powers, which are not enjoyed by other landlords. Secondly, Sec, 21 permits discrimination among allottees. Some allottees may be ejected through the civil Court. Other allottees may be evicted by the Housing Commissioner summarily u/s 21 of the Act. Mr. Agraval, therefore, contended that Section 21 of the Act is void.

13. In order to meet this point, the learned Advocate General urged that an allottee cannot be ejected through the civil Court. The only method for eviction of an allottee is by following the procedure prescribed by Section 21 of the Act.

14. Sub-section (2) of Section 4 states :

"The Housing Commissioner shall be a corporation sole by the name of the Housing Commissioner, Uttar Pradesh and shall have perpetual succession and an official seal and may sue and be sued in his corporate name".

Under Section 4, the Housing Commissioner is a juristic person. Section 7 states :

"Subject to the control of the State Government, the Housing Commissioner shall be responsible for allotment of houses, realization of their rent, eviction of persons occupying such houses, and all other matters relating to the administration or this Act".

It will be seen that Section 7 empowers the Housing Commissioner to take action for eviction of persons occupying houses.

15. Section 21 (1) states :

"If the Housing Commissioner is satisfied that. . . the Housing Commissioner may, notwithstanding anything contained in any law for the time being in force, by notice.. order that such person. . . to vacate it. . . ."

It will be noticed that the expression used in Sub-section (1) of Section 21 is "may order", and "not shall order". The learned Advocate General cited cases where it has been held that the word "may" implies "shall". Whether certain action under a statute is permissive or mandatory will depend upon the context. There is no indication in Section 21 or elsewhere in the Act that action u/s 21 (1) is mandatory. One of the conditions mentioned in Section 21 is that the occupier failed to pay rent for a period of two months. In some cases failure to pay rent may be for reasons beyond the control of the occupier. In such cases it would not be proper to insist that the Housing Commissioner must take action for the eviction of the defaulter. I do not think that the word "may" used in Sub-section (1) of Section 21 means "shall". Action under Sub-section (1) of Section 21 is permissive, and not obligatory. The expression "notwithstanding anything contained in any law for the time being in force" merely implies that action u/s 21 of the Act can be taken in spite of provisions like Section 106 Transfer of Property Act, That expression does not imply that action for eviction must be taken by the Housing Commissioner whenever some condition mentioned in

Section 21 (1) is fulfilled.

16. The question whether a civil suit for eviction is barred under certain circumstances came up for consideration before the Supreme Court in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, . In that case the Supreme Court had to examine the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 31 of 1959 (hereafter referred to as the Punjab Act). According to Section 4 of the Punjab Act, if the Collector is of opinion that any person is in unauthorized occupation of public premises and that he should be evicted, he shall issue a notice in writing calling upon such person to show cause why an order of eviction should not be passed. Section 5 of the Punjab Act provides that if after considering the cause and the evidence produced by such person and after giving him reasonable opportunity of being heard the Collector is satisfied that the public premises are in unauthorized occupation, he may make an order of eviction. The question arose whether Sections 4 and 5 of the Punjab Act rule out the possibility of eviction through the civil Court. It was urged before the Supreme Court that Sections 4 and 5 of the Punjab Act imply repeal of the ordinary law for eviction of occupiers of premises. That contention was not accepted by the Supreme Court. The doctrine of repeal by implication was explained by Shelat, J. on pages 5 and 6 of his judgment. On page 6 of his judgment the learned Judge observed :

"It is a reasonable presumption that the legislature did not intend to keep really contradictory enactments on the Statute Book, or, on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation, therefore, is not to be adopted unless it be inevitable. A reasonable construction which offers an escape from it is more likely to be in consonance with the real intention. The well-settled rule of construction is that when the latter enactment is worded in affirmative terms without any negative it does not impliedly repeal the earlier law. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences..... In our view, there is nothing in the Act to warrant the conclusion that it impliedly takes away the right of suit by Government or that, therefore, it is substitutive and not supplemental. Nor is it possible to say that the co-existence of the two remedies would cause such inconvenience or absurdity that the Court would be compelled to infer that the enactment of the Act resulted in an implied deprivation of the Government's right to sue in the ordinary Courts",

17. The same reasoning applies to the interpretation of the U. P. Act, It is true that Section 21 of the U. P. Act provides for eviction of allottees in a summary manner. But it does not follow that the State Government cannot file a civil suit for eviction of an allottee. Under Sections 4 and 7 of the Act the Housing Commissioner may file a civil suit for eviction of an allottee. That right has not been taken away by Section 21 of the Act. Mr. K. P. Agrawal is right in his

contention that there are two alternative modes for eviction of an allottee. The Housing Commissioner may bring a civil suit for eviction. Or he may take summary action u/s 21 of the Act. The question, therefore, arises whether the existence of these two alternative methods for eviction of an allottee involves infringement of Article 14 of the Constitution.

18. The learned Advocate General urged that an allottee cannot raise the question of violation of "Article 14, because he does not possess any rights except those conferred by the Act. In support of this contention, he relied upon N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, . In that case FazI Ali, J. observed on p. 69 :

It is now well recognised 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.

19. N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, does not lay down that a person acquiring certain rights under a statute cannot invoke the aid of the Constitution of India. Even if a Government servant has been employed under a special agreement, he can insist on his right"s under Article 14 and Article 311 of the Constitution. It is doubtful whether constitutional rights can be waived at all.

20. In Ram Dial and Others Vs. The State of Punjab, , the Supreme Court had to examine the provisions of the Punjab Municipalities Act Sections 14 (e) and 16 (1) of the Punjab Municipalities Act provided for different methods for the removal of a municipal member. The proviso to Section 18 (1) provided for a hearing. But Section 14 (e) did not provide for any hearing. Wanchoo, J. (as he then was) observed on page 1521 :

"...it is clear that for the same reasons the State Government may take action u/s 16 (1) in which case it will have to give notice to the member concerned and take his explanation as provided in the proviso to Section 16 (1), on the other hand it may choose to take action u/s 14 (e) in which case it need not give any notice to the member and ask for an explanation from him. This is obviously discriminatory and, therefore, this part of Section 14 (e) must be struck down as it is hit by Article 14 of the Constitution".

21. It will be noticed that in Ram Dial and Others Vs. The State of Punjab, , all that the petitioner was claiming was his rights as a municipal member. Those rights were created by the Punjab Municipalities Act. Yet the Supreme Court permitted the member to urge before the Court that he could not be removed from membership in contravention of Article 14 of the Constitution. Ram Dial and Others Vs. The State of Punjab, , is a clear; authority for the proposition that, even if a person acquires rights under a statute, he: can claim the benefit of Article 14 of the Constitution in order to protect his interest.

22. I now proceed to consider whether the existence of alternative methods for

eviction implies infringement of Article 14 of the Constitution. In *Pannalal Binjraj Vs. Union of India (UOI)*, , Bhagwati, J. observed on page 410 :

"....the discretion vested has to be looked at from two points of view, viz., (1) does it admit of the possibility of any real and substantial discrimination, and (2) does it impinge on a fundamental right guaranteed by the Constitution? Article 14 can be invoked only when both these conditions are satisfied".

In *Manna Lal and Another Vs. Collector of Jhalawar and Others*, , it was held that the Government, even as a banker, can be legitimately put in a separate class. The dues of the Government of a State are the dues of the entire people of the State. This being the petition, a law giving special facility for the recovery of such dues cannot in any event be said to offend Article 14 of the Constitution,

23. In *Sucha Singh Vs. Administrative Officer, Afzalgarh Colonization Scheme, Bijnor and Others*, , validity of U. P. Government Land (Eviction and Recovery of Rent) Act (29 of 1953) came up for consideration before a Full Bench of this Court. It was observed by Desai, C. J. that when private land is occupied by a trespasser it is only the individual that suffers on account of the delay in recovering possession of the land, but when the land in unauthorised occupation of the trespasser is Government land, it is the whole public of the State that suffers. Consequently, a distinction made by the Legislature between loss-caused to an individual and loss caused to the whole public by enacting a special procedure to be followed by Government in evicting trespassers upon Government or public land is a rational one.

24. In *Chittoor Motor Transport Co. (P.) Ltd. Vs. Income Tax Officer, Chittoor*, . the Supreme Court had to consider constitutionality of Section 10 (2) (vi-b) of the Income Tax Act, 1922. Sikri, J. observed on page 572 :

"There is no doubt that on the true interpretation of Section 10 (2) (vib) it is clear that if an assessee sells to a person other than the Government at any time before the expiry of ten years from the end of the year in which the motor vehicle was acquired, the allowance is deemed to have been wrongly allowed for the purposes of the Act, but if the assessee sells it to the Government no such consequence follows.... In our opinion, there is no discrimination which is hit by Article 14 of the Constitution in this case. The Legislature has directed the giving of a rebate on conditions which are exactly the same for every assessee, one condition being that if the assessee sells before the expiry of ten years from the end of the year in which it was acquired, to a person other than the Government, he would forfeit such rebate. This condition is applicable to every assessee and an assessee has a choice of either selling to a person other than the Government and forfeiting the rebate or selling to the Government and keeping the rebate with himself. The discrimination if any, arises on the choice made by the assessee. The Legislature perhaps presumes that if the machinery is offered to the Government for sale, the Government will only buy it at a price which will take into consideration the rebate taken by the assessee. In our opinion,

therefore, it has not been established that Section 10(2) (vi-b) Violates Article 14 of the Constitution".

25. In *Raj Narain Agarwal Vs. Administrator, Improvement Trust, Agra*, this Court had to consider the validity of bye-law No. 3 of the Municipal Board of Agra. Under the bye-law, if somebody encroaches upon nazul land a summary power was given to the Municipal Board by giving notice to eject the person without giving him a right of appeal against such order. It was held by Mehrotra, J. that it cannot be said that such a drastic provision is justified as being in relation to the objective of the U. P. Municipalities Act, and any special treatment meted out to the owners of nazul land cannot be justified on the ground that it has any reasonable relationship with the objective of the Act. It was, therefore held that bye-law No. 3 contravened Article 14 of the Constitution, and is void.

26. In *Pearey Lal Vs. Rex*, this Court had to consider the validity of Government Premises (Eviction) Act, 1950. Agarwala, J. observed on page 511 :

".... under this Act an occupant of Government lands is liable to ejectment by a notice only on the subjective satisfaction of the competent authority and is denied the remedy of having the rights claimed by him adjudicated by a Court of law and at the sweet will of such authority he can be subjected to this disability whereas another person in exactly the same situation can have the benefit of a decision by a Court of law if the same authority in exercise of his unfettered discretion chooses to proceed against him by a regular suit for ejectment instead of taking recourse of the provisions of this Act. This unguided and unfettered discretion of a non-judicial authority to relegate persons similarly situated to different remedies clearly violates the principle of equality before the law guaranteed of Article 14 of the Constitution so that the provisions of this Act must be held to be void under Article 13 of the Constitution".

In *The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another*, a Full Bench of the Punjab High Court had to consider whether the Punjab Public; Premises and Land (Eviction and Rent Recovery) Act (31 of 1959) contravened Article 14 of the Constitution. The Full Bench concluded that there was no infringement at Article 14 of the Constitution.

27. That decision was reversed by the Supreme Court in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*. The majority judgment was delivered by Shclat, J. He observed on pp, 15 and 16 --(pp. 1587, 1588 of AIR) of his judgment :

"The principle which emerges from these decisions is that discrimination would result if there are two available procedures one more drastic or prejudicial to the party concerned than the other and which can be applied at the arbitrary will of the authority.... In this view Section 5 must be declared to be void".

It may be mentioned here that Section 5 of the Punjab Act empowered the Collector to evict occupiers of land summarily,

28. A different view was taken by the minority of the Constitution Bench in that case. Bachawat, J. observed :

"The Government has the option of proceeding against an unauthorised occupant of public premises either under the Act or by a civil suit....Without violating Article 14, the law may allow a litigant a free choice of remedies, proceedings and tribunals for the redress of his grievances....The law does not violate Article 14 because it gives an aggrieved party the free choice of remedies and proceedings for the redress of his recovery Article 14 does not require a metical approach to the problem of equality before the law. It permits a free choice of remedies for the redress of grievances. The impugned Act makes no unjust discrimination".

If I were free to choose either view, I would adopt the reasoning of Bachawat, J. But I am bound by the majority decision in that case.

29. The principle of the case of Northern Indian Caterers Private Ltd., is applicable to the present case. There are two ways of evicting an allottee. The Housing Commissioner may file a civil suit against an allottee for his eviction or the Housing Commissioner may evict the allottee by following the summary procedure prescribed in Section 21 of the U. P. Act. The Act gives the Housing Commissioner no guidance as to the cases in which he should follow the summary procedure prescribed by Section 21 of the Act. It is true that Sub-section (3) of Section 21 of the Act enables the allottee to meet the grievances against him within one month of the notice. In such a case the Housing Commissioner may cancel his order of eviction. But that again has been left to the discretion of the Housing Commissioner. From the allottee's point of view, the summary procedure prescribed by Section 21 of the Act is more drastic than a civil suit. Section 21 permits discrimination between allottees. Following the majority decision of the Supreme Court in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, , I hold that Section 21 of the Uttar Pradesh Industrial Housing Act, 1955 contravenes Article 14 of the Constitution, and is, therefore, void.

30. By the order (Annexure H), the Assistant Housing Commissioner cancelled the allotment in favour of the petitioner. Section 12 of the Act permits cancellation, of any allotment after notice to the occupier and after considering his explanation. Admittedly, the procedure prescribed by Section 12 of the Act was not followed in the present case. The two orders, Annexures H and I purport to be u/s 21 of the Act. I have held that Section 21 is void. It therefore, follows that the two orders, Annexures II and I are illegal.

31. In my opinion, the petition partly succeeds. The notice, Annexure G may stand. But the two orders, Annexures H and I should be quashed. Parties may be left to bear their own costs.

B. Dayal, J.

32. I entirely agree.

M.H. Beg, J.

33. I have had the advantage of reading the judgment of Oak, C. J. I need not repeat the facts of the case so clearly set out there. I will only indicate my reasons for coming to the same conclusions.

34. The Uttar Pradesh Industrial Housing Act 23 of 1955 (hereinafter referred to as "the Act"), is certainly a piece of beneficent legislation of a Welfare State. It is obviously meant to provide certain special amenities in the shape of accommodation in houses constructed by the State for industrial workers. No one can get an allotment of a house under it unless he is an "industrial worker" as defined in the Factories Act, 1948. The occupation of the house allotted is subject to such conditions "as may be intimated from time to time by the Housing Commissioner u/s 12 (1) of the Act". An allottee who has ceased to be an industrial worker is made liable by the Act to eviction by proceedings u/s 21 (1). The conditions upon which the allottee, after grant of an application for an allotment u/s 10 of the Act, can remain in occupation are contained in an agreement executed u/s 14 of the Act in Form C prescribed by the rules made under the Act. It is true that the agreement in Form C does not specifically mention that the allottee is liable to have his allotment cancelled u/s 12 (2) or to be evicted by the procedure provided by Section 21 of the Act. Nevertheless, an allottee, who obtains an allotment of the special accommodation provided for industrial workers on certain advantageous terms, must be deemed to be fully aware of the statutory conditions governing the occupation of a house under the Act.

35. It was contended by the Advocate-General on behalf of the State that an allottee cannot obtain the special benefits of housing under the Act and then asks this Court to disregard the disadvantageous statutory conditions on the ground that these are ultra vires. The submission was that such a person, who obtains a right by the exercise of an option so as to be bound by a contract executed in conformity with the provisions of a statute has no right to object to the conditions imposed by the statute. The statutory conditions are, it is urged, inseparably attached to the right to occupy under the contract so that the enforcement of the statutory terms cannot attract any fundamental right under the Constitution or to be enforced by means of a writ from this Court under Article 226 of the Constitution. This contention assumes that the petitioner relies on a fundamental right to occupy property and that he can be estopped from asserting any fundamental right by reason of a contract he enters into as a matter of free choice. It is one thing to show that a petitioner has no legally enforceable right. It is another thing to urge that all rights not derived from the statute, whether fundamental or not, surrounding the right to occupy property, vanish as soon as the occupation is shown to result from an agreement executed under the statute. Certain cases cited by the learned Advocate-General to support the proposition that an allottee under the Act had no legally enforceable

right falling outside the Act, so that the petitioner could not question the validity of any provision of the Act, may now be noticed.

36. In *Raja Bahadur Kamakshya Narain Singh and Others Vs. The Collector and Deputy Commissioner of Hazaribagh and Others*, provisions of Section 4 (h) of the Bihar Land Reforms Act, 30 of 1950, empowering the Collector to annul, after due inquiry certain transfers made with the object of defeating the provisions of the statute or causing loss to the State or obtaining higher compensation and to dispossess the transferee, after obtaining the previous sanction of the State Government, were assailed as ultra vires. It was contended there that the restrictions imposed by the impugned provisions unreasonably trespassed upon the fundamental rights to property possessed by the petitioner. It was held there; "Assuming, however, that the Collector has very wide powers, it is to be recommended that Section 4 (h) is a part of the law of acquisition of estate as enacted by the Act and is an integral part of the machinery by which acquisition of an estate takes place. The Act is a valid law of acquisition and its whole purpose may be defeated unless there is some such provision as contained in Section 4 (h). The Act being a law for acquisition of estates the question of it or Section 4 (h) of it imposing any unreasonable restriction on the fundamental rights of the petitioners does not arise. In any event, the Act including Section 4 (h) is protected by Art, 31-A of the Constitution."

37. The case of *Pannalal Binraj Vs. Union of India (UOI)*, 3 was cited for the proposition: "There is a broad distinction between discretion which has to be exercised with regard to a fundamental right guaranteed by the Constitution and some other right which is given by the statute. If the statute deals with a right which is not fundamental in character, the statute can take it away but a fundamental right the statute cannot take away.... the discretion vested has to be looked at from two points of view, viz., (1) does it admit of the possibility of any real and substantial discrimination, and (2) does it impinge on a fundamental right guaranteed by the Constitution? Article 14 can be invoked only when both these conditions are satisfied." That was said in a case in which an assessee, relying upon Section 64 (1) and (2) of the Income Tax Act, 1922, claimed a right to be assessed by the Income Tax Officer of a particular area and complained that the order of transfer of his case u/s 5 (7-A) of that Act unreasonably curtailed his fundamental right to carry on business, conferred by Article 19(1) (g) of the Constitution, as well as his fundamental rights under Article 14 of the Constitution. It was held there: "If there is any abuse of power it can be remedied by appropriate action either under Article 226 or under Article 32 of the Constitution and what can be struck down is not the provision contained in Section 5 (7-A) of the Act but the order passed thereunder which may be mala fide or violative of these fundamental rights." The attack upon the validity of the procedural provisions failed.

38. Another case relied upon on behalf of the State was: *Amar Singh Vs. Custodian, Evacuee Property, Punjab*, . Here, the Supreme Court considered the

question whether a quasi-permanent allotment, under the law relating to Administration of Evacuee Property, constituted "property" so as to attract the protection of fundamental rights in property. It was held that the right under consideration there was analogous to what was called *jus in re aliena* in Roman Law. It was a grant subject to resumption and cancellation having regard to the "exigencies of the Administration of Evacuee Law". Therefore, it was held not to amount to an enforceable right to "property" under the Constitution. It was contended that, similarly, the petitioner allottee before us was incapable of enforcing any right under Article 226 of the Constitution.

39. Reference was also made to *C.K. Achuthan Vs. The State of Kerala and Others*, , where the contract of a milk supplier to a Government hospital had been cancelled. It was held there that the contractor could not claim the benefit of any protection given to fundamental rights although a person aggrieved by an alleged breach of a contract, by the Government may sue for damages or for specific performance of the contract,

40. The case of *Bokaro and Ramgur Ltd. Vs. The State of Bihar and Another*, , was also relied upon by the Advocate-General. Here, it was held that a party could not complain of the infringement of his fundamental right to hold property when the title of that party itself was in dispute and was the subject of a pending adjudication in legally valid proceedings u/s 4 (h) of the Bihar Land Reforms Act.

41. Another case relied upon on behalf of the State was *State of Orissa v. Ram Chandra* AIR 1964 SC 85, where it was held: "Mere possession of the property for however long a period it may be, will not clothe the possessor with any legal right if it is shown that the possession is under a grant from the State which is resumable. Such long possession may give him a legal right to protect his possession against third parties, but as between the State" and grantee, possession of the grantee under a resemble grant cannot be said to confer any right on the grantee which would justify a claim for a writ under Article 226 where the grant has been resumed." This was a case in which a right to property and not a right to equality before the law or to equal protection of laws was alleged to have been infringed.

42. An attempt was made on behalf of the State to equate the case before us with the automatic loss of some special benefit resulting from the operation of statutory provisions. A case of the loss of the development rebate u/s 10 (2) (vi-b) of the Income Tax Act, 1922, by the sale of machinery to any party other than the Government cited to illustrate the effect of such provisions, was *Chittoor Motor Transport Co. (P.) Ltd. Vs. Income Tax Officer, Chittoor*, . Here, the Supreme Court had held that the discrimination between sales to the Government and to others, arising u/s 10 (2) (vi-b) of the Income Tax Act, was a result of a choice exercised by the assessee, and, therefore, was not hit by Article 14 of the Constitution. It was contended before us that, similarly, the petitioner had, by exercising an option, bound himself to the statutory consequences of his option and was not protected by Article 14 of the

Constitution. But, the analogy is quite inapt. The procedure for adjudicating on the question whether an act of a sale entailing the consequential loss of rebate had taken place or not, in a disputed case, was not challenged there at all as invalid on the ground that it permitted unreasonable discrimination. The unreasonable discrimination complained of was the loss of a substantive right to rebate made to depend upon the party to which a sale was made.

43. Reference was also made to *Ramdas Vs. State of M.P. and Others*, AIR1959MP353, where a petitioner had relied upon his fundamental rights to or in property protected by articles 19 and 31 of the Constitution. It was held there that the right of voting granted by a statute has no relationship with anything which is considered "property" in the ordinary sense. Similarly, in *Baleshwar Prasad Chaudhary Vs. State of Bihar and Others*, AIR1963Pat373, to which a reference was also made, it was held that a life membership of the Senate of a University is an office which falls outside the concept of "property" found in Article 31 of the Constitution.

44. The cases mentioned above do not provide any answer to the constitutional difficulties which the provisions of the Act before us have created. The petitioner before us is not trying to enforce any right to or in any property protected by either Article 19 or Article 31 of the Constitution. He claims the fundamental right to equality before the law and equal protection of the laws conferred by Article 14 of the Constitution. It is well settled that the constitutional right to equality or impartial treatment extends to procedural provisions which safeguard substantive rights. This procedural protection covers the propertyless as well as the propertyless, the wronged as well as the wrong-doer, the citizen as well as the alien, the person who derives his right from a statute as well as the person who claims his right under the general law, the person who gets a right or incurs a liability by operation of law as well as one who traces it to a contract resulting from the free exercise of an option. It requires similar treatment from the similarly situated.

45. With regard to the argument which assumes that the constitutional protection afforded by Article 14 can be waived or abrogated, as a result of an option exercised or contract executed, I may cite what their Lordships of the Supreme Court said in *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, *S. R. Das, C. J.*, speaking for himself and *Kapur, J.*, after analysing "the true intent and effect of Article 14" as "an unequivocal admonition administered by the Constitution" to the State, concluded (at p. 159): "On a consideration of the nature of the fundamental right flowing from Article 14, we have no doubt in our mind that it is not open to a citizen or any other person who benefits by reason of its provisions to waive any breach of the obligation on the part of the State. In the same case, *K. Subba Rao J.* as he then was, ruled;" I hold that the doctrine of waiver has no application in the case of fundamental rights under our Constitution.

46. I do not think that even the factual requirements of a waiver against

assertion of a fundamental right to equality before the law and equal protection of laws can be held to be satisfied merely because a citizen obtains a benefit or a contract under a statute. By obtaining a benefit under one provision of a statute, he does not necessarily agree not to claim the benefit of the Constitution in assailing another provision of the statute. If he is deemed to be aware of the statutory provisions, everyone is also presumed to know the law of the Constitution. The Constitution imposes the obligation upon the State not to legislate so as to violate any provision of the Constitution. Far from preventing the citizen from litigating in order to vindicate a fundamental right, the Constitution empowers him to do so. A person can question the validity of a statutory provision if the provision conflicts with a constitutional provision even if such a person has benefited from other provisions of the statute.

47. Article 14 of the Constitution contains the basic right to be treated justly and impartially by the organs of State as well as by the laws of the State. It does not prohibit classification of persons or objects. It permits discrimination which is reasonably related to constitutionally valid objects of a statute. In determining whether there is a rational nexus between the objects of a statute and a discrimination permitted by the provisions of that statute, Courts are called upon to decide whether similarly placed persons can be treated unequally by the organs of the State without any means of redress against such discrimination under the statutory provisions. Even if the amplitude of powers conferred by a statutory provision makes it possible for organs of the State to discriminate unreasonably between persons identically situated, the provision of the statute is not struck down provided adequate and reasonable means are open for escape from any discrimination resulting from possible abuse of power.

48. In *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, , the Supreme Court held: "An unrestricted power has been given to the State Controller to make exemptions; and even if he acts arbitrarily or from improper motives, there is no check over it and no way of obtaining redress. Clause 3 (2) (b) of the Control Order seems to us, therefore, "prima facie" to be unreasonable". In that case, the attack upon the provisions of a Control Order was based upon alleged infringement of fundamental rights under Article 14 as well as under Article 19(1)(g) of the Constitution. In later cases, as in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, , it was explained by the Supreme Court that mere width of powers conferred cannot be the ground for holding that Article 14 of the Constitution had been transgressed. It was held that the existence of a provision conferring power is not bad if there is sufficient guidance given to indicate how that power should be exercised. It has also been held that, in cases of abuse of power, the actual abuse and not the provision conferring the power should be struck down. Greater amplitude of discretionary power has been permitted where the power conferred is judicial or quasi-judicial in nature because there is a stock of judicially recognised principles showing how judicial power should be exercised. In *Mineral Development Ltd. Vs. The State of Bihar and Another*, , the Supreme Court held that the fact that a discretionary

power is vested in the State Government itself and not in a subordinate officer could also be taken into consideration in determining the validity.

49. It is evident that no single feature generally decides the question of constitutional validity of a procedural provision, although, on weighing a number of conflicting considerations, one particular feature of the provisions of a statute may tilt the balance on one side or the other ultimately. The principles upon which statutory discretionary powers and various procedural patterns, for dealing with diverse rights in differing contexts, have been either struck down or upheld, are quite well settled. But, their applications to similar statutory provisions of different statutes sometimes produce apparently conflicting results. Before applying the reasoning adopted or a conclusion reached about the validity of the procedural provisions of one statute to the analogous statutory provisions of another statute with a similar purpose, we have to be certain that the principle sought to be applied is really applicable.

50. After taking the matters mentioned above into consideration, it has appeared to us that the grounds upon which our Supreme Court decided *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, are equally applicable to the case before us although the case under consideration there arose under the Punjab Public Premises (Eviction and Rent Recovery) Act 31 of 1959, which was directly meant to provide a more speedy summary procedure for the eviction of unauthorised occupants of Government properties, whereas we are concerned with a statute the primary object of which is not to evict occupants of premises but to provide suitable accommodation for industrial workers on specially advantageous terms. The procedure for summary eviction in the Act before us is only incidental and subordinate. It serves the primary object indirectly.

51. It may be mentioned that a Division Bench of this Court had already accepted the precise ground adopted by the Supreme Court in the case of *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, and had declared invalid the summary procedure provided for the eviction of occupants of Government properties under the Government Premises Eviction Act (1950). In *Brigade Commander, Meerut Sub-Area and Another Vs. Ganga Prasad and Another*, it was observed: "It may further be pointed out that under this Act an occupant of Government lands is liable to ejection by a notice only on the subjective satisfaction of the competent authority and is denied the remedy of having the rights claimed by him adjudicated by a Court of law and at the sweet will of such authority he can be subjected to this disability whereas another person in exactly the same situation can have the benefit of a decision by a Court of law if the same authority in exercise of his unfettered discretion chooses to proceed against him by a regular suit for ejection instead of "taking recourse of the provision of this Act."

This unguided and unfettered discretion of a non-judicial authority to relegate persons similarly situated to different remedies clearly violates the principle of

equality before the law guaranteed of Article 14 of the Constitution so that the provisions of this Act must be held to be void under Article 18 of the Constitution."

52. Another Division Bench of this Court, in *B. P. Singh v. State of Uttar Pra-desh* 1960 All LJ 52, had declared that the provisions of the Uttar Pradesh Government Land (Eviction and Rent Recovery) Act, 1953, for speedy eviction of occupants of Government lands were struck by Article 14 of the Constitution because the need for speedy eviction of occupants could not provide a reasonable basis for a distinct and separate procedure for eviction from land belonging to the State. It took the view that the Legislature had tried to erect "something in the nature of *droit administrative*" by providing for decision of disputes between the State and citizens by special authorities and by a special procedure. It may be observed, with great respect for the learned Judges who took that view, that it is too late in the day to adopt the shocked attitude of A. V. Dicey, in the "Law of the Constitution", towards special or summary and speedy procedure before specially constituted authorities, on the ground that it smacks of "*droit administrative*". All that we require today is that such special procedure is fair and reasonable and ensures justice which should not be delayed.

53. The particular ground of invalidity of a special summary procedure for eviction from State-owned properties, adopted in *B. P. Singh's* case 1960 All LJ 52 (supra), was held to be erroneous by a Full Bench of this Court in *Sucha Singh Vs. Administrative Officer, Afzalgarh Colonization Scheme, Bijnor and Others*, . The Full Bench relied upon *Manna Lal and Another Vs. Collector of Jhalawar and Others*, and *Nav Rattanmal and Others Vs. The State of Rajasthan*, to sustain the validity of special procedure for speedy recovery of property belonging to the State. In the case of *Northern India Caterers Ltd. Civil Appeal No. 1101 of 1965, D/-4-4-1967 : AIR 1987 SC 1581* (supra), Which is the main-stay of the petitioners case, the Supreme Court held that even if special procedure for speedy recovery of public-owned property rests upon an intelligible and reasonable basis for classification, the special procedure was unconstitutional for other reasons.

54. In *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, , a majority of their Lordships of the Supreme Court adopted the view that, where two alternative remedies are left open by statutory provisions for the eviction of an occupant of Government premises, one by means of a civil suit and another by means of summary proceedings taken by the Collector u/s 5 of the Punjab Public Premises and Land (Eviction and Kent Recovery) Act 31 of 1959, without any statutory guidance to regulate the exercise of the discretion to choose between, the two remedies, the statutory provision, authorising the summary and more drastic procedure, was invalid. The minority view in this case was that the mere possibility of abusing the discretionary power of resorting to a civil suit, when the summary remedy was available to the Collector, would not invalidate the statutory provision. In the Opinion of their Lordships who took the

dissenting minority line of reasoning the likelihood of the Collector taking the more cumbersome alternative course of a civil Suit was remote and unreal.

55. In the abovementioned case, the petitioner, who had been unsuccessful in the Punjab High Court, was a person whose right to continue to occupy Government property had obviously ended. Nevertheless, such a person, who was no better than a trespasser, was held to be entitled to the protection given by the more elaborate proceedings in the Civil Court, because the Collector could have, at his option, adopted, the procedure which was more favourable to the occupant. Such a power of choice, being unrestricted and unregulated, and therefore, liable to misuse, was held, by the majority of their Lordships of the Supreme Court to be sufficient to invalidate the more drastic procedure for eviction of occupants of Government properties irrespective of the substance or contents of the claims of the persons to be evicted. The inability of the particular occupant to show a right to continue in occupation, or, in other words, to prove a right in property, was not considered material enough to deserve even a mention or discussion. The reason seems to be that it was not a direct right in property but a right to equality of procedural protection surrounding the right to occupy property which was claimed and upheld there. Evidently, the procedural protection was available, on this view, without taking the nature or substance of the occupant's claim to property into account.

56. In the case before us also the Housing Commissioner has the unrestricted option to proceed to evict an occupant either by filing a suit in a Civil Court or by proceeding u/s 21 (1) and (2) of the Act. Section 4 (2) of the Act recognises the right of the Housing Commissioner in Uttar Pradesh to sue as a corporation sole. The power of the Housing Commissioner to sue is not confined to those cases only in which no action could be taken u/s 21. It is very difficult to think of any case for eviction which could fall outside the purview of Section 21 of the Act. Procedure for eviction u/s 21 (1) would also apply to cases falling u/s 12 (2) of the Act in which the allotment could be cancelled for any reasonably sustainable ground whatsoever. This means that the Housing Commissioner has an unregulated and absolute option to resort to the ordinary remedy of filing a suit in a Civil Court or of eviction by adopting the procedure laid down u/s 21 of the Act. It could be urged in this case, just as it appears to have been argued before the Supreme Court, in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, , that an authority invested with the wider power to evict by means of a drastic summary and speedy procedure could not reasonably be expected to resort to the protracted process of a civil suit. It may be that if the Housing Commissioner were to resort to an ordinary civil suit when the summary proceeding u/s 21 of the Act was available, the Housing Commissioner may be said to be acting unreasonably. On the other hand, an extremely conscientious Housing Commissioner could reasonably afford an occupant the opportunity of getting the question raised by me occupant adjudicated in a Civil Court as the Housing Commissioner himself may have decided certain matters disputed between the occupant and the Housing

Commissioner, such as the extent of liability for "other charges", under the Act. The legal position, however, is that this discretionary power to choose between these two procedures is unregulated by the Act or rules framed thereunder. If the Housing Commissioner were to discriminate deliberately or proceed unreasonably so to favour one occupant liable to eviction, by proceeding in a Civil Court, and to disfavour another occupant, identically situated, he could do so without any reasonable means of control over it. The exercise of a choice by the Housing Commissioner to proceed by means of a civil suit against any particular occupant could not be reasonably questioned By an occupant of another house or even by a possible future allottee of the same house as such a person would not be considered to be a person "aggrieved" by the action of the Housing Commissioner in filing a suit against another person. The bare possibility of some administrative control by the Government, over the exercise of such a discretionary power could not be an adequate check against the misuse of discretionary power.

57. Coming to other aspects of the procedure for eviction sanctioned by the Act, it may be mentioned that Section 21 (I) scorns to violate a principle of natural justice inasmuch as the officer, invested with the authority to judge whether a ground for eviction exists or not and then to pass an eviction order, is the manager of the property made responsible by Section 7 of the Act, "for allotment of houses, realization of their rent, eviction of persons occupying such houses, and all other matters relating to the administration of the Act". His position, in any eviction proceedings, is evidently that of a party and prosecutor. It is this very officer who could file a suit and figure as the plaintiff in a Civil Court. Again, this very officer is given the power to fix rates of rent and to determine what "other charges" or their extent should be. These "other charges" could only cover liabilities analogous to those for rent which are reasonably related to or follow from the occupation of a house by an allottee. The Housing Commissioner may have, as is the case before us, taken a decision as to what could be reasonably demanded as "other charges". He may thus be biased in favour of a particular view he may have already taken on a ground for eviction even before taking proceedings u/s 21 (1) of the Act.

58. In *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, , the Supreme Court observed, with regard to quasi-judicial proceedings, after noticing several judicial pronouncements on the need for freedom from bias: "The aforesaid decisions accept the fundamental principle of natural justice that in the case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute." In that case, one of the parties to the dispute was the Transport Department of the State Government functioning as the statutory authority. It was held that the hearing given by the Secretary, Transport Department, offended against a principle of natural justice,

59. In the Act before us and in the rules framed under it no attempt is made to make even a formal separation between the officer who prosecutes and the officer who issues an eviction order after deciding that a ground for eviction exists, In administrative quasi-judicial action it is enough if the duty to prosecute and to decide is performed by different officers. But, under the Act, it is possible for both the functions to be performed by the same individual. This aspect of the procedure for eviction u/s 21 (1) of the Act raises the further questions whether this procedure under the Act is or ought reasonably to be a quasi-judicial procedure.

60. The condition precedent to the exercise of power to evict from the premises u/s 21 of the Act is that the Housing Commissioner should be "satisfied" that-

"(a) the person authorised to occupy any house-

(i) is in arrears of rent or other charges lawfully due from him in respect of such house for a period of two months, unless the period for payment of rent has been extended by the Housing Commissioner u/s 16, or

(ii) has sublet the whole or any part of such house, or

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

(iv) has ceased to be an industrial worker as defined under the Act, or

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

Upon such satisfaction, the Housing Commissioner 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 house, or

(iii) in such other manner as may be prescribed

order that such person, as well as any other person who may be in occupation of the whole or any part of the house: to vacate it within one month of the date of the service of the notice."

61. A bare perusal of the abovementioned grounds for eviction, about the existence of one of which the Housing Commissioner has to be satisfied, indicates that they are grounds of a nature on which there is almost invariably a dispute between the person sought to be evicted and the person seeking to evict in exercise of the powers of the landlord. An attempt was made to show that the notice u/s 21 (I) of the Act is only a preliminary notice which can be cancelled u/s 21 (3) "if a person who has been directed to vacate the house under Sub-

clause (i) or (iii) of Clause (a) of Sub-section (1) pays within one month of the date of service of the notice or such longer time as the Housing Commissioner may allow, the rent or other charges in arrears or carries out or otherwise complies with the terms contravened by him, to the satisfaction of the Housing Commissioner." It will be noticed that this power to withdraw that is described not merely as a notice but as an "order" of the Housing Commissioner is confined to certain cases. The Housing Commissioner has only got the power to satisfy himself under Section 21 (3) that the grounds of contravention of terms of occupation have been removed. The very conditions upon which the power to cancel u/s 21 (3) a notice or order issued u/s 21 (1) can be exercised show that the power must be exercised on the assumption that the terms of occupation of a house have been contravened. No notice in the nature of a show-cause notice before a contravention is found to have been satisfactorily established need be issued u/s 21 of the Act. The result seems to be that, although the power to be satisfied that a ground for eviction has been removed is to be exercised quasi-judicially, the power to be satisfied about the very existence of a ground for eviction need not be exercised quasi-judicially.

62. It is true that the use of the term "satisfied" in a statutory provision, having regard to the nature of the function to be performed, has been so interpreted sometimes as to imply quasi-judicial action. The very nature of the exercise of a power to deprive a person of "property" has been held to imply the duty to act quasi-judicially. (See *Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others*, where reliance was placed on *Cooper v. Board of Works for Wandsworth district* (1863) 14 CBNS 1.80; *Hookings v. Smith-wick Local Board* (1890) 24 QBD 712; *Smith v. Queen*, (187G) 3 AC 614). An allottee whose right to occupy property has not been terminated legally cannot be equated with a person with no right whatsoever in property. But, I doubt very much whether we can read rules of natural justice into the word "satisfied" used in Section 21 (1) of the Act and hold that its necessary implication is that a hearing must be given before the order is passed when we find express provisions in Section 12 (2) and Section 21 (3) of the Act for hearing before decisions are taken. All that can be said is that the decision to be taken before an order is passed u/s 21 (1) of the Act on one of specified grounds is of such a nature that a reasonable opportunity to be heard before the order is passed ought to have been provided.

63. Reliance was placed, on behalf of the State, partly on the nature of the agreement executed by the allottee and partly on the statutory procedure for his eviction, to contend that the right of the allottee was itself too tenuous and unsubstantial to call for procedural niceties. The actual agreement executed by the allottee was not placed before us. But, assuming that the agreement conformed to Form C, according to Rule 15 (5) of the Industrial Housing Rules, I find that it is a full-fledged agreement for a month-to-month tenancy "terminable by either side giving to the other one clear month's notice. (See Condition 10 of Form C). The allottee agrees to pay "rent" and "other reasonable charges" (See Condition 3 of Form C). The allottee is described as a "tenant". In the light of

such an agreement, the procedure contained in Section 21 is not for a notice of termination of tenancy in terms of the agreement, but a procedure for eviction after a decision on one of the grounds specified in Section 21(1) Such an eviction is to be preceded by a "satisfaction" of the Commissioner, without the need for hearing the allottee, as a substitute for what ought in fairness to be at least a quasi-judicial adjudication.

64. A month-to-month tenancy right in State-built houses obtained by an industrial worker on very advantageous terms in these days of housing difficulties, after grant of an application for it, is not so unsubstantial as to be beyond the constitutional concept of "property". It is true that such a right cannot be equated with the abstract basic constitutional right or competence to own, possess, or part with property which is all that Article 19(1)(f) of the Constitution protects according to the view of Patanjali Sastri, C. J., in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, . A broader view of the term "property" was taken by the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , where it was observed: "There is no reason why the word "property" as used in Article 19(1)(f) should not be given a liberal and wide connotation and should not be extended to those well-recognised types of interest which have the insignia or characteristics of proprietary right." It was extended there to what Patanjali Sastri, C. J., had, in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, , described as "concrete" rights in particular properties. In *Ananda Behera and Another Vs. The State of Orissa and Another*, , the Supreme Court held that a "profit a preudre" was immovable property and countenanced the possibility that a contract may constitute "property" covered by Articles 19(1)(f) and 31 of the Constitution.

65. I do not think that, for the purpose of showing that a fundamental right to procedural protection exists, it need be shown that the procedural protection is sought for protecting either a fundamental right to property or a proprietary interest. Lesser types of interest in property, such as that of a month-to-month tenant, also require and deserve procedural protection. The right to property guaranteed by Article 19(1)(f) can only be reasonably restricted but not taken away altogether by law, whereas other rights in particular properties, including those created by statute, can be ended by ordinary law. The question of providing a just and reasonable procedure for depriving persons of right in property can arise only with regard to rights which can be legally taken away and not for rights which cannot be legally extinguished at all. Therefore, even when a right arises under, a statute which also prescribes the grounds on which it is lost, justice requires that a fair and reasonable procedure must be provided for determining whether it is really lost in accordance with the statutory purpose. It is not in every case of loss of such a right that a quasi-judicial procedure is called for.

66. It was not contended before us, on behalf of the State, that the powers u/s

21 of the Act were to be exercised subject to the conditions prescribed by Section 12 (2) of the Act so that eviction could take place only after due hearing and cancellation of an allotment order u/s 12 (2) of the Act. On the other hand, it was contended that Section 12 contains an additional power of the Housing Commissioner to cancel an allotment for reasons even apart from the ground mentioned to Section 21 (1) (a) of the Act. The contention on behalf of the State, if I have correctly understood it, was that eviction u/s 21 (1) of the Act takes place practically automatically in certain contingencies so that no notice or hearing need be given to the party affected before the Housing Commissioner is satisfied in such cases, but the power u/s 12 (2) was to be exercised quasi-judicially in other cases only which fall outside the ambit of Section 21 (1) of the Act. I find it very difficult to accept the proposition that a duty to decide upon one of the grounds of eviction so elaborately and specifically set out in Section 21 (1) of the Act, which necessarily requires consideration of evidence of each side, can be reasonably performed by an authority without requiring it to act quasi-judicially. This view finds support from the provisions of Section 12 (2) and Section 21 (3) of the Act itself where similar decisions on allottee's rights under this same Act are meant to be taken quasi-judicially. I fail to see the reason for providing a different kind of procedure for cases falling u/s 21 (1) of the Act. The objects of an Act intended to provide special housing facilities to industrial workers, as a part of the functions of a socialistic "Welfare State", are not served better by such a difference in procedure.

67. The fact that an allottee's right of occupation is substantial enough, according to the legislative verdict found in the Act, to deserve the procedural protection of an opportunity to be heard before its deprivation, is demonstrated by Section 12 (2) of the Act which gives such opportunity before an allotment is cancelled. It may be noticed that Section 9 (b) of the Act places the person whose allotment is cancelled in the class of unauthorised occupants. Section 9 (c) of the Act puts the allottee who has ceased to be an industrial worker also in the class of unauthorised occupants and he is found in Section 21 (1) (a) (iv) of the Act too. Again, a person who gets a notice of demand for arrears becomes an unauthorised occupant u/s 19 of the Act, and he is also covered by Section 21 (1) (a) (i) if he is in arrears for two months. Section 21 (1) (b) covers all unauthorised occupants. Thus, the categories of unauthorised occupants are overlapping. Unauthorised occupants are not kept in separate water-tight compartments by the Act. All unauthorised occupants are subject to the same proceedings for eviction u/s 21 (1) of the Act. But, as regards the mode of determination of a ground for eviction, those allottees who fall u/s 12(2) get the benefit of a more reasonable and fairer procedure than other occupants. I am not able to see how this difference in procedure between different alleged unauthorised occupants can be reasonably connected with the objects of the Act simply because the grounds of eviction to be established in different cases may be different. As regards procedural needs for proving or disproving a ground for eviction, all occupants seem to me to be similarly situated.

68. Another aspect may also be mentioned. The language of Section 12 (2) of the Act does not confine proceedings for cancellation of an allotment order to any particular ground for cancellation. The ground for it in a particular case could very well be one of the grounds given in Section 21 (1) (a) of the Act. Section 21 (1) (b) of the Act is also so worded as to include persons who had not obtained any authorisation from the Commissioner as well as those whose allotment has been cancelled u/s 12(2) of the Act. The result is that the Housing Commissioner may choose, as between two allottees similarly situated, to adopt either the more just procedure of cancellation of an allotment, in conformity with the requirements of natural justice, prescribed by Section 12 (2) of the Act, followed by the notice u/s 21 (1) of the Act, or, in the alternative, he may straightway exercise the power to evict, u/s 21 (1) of the Act, without giving any hearing and without following the procedure laid down in Section 12 (2) of the Act.

69. It was contended, on the strength of *Ram Dial and Others Vs. The State of Punjab*, that, where two alternative procedures are provided for achieving the same object under two different sections of the same Act, one of which provides for an opportunity to be heard to the person affected and another which does not provide for such an opportunity, the procedure which is disadvantageous to the person affected by it is hit by Article 14 of the Constitution. That was a case of procedure for removal from office. In my opinion, such a ground of attack upon the validity of Section 21 (1) of the Act is also available to the petitioner before us.

70. The result is that I hold that the provisions of Section 21 (1) of the Act are struck by Art 14 of the Constitution, and, therefore, are void by reason of Article 13 of the Constitution. I would, however, like to make it clear that I think that the doctrine of invalidity of the less advantageous of the two alternative procedures should be confined to cases where the following conditions are fulfilled; firstly, the discretion to choose between the two alternative procedures is so unrestricted that no effective control over its misuse is reasonably possible; secondly, the consequences of the decision to be taken by the impugned procedure are serious for the person affected by it; and thirdly, the unfavourable procedure is also otherwise unfair and unreasonable in the context of the purposes of the enactment in which the procedure is found and having regard to the nature and importance of the rights to be dealt with. Whatever may be the position, in these respects, under the procedural provisions for eviction of unauthorised occupants in other enactments which are not before us for consideration, the conditions set out above are fully filled by the objections to the procedure for eviction u/s 21 (1) of the Act.

71. I may also observe, to illustrate my point of view, that, although the two alternative modes of recovery of arrears of rent and other charges, found in Sections 19 and 20 of the Act, may be available in certain cases, and an eviction order u/s 21 (1) may also be utilised as an alternative method of putting pressure with the object of realising these arrears, yet the availability of such

alternative means of recovery of dues would not, in my opinion, invalidate either Section 19 or Section 20 of the Act. Mere existence or use of the alternative modes of recovery of dues to the State, which do not entail the serious consequence of eviction from accommodation, can be placed on a separate footing. Section 19 follows a well-established pattern for the recovery of dues to the State. Section 20 is based on an obviously rational differentia. The method of recovery given there can only be used where an allottee expressly elects, presumably for his own advantage or convenience, to authorise its use by executing a special agreement. There is hardly any room for favouring or discriminating against anybody by the adoption of one of the two modes of realising dues which have to be met in any case. Any person injured and affected by a legally improper choice made mala fide can challenge it and get redress.

72. The validity of procedure for recovery of dues as such was not challenged before us. But, the power of the Housing Commissioner to determine and fix rents and other charges, u/s 15 of the Act, was questioned on the ground that it was too wide and unregulated. It is true that the power to fix the "rates" of the rent and other charges and dates of payment can be exercised without any appeal against it, whereas the order of the Housing Commissioner under Sections 12 (2) and 21 (2) placed in the same class for this purpose are appealable u/s 22 of the Act. But, this difference is explained by the fact that the power u/s 15 apparently meant to be exercised on general principles of assessment of "rates" by general orders about various types of accommodation and amenities provided and not by specific orders on individual cases. When exercising such general powers, the Housing Commissioner is to be guided by an Advisory Committee, constituted u/s 8 of the Act, on which the industrial workers are represented. Section 7 of the Act subjects the Housing Commissioner to the control of the State Government in performing his duties. He could be guided by the Government on matters of policy in fixing rates. Moreover, as we have held that the ambit of "rent and other charges" for the accommodation is reasonably ascertainable, a person aggrieved by an order of fixation of rent or other charges in excess of jurisdiction to do so can obtain redress. Recourse to Courts of law is open when an authority, empowered to make a charge such as licence fees for certain purposes plainly exceeds its power and uses it for the unauthorised object of augmenting income only. Section 13 of the Act does not bar the jurisdiction of even ordinary Civil Courts to grant relief against actions which, are ultra vires. After considering the reasonableness and legality of the demand made upon the petitioner for payment of excess water charges, we have ourselves found it to be justified in the case before us. The power of fixing rates of "rent and other charges" is, therefore, not unconstitutional or void for any reason.

73. It appears that the officer, Sri R. K. Gupta, an Assistant Housing Commissioner, who took action against the petitioner, was so confused by the provisions authorising alternative procedures under the Act that he issued a notice on 23-8-1960 (Annex-lire H) purporting to cancel the allotment order u/s

21 (1) of the Act. This was quite illegal. A cancellation of the allotment could only take place by following the procedure prescribed by Section 12(2) of the Act. The officer concerned also tried to satisfy the requirements of natural justice by informing the petitioner that the petitioner would be given a personal hearing by the officer on any working day within a month. Such a composite order was not authorised by any provision of the Act. The subsequent order, purporting to have been made u/s 21 (2) of the Act on 10-10-1960 (Annexure I) was also illegal as there was no legally valid order under Section. 21 (1) of the Act.

74. For the reasons given above, T agree with the conclusions reached and the order proposed by my Lord, the Chief Justice.

BY THE COURT

75. The petition is partly allowed. Two orders of the Assistant Housing Commissioner, U. P., dated 23-8-1960 and 10-10-1960 (Annexures H and I to the writ petition, respectively) are quashed. Parties shall bear their own costs.