State of M. P.

Vs

Champalal and Ors.

Civil Appeals Nos. 379 to 383 of 1959

(CJI B. P. Sinha, J. R. Mudholkar, Raghuvar Dayal, K. N. Wanchoo, N. Rajgopala Ayyangar JJ.)

19.12.1963

JUDGMENT

AYYANGAR J. –

These five appeals which have been consolidated for hearing, raise for consideration principally two points :

(1) the constitutional validity of the Bhopal Reclamation and Development of Lands (Eradication of Kans) Act, 1954 (Act XIII of 1954) which will be hereafter referred to as the Act, and

(2) whether the provisions of the Act, even if constitutionally valid, were complied with in the case before us.

The Act the provisions of which we shall set out and examine later, empowered the State Government to notify areas of the State as "Kans infested areas" and on such notification officers of the State were enabled to enter on the lands within the notified areas and conduct deep ploughing tractorisation operation with a view to eradicate the kans. We might mention even here that Kans are a species of weeds which infest large areas of land in and around the former State of Bhopal now forming part of Madhya Pradesh. The weeds are hardy, quick growing, rapidly expanding the area of their infestation and sap the fertility from the soil and thus lead to very poor yield of the land and if the growth is more extensive, practically prevent any crops. The Act provided for the cost incurred in these eradication operations being recovered from the farmers on whose lands the tractorisation was effected. Acting under the said law, considerable extents of land in the former State of Bhopal were tractorised and demands were made on the owners of the lands for the payment of the charges claimed as due. Five of these farmers on whom these demands were made thereupon filed petitions under Art. 226 before the Judicial Commissioner, Bhopal challenging the constitutionality of the Act as well as the legality of the levy, even assuming the law to be valid, and these petitions were allowed, and the learned Judicial Commissioner holding the Act to be unconstitutional and the levy illegal, granted the declaration and mandamus prayed for. The appellants thereafter applied for and obtained from the Judicial Commissioner certificates of fitness under Art. 133(1)(c) and have preferred the appeals which are now before us.

We shall narrate a few facts which serve as a background to the enactment of the legislation now impugned, and which would also throw some light on some of the points urged by the respondents. It was recognised as early as the first decade of this century that without the eradication of Kans there could be no improvement in the return from the land in the Bhopal and surrounding areas. The

question was as to how this was to be accomplished. With this end in view research was conducted by the Imperial Council of Agricultural Research from about 1940 onwards, and as a result it was concluded that the only method of eradicating the pestilential weed was by deep ploughing of the land with tractors which would reach a sufficient depth wherefrom the roots of the weed could be pulled out and exposed and thus destroyed. This conclusion was accepted by the then Government of Bhopal who between the years 1944-48 carried out experiments by tractorisation or deep ploughing of lands in several areas of the State. The experiments demonstrated that tractorisation would increase the out turn of crops. This experimental ploughing was, however, confined to particular villages and areas in the State but the results achieved in them showed that if done systematically, deep ploughing by tractors would help to eradicate the pest and increase the yield from the land. In order to carry out this purpose an Ordinance XXXVIII of 1949 was promulgated on October 20, 1949 whose provisions were substantially identical with those contained in the Act which we shall presently read. The notifications now impugned defining the areas to undergo tractorisation (which included in them the places where the lands of the respondents are situated) were issued under this Ordinance. Similarly, the notices demanding payment of sums from the respondents whose validity is likewise challenged were also issued under it. The Ordinance, however, it is now admitted, was constitutionally incompetently promulgated and had, therefore, no legal validity. All action, however, taken under the Ordinance was validated by the Act and by its s. 17 "all acts done notifications issued, authorisations, inquiries made, duties assigned, notices served, or any action taken with respect to or on account of eradication of kans during the period commencing October 20, 1949 and ending with the date of the commencement of this Act etc. will be as valid and operative as if they had been done, issued, made, assigned, served or taken in accordance with the law." The validity of this provision which was upheld by the Judicial Commissioner is not challenged before us and therefore notwithstanding that the notifications which will be referred to later were issued anterior to the enactment of the Act, that circumstance is immaterial for considering their effectiveness.

Before however, proceeding with the narration of the facts and particularly with those touching the issue of the impugned notifications and the notice of demand, we consider it would be convenient to set out the relevant provisions of the Act, and in particular those whose constitutional validity is challenged. It may be mentioned that the Act received the assent of the President on November 7, 1954 and was published in the State Gazette on November 25, 1954. Its preamble recites that it was enacted "to provide for the reclamation and development of lands by eradication of kans weed in certain areas of the State of Bhopal." Section 2 contains the definitions and cl. (c) defines a 'kans area' wherein eradication operations are to be conducted under the provisions of the Act as meaning "the area which the Government may, by notification, declare under sub-s. (1) of s. 4 to be an area infested with kans." Section 3 empowers the Government to appoint a Reclamation Officer. Section 4 is one of the main provisions whose validity is challenged and has, therefore, to be set out in full

> "4. (1) If the Government is of opinion that any area is infested with kans, it may, by notification, declare such area, giving full particulars thereof, to be a kans area for the purpose of this Act.
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> (2) Such notification shall be a sufficient notice of the fact stated therein to all persons holding or having interest in the land comprised in such area.
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> (3) The Reclamation Officer shall give publicity to the notification issued under sub-section (1) in such manner as he deems fit.

(4) The Reclamation Officer may enter upon any land in such area and take possession thereof for such period as may be necessary for the purpose of eradication of kans from such area and carry on other ancillary subsidiary operation therein."

Section 5 provides for the constitution of a Reclamation Board - a provision to which we shall have occasion to refer at a later stage. Section 6 deals with the consequences of a notification under s. 4(1) and with the matters which take place thereon and is thus intimately connected with s. 4 and we shall therefore set it out in full :

"6. (1) On issue of a notification under sub-section (1) of section 4, the Reclamation Officer and his subordinates and workmen, authorised by him in this behalf, may, notwithstanding the provisions of the Bhopal Land Revenue Act, 1932, (IV of 1932), -

(a) enter upon any land in the kans area for the purpose of survey and any other ancillary purpose, and

(b) taken possession of the whole or any part of the kans area and carry on eradicating and other ancillary and subsidiary operations therein.

(2) No person shall use the land so notified for any purpose till such date as the Reclamation Officer, after the completion of the reclamation and demarcation operations, may, by notification in the official Gazette, specify for the restoration of the same to the person who was, on the date of taking over, in lawful possession of the same or was entitled to such possession :

Provided that no revenue shall be charged from a person whose land has been taken over by the Reclamation Officer under this section in respect of the period during which the land has so remained in the possession of the said Officer.

(3) For the purposes of this section, any reference to the person entitled to take possession of land notified above, shall, if he is dead, be deemed to include a reference to his successors in interest.

(4) The notification mentioned in sub-section (2), shall be final, and full discharge of the Government from all liability in respect of such delivery of possession, and the possession of the land shall, on the date specified in this behalf, be deemed to have been delivered by the Government to the person entitled to it."

Section 7 provides the machinery for ascertaining the share of the cost which has to be paid by persons having interest in the land who have benefited by the tractorisation and it is the procedure contained in this section that is stated to have been departed from in making the demands on the respondents by reason of which the respondents successfully resisted the demands made on them. Section 7 runs :

"7. (1) The total expenditure incurred, or to be incurred, by the Government on eradicating or other ancillary or subsidiary operations in the kans area, shall be equitably apportioned by the Reclamation Board between the several holders of, or persons having interest in the lands comprised in the kans area.

(2) Every person holding, or having interest in the land in which eradicating or other ancillary, or subsidiary operations have been carried out our intended to be carried on, shall be liable to pay the costs of such operations on his land

(3) The Reclamation Officer shall fix the amount of costs payable by each holder or other person having interest in the land comprised in the kans area. The amount so fixed shall be charged on the land to which it relates, and shall not be called in question in any suit or other legal proceedings.

(4) The Reclamation Officer shall also determine whether the amount so apportioned shall be paid by the person holding, or having interest in the land in one lump sum or by such annual instalments as he may fix for the amount.

(5) The payment mentioned in sub-section (4), may be made in cash or agricultural produce of such land or both.

(6) If the actual cost of the eradicating or other subsidiary or ancillary operations exceeds or falls short of the amount to be payable by a holder of, or other person having interest in, the land, the difference shall be returned to, or recovered from, the person concerned, as the case may be."

The machinery for collection is contained in s. 8 and it is enough to point out that it makes provision for the Reclamation Officer serving on the person holding or having interest in the land in which eradication operations have been carried out a notice of demand which in the context would mean such sum as has been determined under s. 7 and for the recovery of the said sum as an arrear of land revenue. Section 9 makes provision for the payment of compensation and it is one of the sections of the Act which have been struck down for unreasonableness. It enacts :

"9. (1) Any person may, within thirty days from the date of the taking over of the land under section 6, apply to the Reclamation Board for payment of compensation for destruction of or damage to any plant, tree, building, hut or other structure in his land as a result of the eradicating operation.

(2) On receipt of such application, the Reclamation Board may make such inquiry as it deems fit, and, if in its opinion, the payment of compensation is justified, it may grant such compensation as it deems fit.

(3) The decision of the Reclamation Board shall be final in all respects, and shall not be called in question in any court of law."

Though some of the other sections of the Act have been dealt with and examined by the learned Judicial Commissioner, they do not bear materially on the points which have been urged before us in the appeals and we do not therefore, consider in necessary to refer to them.

To resume the narration of the facts leading to the filing of these petitions, it would suffice to mention those relating to any one of these petitions, as those of the others are substantially similar. We shall refer to the facts in Case 18 of 1954 from which C.A. 379 of 1959 has arisen as illustrative of the rest. On January 18, 1951 a notification was issued by the Chief Commissioner under s. 4(1) of the Ordinance declaring all the villages in seven tehsils which were set out in it as "Kans areas" and this was published in the Gazette on January 27, 1951. This notification was amended by a

further notification dated May 30, 1951 by which all the villages in two more tehsils were added to the original seven. Among these newly added was Tehsil Huzur in which the lands of the petitioners who number thirty, were situate. Needless to add that this amendment was also published in the Gazette, Subsequently on November 21, 1952, there was a notification stating inter alia that 10 named villages in Tehsil Huzur were being taken over for tractorisation operations "during the ensuing season" and after this these operations were conducted on the lands of the petitioners. Thereafter on February 4, 1953, a communication was addressed by the Land Reclamation Officer, Bhopal to the Tahsildar, Huzur among other Tahsils which read, to quote the material passage :

> "I forward herewith demand lists of villages of your Tehsil in respect of the tractorisation charges for the season 1951-52. Pending final decision regarding exact rates of bush clearance and ploughing, it has been found advisable that collection may be made at the rate of Rs. 10, per acre towards first instalment of the demand. As soon as the rates are finalised intimation as to the exact rate will be sent to you to adjust the account likewise."

This was finalised at a later date on receipt of intimation from the Government of India on August 12, 1953, but the figure was modified slightly in March 1954 and again in October, 1954 by a revision to a lower figure but nothing turns on the modifications, because the challenge in the petitions to the demand does not turn on the quantum of the levy or its unreasonableness quoad the service rendered. When demands were made on the petitioners for the payment of the first instalment at Rs. 10 per acre they filed the petition 18 of 1954 and sought relief primarily by way of : (1) a declaration that the Ordinance and the Act which repealed and re-enacted it with retrospective effect went unconstitutional and void, (2) a permanent injunction restraining the State and its authorities from enforcing the demands on them. The petition also prayed for certain other reliefs which were not granted and are no longer material. The Judicial Commissioner substantially allowed the petition and granted the principal reliefs sought and hence this appeal. As stated earlier, the contents of the other petitions are substantially the same, and all these five were dealt with by a common judgment and so it is unnecessary to set them out.

Four points were urged by Mr. Sen - learned counsel for the appellant : (1) That the learned Judicial Commissioner was wrong in holding that the principal and operative sections of the Act were unconstitutional and void, (2) that procedure prescribed by ss. 7 and 8 of the Act for enabling the demand to be made was substantially complied with, (3) that even if the Act be unconstitutional, still it must be taken to have been validated by the Madhya Pradesh Reclamation of Lands (Extension to Bhopal) Act, 1957 by which the Madhya Pradesh Act, whose constitutional validity was not open to challenge had been extended to the Bhopal area, (4) that in any event, having regard to the benefit that had been conferred on the farmers by the tractorisation operations, the charges which were demanded, could be recovered under s. 70 of the Indian Contract Act.

We shall deal with these submissions in that order.

The first of the sections of the Act which has been held unconstitutional is s. 4(1). Under it, it would be seen, the Government is empowered, by notification, to declare areas as 'kans areas' "if it is of opinion that any area is infested with kans". Two points were urged in support of the challenge to the validity of this provision and both of them have been accepted by the learned Judicial Commissioner. They were, first, that the provision constituted an excessive delegation of legislative power, and, secondly, that the power thus conferred was arbitrary and constituted an unreasonable restriction on the right to hold and enjoy property and therefore violative of Arts. 14 and 19(1)(f) of

the Constitution. We agree with Mr. Sen that s. 4(1) does not suffer from the vice of excessive delegation of legislative power. The preamble and long title of the Act make it clear that the enactment is one "for the reclamation and development of lands by the eradication of kans weed in certain areas in the State", the purpose being specified as the eradication of kans in areas infested with it. The legislative policy behind the provision is thus writ large, and what remains and is left to the executive is to carry out that mandate and give effect to the law so as to achieve the purposes of the Act. 'The areas infested' is manifestly not capable of legislative definition but must obviously be left to the executive to determine having regard to the intensity of the weed infestation and its distribution. There is thus legislative guidance offered of the criteria which must be borne in mind by the Government before any area is declared as a 'kans area' and if the determination of the particular area is left to the executive it cannot be said to be any delegation of legislative power at all.

The second point, however, about the power conferred being unreasonable in the context of the other provisions of the Act deserves more serious consideration. In this connection it is necessary to notice certain admitted facts. The notification under s. 4(1) dated January 18, 1951, read in conjunction with the addition made by a further notification dated May 30, 1951 already referred to, declared all the villages in 9 tehsils which were named to be 'kans areas'. It was the complaint of the respondents who were the petitioners in the writ petitions that their lands were not kans infested and that the notification was issued and the subsequent proceedings thereunder taken without giving them an opportunity of establishing that fact. No doubt, it was the case of the State that this complaint was not correct and that the lands were, in fact, kans infested. In this connection, however, it is necessary to refer to one fact which is a matter of admission. Among the affidavits filed in support of the written statement by the State was one by Syed Majid Ali who had conducted previous experiments under the Imperial Council of Agricultural Research and who was one of those on whose recommendation it was decided that tractorisation was the best method of eradicating kans. He stated in paragraph 9 of his affidavit :

> "Before I started my experiments in the State of Bhopal a statement showing kans infestation tehsil-wise had already been prepared by the State authorities and it is filed in the case. A corresponding map was also prepared and that is also filed in the case."

The map that was prepared then and which was filed in the case showed the lands in the State divided into three groups of areas dependent on the intensity of the kans infestation and these three groups of areas were differently coloured. The highest intensity comprised areas in which the infestation was 60 per cent, those between 40 - 60 per cent formed the second class, while those below 40 per cent formed the last. A glance at the map which is part of the record before us shows an uniform colouring throughout these three groups of areas which is apt to indicate that in all the tehsils which are included in any of these three group there was uniform infestation to the percentages indicated. Mr. Sen strongly relied on this map as establishing this. But that this is not a correct picture of the spread of infestation appears to be made out by the statement prepared in July 1941 which is the document first referred to by Syed Majid Ali. In this statement which is marked as Ex. N/4 the State is divided into two districts - one western and the other eastern - the former comprising 7 tehsils and the latter 11. It gives a break-up of the occupied and the unoccupied land, the area of each tehsil-wise, the area which has been cleared of kans in each tehsil and the area still remaining similarly infested. Taking the 1st of the tehsils which is included in the notification dated January 18, 1951 -Nasrullaganj - it is seen from Ex. N/4 that of the occupied land 8478.86 acres were kans infested while 21016.03 acres were areas which had been cleared. It might not be clear

from these figures whether the areas cleared were merely some isolated fields or larger contiguous patches, but one thing is clear that the entire tehsil, or rather the entire occupied land in the tehsil was not kans infested as the map would indicate, but there were considerable portions in which eradication operations had been carried out already. It is possible that between the years 1941 when this statement was prepared and January 1951 when the notification under s. 4(1) of the Act was issued, lands which had once been cleared might again have become infested but anyway it would show that before there was any interference with the right of the farmers to their property they should have been given an opportunity to prove to the satisfaction of the authorities that their land was not kans infested and therefore did not need tractorisation. The provision contained in s. 4(4) under which the Reclamation Officer is empowered to enter upon any land in the area so declared under s. 4(1) and commence and complete eradication operations has also to be taken into account in this context. If at least at the stage when the Reclamation Officer selected the particular land in which the eradication operation was to be conducted there was notice required to be given to the owner or the occupier, in order to give him an opportunity to establish that notwithstanding his land being included in the notification under s. 4(1) the particular land in which he was interested was not kans infested and therefore did not stand in need of any eradication operation, the provision in s. 4(1) would not have been open to serious challenge. But even at the second stage when the officer was empowered to select the land for the purpose of giving effect to the provisions of the Act and conduct tractorisation operations thereon, the Act contains no provision for the persons interested having such an opportunity. We consider, therefore, that s. 4(1) read in conjunction with the power contained in s. 4(4) coupled with the absence of any provision for entertaining objections would, in the circumstances of there being admittedly patches of land in the same tehsil which had been cleared at least in 1941 must be characterised as arbitrary and imposing an unreasonable restriction on the right to hold and enjoy property within Art. 19(1)(f). The operation of the several sub-sections of s. 6 to which we shall immediately make reference reinforces our conclusion as regards the unconstitutionality of the provisions of s. 4(1) read with s. 4(4). Under s. 6(1)(b) immediately on the issue of a notification under s. 4(1) the Reclamation Officer is empowered to take possession of the whole or any part of "the kans area" and "carry on eradicating and other ancillary and subsidiary operations therein."

Now, in regard to this it was submitted that this provision under which the land-owner is deprived of the possession of his property is unconstitutional as violative of Art. 31(2) as it originally stood before the 4th amendment. That Article then ran :

> "No property, movable or immovable.... shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession.... unless the law provides for compensation for the property taken possession of.... and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined and given."

The argument urged on behalf of the respondents and which the learned Judicial Commissioner accepted was based on the circumstance that no compensation was provided for the taking possession by the State or an officer acting on its behalf, of the lands notified under s. 4(1) and (4). Mr. Sen, however, submitted two answers to this objection. The first was that the duration during which the owner was deprived of possession, if at all, was so short as not to amount to "taking possession" within Art. 31(2). This was also presented in a slightly modified form by stating that there was in reality no taking of possession at all but that the Reclamation Officer merely entered on the land and carried out the tractorisation operation without disturbing the possession of the owner. The argument that the landowner is not disturbed in his possession by the tractorisation operations

and that he is not deprived of the same by the operation of the Act, proceeds upon overlooking the provisions which directly point to possession of the land statutorily passing to the Reclamation authorities on the issue of the notifications. Section 6(2) enacts a ban on the owner using the land notified under s. 4(1) until there is in effect a denotification of that land by the Reclamation Officer and the lawful possession of the land is restored to the owner. In the circumstances, it is clear that the possession of the Reclamation Officer is exclusive and amounts to taking possession within Art. 31(2). Nor is there any force in the point about the shortness of the duration during which the owner is deprived of possession or rather the period during which the State through the Reclamation Officer is in possession of the land. As regards this it might be pointed out that the Act itself specifies no period of time within which the reclamation should be completed. Nor are we satisfied that the mere fact that this duration is not considerable has any materiality or relevance for considering whether there has been a taking possession of the land by the State. If the period during which the owner is deprived of possession be short the compensation payable to him might be less but that does not, in any manner, affect the reality of the dispossession or rather the taking of possession by the State within the meaning of Art. 31(2). We thus reach the position that there has been a taking possession by the State of the immovable property of the owner within the Article.

The second submission related to the question which arises whether "the law provides for compensation for the property taken possession of", for it was not disputed that if it did not, the law providing for the "taking" would be unconstitutional. In regard to this Mr. Sen relied on the proviso to s. 6(2) as providing compensation. That proviso, it would be recollected, enacted that during the period when the land was in the possession of Government for the conduct of the eradication operation, no land revenue would be charged to the land owner. Mr. Sen urged that there was in law an obligation cast upon the owner to pay land revenue and the foregoing of this payment during the period when the owner was out of possession would, in the eye of law, amount to compensation and therefore satisfied the requirements of Art. 31(2) as it originally stood. We consider this wholly without substance. In the first place, the framers of the Act knew what compensation was and they made provision for compensation in s. 9 in respect of the injury suffered by the owner. In the context of this provision and its language they could certainly not be treated as considering the abstention from charging land revenue during the period when the land was not available to the owner as compensation. Secondly, even a cursory examination would demonstrate the fallacy underlying this submission. If the exemption from payment of land revenue should suffice as compensation for deprivation of possession for a time, it would follow that for possession of property being taken for ever or say for 99 years exemption from land revenue for that period would suffice as compensation. This would illustrate the utter untenability of this argument. Normally speaking, land revenue is charged on the basis that the owner is free under the law to utilise the land for profitable use. When, therefore, he is deprived of the opportunity of so utilising it, the State exempts him from payment of the same. This can in no sense be treated as compensation for the deprivation of possession. Besides, the theory of land revenue is that it represents a proportion of the income which the owner derives from the land, and is in theory fixed on the basis of allowing him some surplus over the State's share. When by deprivation of possession he is prevented from making any income from the land, the exemption from payment of land revenue, offers him no compensation, only it alleviates his loss. In this view it is unnecessary for us to consider the question whether under Art. 31(2) as it stood at the relevant date, the compensation even if provided need be adequate and how far the adequacy could be justiciable. We have, therefore, no hesitation in saying that s. 4(1) read with s. 6(1)(b) is unconstitutional as violative of Art. 31(2).

The learned Judicial Commissioner has also struck down s. 6(2) as unconstitutional and Mr. Sen did not question the correctness of this conclusion. There are other minor points about s. 6 which also

have been held to render that section unconstitutional out to these it is not necessary to refer in the view that we have expressed about the provisions we have discussed. If the appellant State is unable to sustain the validity of ss. 4 and 6, which are the key provisions of the Act, Mr. Sen conceded that it would not be necessary to consider the validity of the other provision and we accordingly refrain from doing so.

This takes us to the second principal ground on which the respondents have succeeded, viz., that even if the Act be valid, the provisions of s. 7 were not complied with and as result the demand made on the respondents for payment of an installment of the tractorisation charges was unauthorised and illegal. It was Mr. Sen's contention that the learned Judicial Commissioner was in error in upholding this contention. The point arises this way. Section 5 makes provision for the constitution of a Reclamation Board. The Board consisted at the relevant date of the Development Commissioner as the Chairman, six non-official members who were members of the Legislative Assembly of the State besides five other officials with the Director, Land Reclamation as the Secretary of that Board. Section 7 entrusts this Board with the duty first of ascertaining the total expenditure incurred or to be incurred, and then to equitably apportion it among those land-owners on whose lands eradication operations have been or would be conducted. Now, in the present case the facts were that the Central Government incurred the expenditure in the first instance by utilising the Central Tractor Organisation - a body set up by the Central Government and then intimated to the State Government both the total amount which they had expended and which was repayable to them by the State, as well as the manner in which the amount thus recoverable from the State was to be allocated among the several land-holders. It is common ground that the Reclamation Board never met and consequently neither computed the total expenditure incurred or to be incurred for the eradication operations, nor did it make the allocation among the holders of the lands of which eradication operations were conducted. After referring to these features the respondents pointed out in the petitions that, without the requirements of s. 7 being satisfied, they were informed of the contents of a letter date October 29, 1954 from an Under Secretary to the Government of India to the Secretary to the Government of Bhopal - Development Department, in which the amount to be recovered from the land-owners for the deep ploughing of their lands was mentioned which amount, the revenue official of the state were directed to recover. It is now admitted that this is the basis on which the impugned demands were made on the respondents. The learned Judicial Commissioner held that the terms of s. 7 were mandatory and that unless the mind of the Reclamation Board was brought to bear on the question, and the Board computed the total expenditure as well as the proper allocation of this sum among the several land-owners no lawful demand could be made under s. 8, nor could the same be recovered from the respondents. We find ourselves in entire agreement with the learned Judicial Commissioner in holding (1) that the procedure prescribed by s. 7 is mandatory and (2) that as admittedly there was no compliance with it no lawful demand could be made for the contribution payable by any landholder by the Central Government or by the State Government at the instance of the Central Government without recourse to the machinery provided by s. 7. The notices of demand were, therefore, properly quashed as illegal.

It is only necessary to add that the validity of these notices of demand would arise only in the event of the crucial provisions of the Act - s. 4 and s. 6 - being valid and in view of our conclusion as regards the constitutional validity of those provisions, even in the event of the terms of s. 7 being complied with there could be no lawful demand made on the respondents.

There remain two minor points which were urged Mr. Sen but neither of these need detain us long. The first of these was the effect on the present demand of the Madhya Pradesh Reclamation of Lands (Extension to Bhopal) Act, 1957. By this enactment the Madhya Pradesh Act which is

somewhat analogous to but not identical with the Act now under consideration was extended to the Bhopal area. The argument of Mr. Sen was that by virtue of this extension of the Madhya Pradesh Act, even if the Bhopal Act were invalid, the demand made could be justified as made under the Madhya Pradesh Act. But the extension of the Act, in the present case, is of no avail to the appellant because that Act was brought into force only prospectively and not retrospectively. If, therefore, the demand when made was illegal or invalid it cannot be sustained on the basis of the Madhya Pradesh Act. In the circumstances, it is unnecessary for us to consider the provisions of the Madhya Pradesh Act to find out how far, if retrospective, they would affect the validity of the demand.

The last of the points urged was that even if the Act was invalid and the demand could not be justified as a legal demand having regard to the terms of s. 7, still as eradication operations which are beneficial in their nature had been conducted on the lands of the respondents which had derived benefit therefrom, lands which the respondents still retained the provisions of s. 70 of the Indian Contract Act were attracted and that on the basis of a quasi contract which that section postulates, the claim for compensation might be sustained. This raises larger questions for which there might be sufficient answers, but in view of the circumstances that it was not pleaded as a defence to the writ petitions before the Judicial Commissioner nor put forward in arguments before him, nor in the grounds of appeal or even in the statement of the case filed in this Court, we have not thought it proper to permit learned counsel to urge the ground at this stage.

The fact of the other appeals being substantially similar, and the points arising in them being identical, they do not require to be dealt with separately. What we have stated regarding Civil Appeal 379 of 1959 would equally apply to them.

The appeals fail and are dismissed with costs - one hearing fee.

Appeals dismissed.

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