

(1952) 07 KL CK 0012
In the High Court Of Kerala
Case No : A.S. No. 768 of 1950

Vishnu Vishnu Bhattathiripad

APPELLANT

Vs

Poulo Poulo and Others

RESPONDENT

Date of Decision : 04-07-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 4, 51
Constitution of India, 1950 — Article 13(2), 14, 19, 19(1), 19(5)
Government of India Act, 1935 — Section 107
Holdings (Stay of Execution Proceedings) Act, 1950 — Section 4, 5

Citation : (1952) 07 KL CK 0012

Hon'ble Judges : Vithayathil, J; Govinda Pillai, J

Bench : Division Bench

Advocate : P. Narayana Pillai, for the Appellant; K.T. Thomas, for the Respondent

Judgement

Vithayathil, J.—The decree-holder is the Appellant. The appeal is from an order in execution rejecting the petition of the decree-holder for recovery of possession of the decree schedule property. The suit was on the basis of a lease deed for recovery of possession of property with arrears of rent. During the pendency of the suit, a receiver was appointed for the property. After the suit was decreed the decree-holder applied for recovery of possession of property from the receiver. The court below refused this prayer on the ground that the decree came within the purview of Act 8 of 1950, Holdings (Stay of Execution Proceedings) Act. The appeal is from that order.

2. One of the points argued on behalf of the Appellant is that the judgment-debtors have failed to pay the rent of the holding which accrued due after the commencement of the Act and that they are, therefore, not entitled to the benefit of the Act. No such ground was taken by the decree-holder in his execution application. Neither is the ground taken in the appeal memorandum. In view of the fact that the property has been in the possession of the receiver even before the date of the commencement of the Act, we do not think that the proviso to Section 4 of the Act will apply to this case. There is, therefore, no

substance in this contention.

3. The main argument advanced on behalf of the Appellant is that Act 8 of 1950 offends the provisions of the Indian Constitution and that it is, therefore "ultra vires". The Act was impugned on three grounds (1) that it offends Article 14 of the Constitution relating to equality before law; (2) that it offends Article 19(1) (f) relating to the right 1 to hold property; and (3) that it comes within the purview of Article 254 which prohibits the legislature of a State to make any law which is repugnant to any provision of law made by Parliament.

4. With regard to the first point, the argument advanced is that the impugned Act amounts to a discrimination against holders pf decrees for recovery of possession of properties demised on lease. Article 14 reads thus:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 13(2) provides that the State shall not make any law which takes away or abridges the rights conferred by Part 3 of the Constitution relating to fundamental rights and that any law made in contravention of the Article shall, to the extent of the contravention, be void.

5. Before considering the question whether Act 8 of 1950 offends Article 14 of the Constitution it is necessary to understand the object and scope of that Act. The preamble to the Act reads thus:

Whereas it is deemed expedient to stay proceedings in execution of certain decrees in civil courts for eviction from holdings in Travancore it is hereby enacted as follows:

Section 4 of the Act which contains the operative provision of the Act reads thus:

Notwithstanding any law to the contrary, proceedings in execution of a decree in a suit for the recovery of possession of a holding shall, so far as they relate to the delivery of possession of the holding, be stayed for a period of-one year from the date of commencement of this Act:

Provided that nothing contained in this section shall preclude the court-

(a) from ordering the delivery of possession of the holding to the decree-holder if the court is satisfied either that the lessee has committed intentional and wilful acts of waste or that he failed to pay the rent of the holding which has accrued due after the commencement of this Act; or

(b) from granting any other appropriate relief to which the decree-holder may be entitled.

Section 5 provides that in computing the period of limitation prescribed for the execution of any decree the time during which execution proceeding are stayed under the Act shall be excluded. The question for consideration is whether such an enactment amounts to a discrimination against a certain class of decree-

holders. The Act only stays execution of decrees for recovery of possession of holding as defined in the Act, so far as the relief, for recovery of possession of the holding is concerned, for a period of one year from the date of the commencement of the Act, and that also subject to certain conditions. Although the preamble to the Act only says that it is deemed expedient to stay proceedings in execution of certain class of decrees for eviction from holdings, the object of the enactment seems to be to afford, temporary relief to tenants in occupation of holdings. It has to be considered whether an enactment of this nature would amount to discrimination against a particular class of citizens.

6. The 14th amendment of the American Constitution relating to equal protection of the laws has been the subject matter of numerous decisions of the Supreme Court of the United States. The principles laid down in those rulings have been discussed and followed by the Supreme Court of India and by the Indian High Courts in a good number of cases. Reference may be made to some of them.

7. In - Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, Fazl Ali J. quotes with approval the following passage from Professor Willis's Constitutional Law relating to equal protection of the laws:

Meaning and effect of the guaranty - the guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges and the liabilities imposed. The inhibition of the amendment...was designed to prevent any person or class of persons from being singled out as a special subject for discrimination and hostile legislation. It does not take from the States the power to classify either in the adoption of police laws, or tax laws or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis." (P. 579, 1st Edition of "Constitutional Law" by Prof. Willis).

The learned Judge proceeds thus:

There can be no doubt that Article 14 provides one of the most valuable and important guarantees in the Constitution which should not be allowed to be whittled down, and, while accepting the statement of Professor Willis as a correct exposition of the principles underlying this guarantee, I wish to lay particular emphasis on the principle enunciated by him that any classification which is arbitrary and which is made without any basis is no classification and a proper

classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed.

... The presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in - "Middleton v. Texas Power and Light Co." (1919) 249 US 152 at p. 157 (B) in which the relevant passage runs as follows:

It must be presumed that a legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds.

At p. 49 Patanjali Sastri J., as he then was observes thus:

If a law is made applicable to a class of persons or things and the classification is based upon differentia having a rational relation to the object sought to be attained, it can be no objection to its constitutional validity that its application is found to affect only one person or thing.

The following are the observations made by Mukherjea J. at page 57:

It must be admitted that the guarantee against the denial of equal protection of laws does not mean that identically the same rules of law should be made applicable to all persons within, the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America, "equal protection of laws is a pledge of the protection of equal laws" (See - "Yick Wo v. Hopkins" (1885) 118 US 356 at p. 369 (C)), and this, means, "subjection to equal laws applying alike to all in the same situation". Vide - "Southern Railway Co. v. Greene" (1909) 216 US 400 at p. 412 (D), In other words, there should be no discrimination between one person and Anr. if as regards the subject-matter of the legislation their position is the same...There can certainly be a law applying to one person or to one group of persons and it cannot hold to be unconstitutional if it is not discriminatory in its character. It would be bad law if it arbitrarily selects one individual or a class of individuals one corporation or a class of corporations and visits a penalty upon them, which is not imposed upon Ors. guilty of like delinquency" - "Gulf v. Ellis" (1896) 165 US 150 at p. 159 (E). The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial, of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect of which the classification is made; and classification made without any substantial basis should be regarded as invalid.

Das J. makes the following observation while discussing the principles relating to equal protection of the laws:

The varying needs of different classes of persons often require separate treatment

and it is, therefore, established by judicial decisions that the equal protection clause of the 14th Amendment of the American Constitution does not take away from the State the power to classify persons for legislative purposes. This classification may be on different basis. It may be geographical, or according to objects, or occupations or the like. If the law deals equally with all of a certain well defined class it is not obnoxious and it is not open to the charge of a denial of equal protection on the ground that it has no application to other persons, for the class for whom the law has been made is different from other persons and, therefore, there is no discrimination amongst equals. It is plain that every classification is in some degree, likely to produce some inequality but mere production of inequality is, not by itself enough. The inequality produced, in order to encounter the challenge the Constitution must be actually and palpably unreasonable and arbitrary.

8. In - "State of Bombay v. P.N. Balsara" AIR 1951 SC 318 (F) Fazl Ali J. formulated the following 7 principles with regard to the applicability of Article 14 of the Constitution, viz., (1) The presumption is always in favour of the constitutionality of an enactment since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds. (2) The presumption may be rebutted in certain cases by showing that on the face of the statute there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class. (3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment. (4) The principle does not take away from the State the power of classifying persons for legitimate purposes. (5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough. (6) If the law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. (7) While reasonable classification is permissible such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained and the classification cannot be made arbitrarily and without any substantial basis.

9. Another decision of the Supreme Court in which the principles relating to Article 14 of the Constitution are exhaustively dealt with is - The State of West Bengal Vs. Anwar Ali Sarkar, The question is discussed by all the seven Judges who took part in the decision, i.e. their Lordships Patanjali Sastri C.J., Fazl Ali, Mahajan, Mukherjee, Das, Chandrasekhara Iyer and Bose JJ. His Lordship Patanjali Sastri C.J., observes thus at page 79:

As pointed out in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and

Others, and numerous American decisions dealing with the equal protection clause of the 14th Amendment, the State in the exercise of its governmental power must of necessity make laws operating, differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws. But classification necessarily implies discrimination between persons, classified and those who are not members of that class. "It is the essence of a classification" said Brewer J. in - "Atchison Topeka and Santa Fe. R. Co. v. Mathews" (1899) 174 US 96 at p. 106 (H) "that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality." Commenting on this observation in his dissenting opinion in "Connolly v. Union Sewer Pipe Co." (1909) 184 US 540 at op. 566, 567, 568 (I) which later prevailed in - "Tigner v. Texas" (1940) 310 US 141 (J) McKenna J. posed a problem and proceeded to answer it. "It seems like a contradiction to say that a law having inequality of operation may yet give equality of protection. Viewed, rightly, however, the contradiction disappears... Government is not a simple thing. It encounters and must deal with the problems which come from persons in an infinite variety of relations. Classification is the recognition of those relations and, in making it, a legislature must be allowed a wide latitude of discretion and judgment... Classification based on those relations need not be constituted by an exact or scientific exclusion or inclusion of persons or things. Therefore, it has been repeatedly declared that classification is justified" if it is not palpably arbitrary. Thus the general language of Article 14 as of its American counterpart has been greatly qualified by the recognition of the State's regulative power to make laws operating differently on different classes of persons in the governance of its subjects, with the result that the principle of equality of civil rights and of equal protection of the laws is only given effect to as a safeguard against arbitrary State action. It follows that in adjudging a given law as discriminatory and unconstitutional two aspects have to be considered. First, it has to be seen whether it observes equality between all the persons on whom it is to operate. An affirmative finding on the point may not, however, be decisive of this issue. If the impugned legislation is a special law applicable only, to a certain class of persons, the Court must further enquire whether the classification is founded on a reasonable basis having regard to the object to be attained or is arbitrary. Thus, the reasonableness of classification comes into question only in those cases where special legislation affecting a class of persons is challenged as discriminatory... It is interesting to find that the trend of recent decisions in America has been to lean strongly towards sustaining State action both in the legislative and in the administrative spheres against attacks based on hostile discrimination.

10. Fazl Ali J. re-affirmed the principles laid down by the Supreme Court in -

Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, and - " AIR 1951 SC 318 (F)". His Lordship observes thus:

One of these principles is that Article 14 is designed to protect all persons placed in similar circumstances against legislative discrimination and if the legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a well-defined class, it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. There is nothing sacred or sacrosanct about the test of reasonable classification, but it has undoubtedly proved to be a useful basis for meeting attacks on laws and official acts on the ground of infringement of the equality principle.

11. Mahajan J. deals with the question in the following manner:

By the process of classification the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. The classification permissible, however, must be based on some real and substantial distinction bearing a just and reasonable relation to the subjects sought to be attained and cannot be made arbitrarily and without any substantial basis.

12. Mukherjea J. observes thus at page 88:

It can be taken to be well settled that the principle underlying the guarantee in Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, it only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. (Old Dearborn Distributing Co. v. Seagram Distillers Corporation" (1936) 299 US 183 (K). Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and Anr. if as regards the subject-matter of the legislation their position is substantially the same.

13. Das J. comes to the following conclusion after discussing the principles relating to Article 14:

In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just

explained. The doctrine, as expounded by this Court in the two cases I have mentioned *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, and AIR 1951 SC 318 leaves a considerable latitude to the Court in the matter of the application of Article 14 and consequently has the merit of flexibility.

14. Chandrasekhara Iyer J., after discussing the question affirms the seven principles formulated by Fazl Ali J. in - "AIR 1951 SC 318" (F).

15. Bose J. expresses his view on the question in the following manner:

What I am concerned to see is not whether there is absolute equality in any academical sense of the term but whether the collective conscience of a sovereign democratic republic can regard the impugned law, contrasted with the ordinary law of the land, as the sort of substantially equal treatment which men of resolute minds and unbiased views can regard as right and proper in a democracy of the kind we have proclaimed ourselves to be. Such views must take into consideration the practical necessities of Government, the right to alter the laws and many other facts, but in the forefront must remain the freedom of the individual from unjust and unequal treatment, unequal in the broad sense in which a democracy would view it. In my opinion, "law" as used in Article 14 does not "mean the "legal precepts which are actually recognised and applied in the tribunals of a given time and place" but "the more general body of doctrine and tradition from which those precepts are chiefly drawn, and by which we criticise them." (Dean Pound in 34 Harward Law Review, 449 at p. 452).

16. In - *V.G. Row Vs. The State of Madras*, Satyanarayana Rao J. has discussed the question with reference to various rulings of the Supreme Court of the United States of America. The learned Judge quotes with approval the, following observation of Field J. in - "*Barbier v. Connolly*" (1883) 113 US 27 (M):

Class legislation, discriminating against some and favouring Ors. , is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.

Reference is also made to the following passage in Weaver on Constitutional Law, page 397:

Class Legislation, is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion or one and the exclusion of the other from such privilege.... The classification must not be arbitrary, artificial and evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates. Unless the classification is clearly unreasonable and arbitrary the Court would not interfere with the legislation.

17. Rajamannar C.J., makes the following observation at page 176:

The principle of equality before the law is not violated by the instance of special laws providing for particular groups in the State.... But in the enforcement of these laws as well as in the enforcement of the general law, no distinction is made between man and man.

At page 177 the learned Judge further observes thus:

It (the equal protection clause) prevents any person or class of persons from being singled out as a special subject for discrimination and hostile legislation." (*Pembina Consolidated Silver Mining Co. v. Commonwealth Pennsylvania*" (1883) 125 US 181 (N). It is well established that this clause does not forbid classification for purposes of the exercise by the State of "police power" or taxation rights. It is in this sense I understand the phrase as incorporated in Article 14.

18. Viswanatha Sastri J. deals with the question in the following manner.

Relations between debtor and creditor, employer and workman, and landholder and tenant are not regulated by the "laissez faire" theory or by the principle of freedom of contracts, and are even taken out of the jurisdiction of Courts. The bulk of modern social economic legislation applies not to all citizens generally but only to special classes considered by the public opinion of the day as deserving of special protection. The prohibition against the denial of equal protection of the law does not, therefore, require that the law should have an equality of operation on persons as such but on persons according to their relation. Distinguishing, selecting and classifying objects of legislation within a wide range of discretion and according to the needs and circumstances of society from time to time are both necessary and permissible provided the discretion is based on some reasonable or intelligible grounds. The power of the State to prescribe regulations for promoting the health, morals and education of the people, the economic and industrial development of the country and for preserving peace and order, called the "police power" in America involves some kind of selection, classification and special treatment. Reasonable classifications made and restrictions imposed by law do not amount to a denial of equal protection. Though the classification must have relation to the purpose of the legislation, logical appropriateness of the inclusion or exclusion of objects or persons is not required, and the legislature must have great freedom of discretion in this respect. A classification having some reasonable basis does not offend the rule of "equal protection of the laws" merely because it is not made with mathematical, logical or scientific accuracy or because in practice and actual working it results in some inequality. "(1896) 165 U.S. 150 at p. 155 (E)" - "*Health Mileigan Manufacturing Co. v. Worst*" (1907) 207 U.S. 338 (O). All that can be said is that the classification must not be an arbitrary, capricious or colourable selection which no reasonable man would make, but must rest upon some difference which bears a reasonable and just relation to the act in respect of which the

classification is made... He who assails the legitimacy of the classification must establish beyond doubt that it does not rest on any reasonable basis, the presumption being that it does "(1896) 165 U.S. 150 at p. 155 (E)"; - "Connolly v. Union Sewer Pipe Co" (1909) 184 U.S. 540 (I); - Lindsye v. National Carbonic Gas Co." (1911) 220 U.S. 61 at p. 78 (P).

19. From the above discussion of the principles on which Article 14 of the Constitution is based it is clear that if a particular legislation relates to a class and if the classification is not arbitrary but has reasonable and just relation to the object of the legislation it will not offend the article even though it may adversely affect particular individuals. Viewed in that light it cannot be said that the impugned Act offends Article 14. The Act applies to all holders of decrees for recovery of possession of holdings. The object of the legislation is affording temporary relief to a particular class of tenants, viz., tenants of holdings as defined in the Act. The persons adversely affected by the legislation are holders of decrees for recovery of possession of such holdings. They constitute a class by themselves so far as the object of the legislation is concerned. Similarly the persons benefited by the legislation also constitute a class. It cannot be said that the classification is in any way arbitrary or capricious. It has a reasonable and just relation to the object of the legislation. No distinction is sought to be made within the class of persons affected by the legislation. We do not think that the legislation aims at discriminating against particular individuals or groups of persons. We are, therefore, of opinion that Act 8 of 1950 does not offend Article 14 of the Constitution.

20. The second ground urged on behalf of the Appellant is that the impugned Act offends Article 19(1)(f) of the Constitution. Article 19(1)(f) is to the following effect:

All citizens shall have the right to acquire, hold and dispose of property.

It is contended that the right to hold property includes the right to recover possession of the property from a tenant and that, since the impugned Act prevents a decree-holder from recovering possession of a holding from a tenant, it is hit by the Article and that, therefore, it is "ultra vires". We have no doubt that the right to recover possession of property in execution of a decree comes within the meaning of the term "right to hold property". Right to "hold" a property necessarily implies the right to be in possession of that property. The expression "property" includes every interest in property including the right to freely possess, enjoy and dispose of the same (vide - "Metropolitan Trust Co. v. Jones" 149 A.L.R. 1416 (Q)). "To hold" a property means "to possess" the property and enjoy the benefits which are ordinarily attached to its ownership. (Vide - Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, As observed by Rajamannar C.J. in - Rajah Sri Ravu Sweta, Chelapathi Ramakrishna Ranga Rao Bahadur, Rajah of Bobbili Vs. The State of Madras,

the proper meaning to be attached to the word "hold" in Article 19(1)(f) is to

"enjoy". Enjoyment of property consists in actual occupation and possession of it and will also comprise the perception of rents and profits from it.

We have no doubt that the right to be in possession of property is a right appurtenant to the right to hold property. The impugned Act does prevent the owner of a property, though for a limited period, from recovering possession of the same from a tenant. It would therefore infringe Article 19(1)(f) of the Constitution unless it would come under Clause (5) of that Article.

21. Clause (5) of Article 19 reads thus:

Nothing in Sub-clauses (d), (e) and (f) of the said Clause (i.e. Clause (1)) shall affect the operation of any existing law in so far as it imposes, or prevents the state from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of, the general public or for the protection of the interests of any Schedule Tribe.

The question for consideration is whether the impugned Act will come within this clause. It is not the case of either the Appellant or the Respondents that this Statute was enacted for the protection of the interests of any scheduled Tribe. The only question to be decided is whether the Act only imposes a reasonable restriction on the exercise of the right conferred on a citizen by Article 19(1)(f) in the interests of the general public. In other words the question to be decided is whether the restriction, for a period of one year, on the right of holders of decrees for recovery of possession of holdings from tenants to recover possession of the same through court, is a reasonable restriction imposed on the rights of such decree-holders in the interests of the general public. In view of the fact that the restraint imposed by the impugned Act is to last only for a period of one year, rulings relating to enactments by which proprietary right in property is taken away from the owner thereof will not be of much assistance so far as this case is concerned. The first question to be considered is whether the restriction imposed by the Statute is in the interests of the general public. Although it is not clear from the Statute what particular interests of the general public it is intended "to promote or safeguard it can be assumed that the Statute is meant for affording temporary relief to tenants of holdings in the matter of eviction from such holdings. Since tenants of holdings form a substantial part of the general public of the State their interests can be said to be interests of the general public.

Reference may be made in this connection to the following observations of P.B. Mukharji J. in - Ramhari Mandal Vs. Nilmoni Das, :

The words "in the interests of the general public" must be given their plain meaning. That plain meaning as I understand it, is that it includes even sections of general public. I cannot imagine how by any twist of construction it can be said that general public will not include a fairly substantial section of the people who constitute the class of Bargadars in West Bengal. They are just as much a class of the general public as anybody else. But in considering whether the

legislation is in the interests of the general public the cause of the Bargadars is not the only criterion. I consider the legislation to be also in the larger interests of the owners of these lands. Then again there is the interest of the agricultural lands in the country, which is also an interest for the general public.

A legislation intended to protect or advance the interests of tenants of holdings will, therefore, come within the purview of Clause 5 of Article 19, provided the restriction imposed by the Statute on the exercise of the right conferred on a citizen under Sub-clause (f) of Clause (1) of the Article, i.e., the right to hold property, is only a reasonable restriction in the circumstances of the case.

22. The question as to what are reasonable restrictions and what are not reasonable restrictions has been the subject-matter of judicial discussion in all countries having a democratic constitution- particularly in America. The important decisions of the Supreme Court of America on this question have been considered by the Supreme Court of India and other High Courts in India. We may refer to some of the Indian decisions in which the question has been discussed in - Chintaman Rao Vs. The State of Madhya Pradesh, , which was a case coming under Article 19(1)(f) of the Constitution Mahajan J. observes thus at page 119:

The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word ""reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily and excessively invades the, right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1) (g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality.

His Lordship further observes at page 120:

The determination by the Legislature of what constitutes a reasonable restriction is not final or conclusive; it is subject to the supervision by this Court. In the matter of fundamental rights, the Supreme Court watches and guards the rights guaranteed by the Constitution, and in exercising its functions it has the power to set aside an Act of the Legislature if it is in violation of the freedom guaranteed by the Constitution.

23. In - State of Madras Vs. V.G. Row, Patanjali Sastri C.J. following the decision in - Dr. N.B. Khare Vs. The State of Delhi, observes thus:

Both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the court should consider not only factors such as the duration and the "extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in

mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.

24. In *Rajah Sri Ravu Sweta, Chelapathi Ramakrishna Ranga Rao Bahadur, Rajah of Bobbili Vs. The State of Madras*, " Rajamannar C.J. observes thus:

Even assuming that the provisions of the impugned Act do restrict the exercise of the Petitioner's enjoyment of their property, I am prepared to hold that they can well be supported as reasonable restraints imposed in the interests of a large section of the public and therefore saved by Article 19(5) of the Constitution. In this State, agricultural tenants form a very large part of its people and any legislation undertaken with the object of ameliorating their condition must be held to be in the interests of the public, prima facie, reduction of the prevailing rents to ryotwari level cannot be said to be unreasonable. Whether in a particular case the actual reduction effected is so drastic and there are other circumstances which lead to the inference that the landholder is practically deprived of all enjoyment of his property, then it may be in that case there has been an unreasonable restriction.

25. *Ramhari Mandal Vs. Nilmoni Das*, , P.B. Mukharji J. expresses his view on the question in the following words:

The preservation of land for agricultural purposes as being the ultimate source of food for the State is a concern which certainly involves the interests of the general public in every sense. The Barga System of cultivation is an integral part of the agricultural economy and the land system of this State. That system is the work of many centuries. During the first stages of its evolution the sense of common interest and joint venture between the owners of land and the Bagchasis was the cementing bond between them. With the progress of time and the changing social and economic conditions that sense of common interest was lost on the one hand by the growing evils of absentee landlordism which became irresponsible, and on the other by the growing delirium of the new ideology that the land should for all practical purposes belong to the tillers of the soil.

The tension between the land-owner and the Bagchasi developed and their relationship was so greatly strained in recent times that it gave rise to agrarian disturbances in some parts of the State threatening the food production of the country. Legislation was, therefore, needed to readjust the balance for a just and harmonious relationship between the land-owner and the Bargadar. For that purpose an Ordinance was promulgated on 14-11-1949 now replaced by the Statute of 1950. These historic considerations and the present situation alike stamp this legislation with overwhelming public interest. I, therefore, hold that the Bargadar Act 1950 is in the interests of the general public within the meaning of the Constitution.

26. From the above discussion of the principles that should be borne in mind when considering the question whether the restriction imposed by a statute on the exercise of the fundamental right conferred on a citizen by Article 19(1)(f) of the Constitution "to acquire, hold and dispose of property" is a reasonable restriction within the meaning of that expression as used in Clause (5) of the Article, it will be seen that the important factors that should be taken in account by the Court are the nature, extent and duration of the restriction in relation to the interest of the general public that is sought to be served by the legislation. In view of the fact that the restriction imposed by the impugned Act on the right of landholders to "hold" their properties is of a very temporary nature, and of the further fact that the object of the legislation is to afford relief to a large section of the public, we are inclined to take the view that the restriction imposed by the Statute is not unreasonable. The position will be different if the statute virtually deprives a citizen of his fundamental right to "acquire, hold and dispose of property" as observed by Rajamannar C.J. in the passage quoted above in - *Rajah Sri Ravu Sweta, Chelapathi Ramakrishna Ranga Rao Bahadur, Rajah of Bobbili Vs. The State of Madras*, ". Reference may also be made to the following observation of Das J. in - *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*,

If the rights taken away by the Ordinance or the Act are such as would render the rights left untouched illusory and practically valueless, then there can be no question that in effect and substance the "property" of the share-holder has been taken away by the Ordinance or the Act.

In this case, we do not think that the effect of the legislation is to deprive the land-holder of his right to "acquire, hold and dispose of property". The legislation only imposes a temporary restriction on the exercise by the land-holder of his right to "hold" property. In the circumstances, we are of opinion that the restriction imposed by the Statute is only a reasonable restriction coming within the purview of Clause (5) of Article 19 and that it does not therefore offend Clause (1)(f) of that Article.

27. The third argument advanced on behalf of the Appellant is that Act 8 of 1950 is repugnant to the provisions of the Indian CPC which is one of the subjects included in the Concurrent list and that, therefore, the Act is void to the extent of

the repugnancy, as provided in Article 254 of the Constitution Article 254 reads thus:

(1) If any provision of a law made by the legislature of a State is repugnant to any provision of law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the legislature of a State specified in Part A or Part B of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State, shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to amending, varying or repealing the law so made by the Legislature of the State.

Clause (2) of this Article does not apply to this case since Act 8 of 1950 is not an Act which was reserved for the consideration of the President. I have received his assent. The argument of learned Counsel for the Appellant is that since Act 8 of 1950 takes away the power of the Civil Court to order delivery of possession of holdings in execution of decrees for recovery of possession of such holdings it is repugnant to the provisions of the Indian CPC which authorise the court to order delivery of possession of properties in execution of such decrees. List 2 of the 7th Schedule of the Constitution which contains the matters in respect of which a State Legislature can make laws provides for legislation in respect of land. Entry 18 in that list reads thus:

Land, that is to say rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural lands; land improvement and agricultural lands; colonisation.

It is, therefore, clear that Act 8 of 1950 relates to a subject included in List 2 and that the State legislature is competent to make laws relating to it. Entry 13 in the Concurrent List, namely, List 3, relates to "Code of Civil Procedure, including all matters included in the CPC at the commencement of this Constitution. Limitation and Arbitration." According to Article 254 if a State Legislature made any law relating to this subject, namely, Code of Civil Procedure, and if any provision of that law is repugnant to the provisions of the Indian Code of Civil Procedure, such provision will be void to the extent of the repugnancy. We do not think that this Article will apply to this case. Act 8 of 1950 does not relate to

Code of Civil Procedure, and therefore, does not come within the Concurrent List. The Article will have no application when the State law in its "pith and substance" relates to a matter in List 2 and when there is no need to invoke the concurrent power, even if the State law incidentally trenches upon some item in, the Concurrent List. (Vide - "Profulla Kumar Mukherji v. Bank of Commerce Ltd., Khulna" AIR 1947 PC 60 (W); - "Lakhi Narayan Das v. Province of Bihar" AIR 1950 FC 59 at p. 64 (X) and - "Megh Raj v. Allah Rakhia" AIR 1947 PC 72 (Y).

28. In the first case the Judicial Committee observed thus:

The overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdiction. Subjects must still overlap and when they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found.

29. In the second case Mukherji J. elaborated the above dictum of the Privy Council in the following manner:

To ascertain the class to which a particular enactment really belongs, we are to look to the primary matter dealt with by it, its subject matter and essential legislative feature. Once the true nature and character of a legislation determine its place in a particular list, the fact that it deals incidentally with matters appertaining to other lists is immaterial.

30. In the third case, i.e.. - "Megh Raj v. Allah Rakhia (Y)", the Punjab Restitution of Mortgage Lands Act, which enabled the mortgagor to redeem a usufructuary mortgage of lands without payment of the mortgage debt was impugned as repugnant to the Contract Act which came under Entry 10 of List 3 of the Government of India Act, 1935. The Privy Council held that the Punjab Act in its "pith and substance" fell entirely within the provincial item relating to land (item 21 of list 2) and that there was no need for the provincial legislature to rely on any item in the Concurrent List in order to give it validity and that, therefore, no question of repugnancy arose. Their Lordships also held that Section 107 of the Government of India Act, 1935 (which corresponds to Article 254 of the Constitution) would have no application in a case where the Province could show that it was acting wholly within its powers under Provincial list and was not relying on any power conferred on it by the concurrent list.

31. In - AIR 1941 16 (Federal Court) it was held that the provisions of the Agra Tenancy Act which barred civil remedy in cases of remission of rent coming under that Act were not repugnant to the Code of Civil Procedure. The words of Entry 18 in the State List are comprehensive enough to include the remedial as well as the procedural provisions concerning the reliefs in respect; of rights and liabilities enumerated in the entry. Entry in the Concurrent List relating to CPC applies to litigation generally. It does not include a special law of procedure which is applicable only to a litigation regarding a special matter. (Vide - Sree Sreejot Maharaja Sir Bir Bikram Kishore Manikya Bahadur Vs. Tafazzal Hossain and

Others, and - "Uday Chand v. Sararendra" AIR 1947 FC 19 (Z2)).

In the former case, it was contended that the provision in Section 168A of the Bengal Tenancy Act which limited sales in execution of decrees for "rent to the property in arrears, was repugnant to Section 51, CPC which provides that a decree may be executed by the attachment and sale of any property of the judgment-debtor, that, since the CPC was included in the Concurrent List Section 107, Government of India Act, 1935, applied to the case and that therefore the provision in Section 168A of the Bengal Tenancy Act was void. Pal J. repelled this contention in the following words: "In my opinion, it is opposed to the very doctrine of "pith and substance". In order to see "with respect to" what matter the legislature is exercising its legislative functions, we are to look to the substance of the entire subject-matter for legislation and not to every detailed provision severed from the context." The latter decision also related to the same question.

32. Again, Entry 65 in the State List gives the State Legislature jurisdiction to legislate in respect of all matters included in that list. That entry reads thus:

Jurisdiction and powers of all courts except the Supreme Court with respect to any of the matters in this list.

In - "AIR 1947 PC 72 (Y)" it was held that item 2 in List II of the Government of India Act, 1935, (corresponding to entry 65) is wide enough to create and determine the powers and jurisdiction of courts in respect of "land" as a matter ancillary to the subject of item 21 in that list (corresponding to entry 18). Their Lordships came to the following conclusion in that case:

It follows that in their Lordships' judgment there is not sufficient ground for holding that the impugned Act or any part of it was invalid. As a whole, it fell within the powers given to the Province by items 2 and 21 of List II, without any necessity to invoke any powers from the Concurrent List, List III. Accordingly questions of repugnancy u/s 107, Constitution Act, do not arise and need not be considered here.

33. It has also to be stated that the provisions of Act 8 of 1950 are not really repugnant to any of the provisions of the Code of Civil Procedure. "Repugnant to" really means "inconsistent with" and as observed by Higgins J. in "Clyde Engineering Co. v. Cowburn" (1926) 37 Com-W.L.R. 466 at p. 503 (Z3): "things are inconsistent when they cannot stand together at the same time, and one law is" inconsistent with Anr. law when the command or power or provision in the one law conflicts directly with the command or power or provision in the other." Section 4 of the CPC itself provides that when there is an inconsistency between the provisions of the Code and any special or local law the special or local law shall prevail. The section reads thus:

4(1). In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in

force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

Thus in any view of the case Article 254 of the Constitution can have no application so far as the impugned Act is concerned.

34. For the above reasons we hold that Act 8 of 1950 is not "ultra vires". There is thus no merit in this appeal and it is therefore dismissed with costs.

K.S. Govinda Pillai, J.

35. I agree. The State is contemplating the introduction of a lad policy and for this purpose, the status of persons holding lands under a particular tenure is intended to be maintained till appropriate legislation is passed. The present Act has only force for a temporary or short period. It does not offend the provisions of the Constitution and hence is not "ultra vires" as held by my learned brother.