ALLAHABAD HIGH COURT

Asiatic Engineering Co

Vs

Achhru Ram

Applications Nos. 287 and 288 of 1950

(Malik, C.J., Sapru and V. Bhargava, JJ.)

10.05.1951

JUDGMENT

Malik, C.J.

1. These are two applications under Article 226 of the Constitution praying that this Court might be pleased to issue writs in the nature of certiorari, prohibition and mandamus for different acts alleged to have been done by the respondents. The first of these applications has been filed by the Asiatic Engineering Co. Ltd. (hereinafter called the Company) and its writ application number is 287 of 1950. The second application has been presented to this Court by a foreign Company, the Amin Agencies Ltd., and its number is 288 of 1950. Broadly speaking, the man facts which have given rise to them are the same, but we propose first of all to set cut in brief the salient features of application No. 287 and thereafter deal with those distinguishing facts on which application No. 288 of 1950 is founded.

2. The Company was incorporated as a private company under the Indian Companies Act in 1941 and has its registered office at 25/26 Waterloo Street, Calcutta, in the State of West Bengal. It is stated in the petition that the Company had and still has its registered office at Calcutta and branch offices at, inter alia, Kanpur and London. The words "inter alia" appear to have been used, whether deliberately or not, only to conceal the fact that the Company also functions at Karachi in Pakistan.

3. The main business this Company appears to have been carrying on is that of importing machinery from abroad and repairing and reconditioning it. For this purpose it used to maintain two establishments, one at Kanpur and the other at Calcutta. Though it is alleged in the petition that the Hindu share-holders were numerically more than the Muslim share-holders of the Company, yet it would appear that the value of the shares held by the Hindu members of the Company at the time of the petition was negligible as compared with that held by the Muslim share-holders.

4. The Company's case is that inasmuch as its head office is situate in the State of West Bengal it is not subject to any of the provisions of the Administration of Evacuee Property Act as that State is exempt from the operation of the Act. It is claimed that no proceedings can be initiated or

continued under the said Act against or affecting the properties of the petitioner. It is specifically stated in the application that the petitioner carries on business only in the Indian Union and has not acquired any interest in any 'evacuee property' anywhere in Pakistan nor has it any intention of doing so. In other words, the Company's case is that, as a limited Company with an Indian domicile and its head office at Calcutta it is not subject to the provisions of the Evacuee Property Act, that diverse orders have been issued and proceedings initiated against the petitioner, that they affect its rights to hold and own properties belonging to it at Kanpur and that they are without jurisdiction. The acts complained of are : (a) An attachment order, of the property of which the Company is the owner by the Custodian of Evacuee Property, Lucknow, through the Deputy Custodian and the Assistant Collector of all properties and assets held by the Company in Uttar Pradesh, (b) A demand with which the Company has complied under compulsion on its director incharge at Kanpur office, Mr. Bhalwala, to furnish a security to the extent of Rs. 1,20,000 which has since been raised to the extent of Rs. 2,00,000. (c) Appointment of a Manager-cum-Accountant for a few months at Kanpur and compelling the Company to pay out of its funds Rs. 250 per month. It is stated that a fresh notice for fresh appointment of a Manager-cum-Accountant has been served on the Company, (d) Daily interference with the day-to-day administration of the Company by issue of diverse orders, (e) Requiring the Company to produce documents and papers under threat of penalties and compelling it to comply with orders as if the Company was identical with its share-holders and as if the proceedings directly relate to the adjudication of the Company as an evacuee. (f) Various orders from time to time imposing restrictions without any justification or without calling for any explanation. It is urged that in issuing these orders the respondent have wrongfully and deliberately ignored to recognise the fact that the Company is a legal entity with rights and liabilities distinguishable from its members.

5. It is stated in the petition that the acts and proceedings complained against are of a wrongful and mala fide nature and that the respondents have been actuated in doing them by mala, fide, wrongful and arbitrary considerations. It is further averred that respondents 1 to 5 have initiated proceedings against the Company which are now pending before respondent 4 under Section 7 of the Evacuee Property Act for adjudication of the Muslim share-holders of the Company as evacuees. To these proceedings it is stated that the Company is not a party nor has any notice been served upon it to appear in person. The clear object of these proceedings is to take over the assets and properties of the petitioner on the strength of the adjudication of such share holders as evacuees. It is urged that the initiation of these proceedings constitutes a violation of the principles of natural justice and of recognised rules, practice and procedure.

6. A further plea which has been advanced is that the Evacuee Property Act itself is illegal, it being inconsistent with the fundamental rights guaranteed to the petitioner under the Constitution.

7. Originally, the Company which is a private limited concern had both Hindu and Muslim share-holders in the proportion of 50-50, the 50 per cent. Hindu shares being held by what may be called the Lall group and the 50 per cent. Muslim sares by what may be called the Amin group. The Company's books, papers, share register etc. were at all material times maintained at Calcutta in West Bengal. The Company was brought into existence on 3-9-1941 but between 1941 and 1947 nothing particular happened. By 20-11-1947 the Company, however, became indebted to the Amin Agencies Ltd. which is the petitioner in application No. 288 of 1950. The

latter is a Company registered in West Bengal as a foreign Company. The Company became indebted to the extent of Rs. 2,87,000 somewhat in this manner. The Amin group was running another concern called the Amin Brothers Ltd. This concern had advanced by the 20th November a sum of Rs. 2,87,000 to the Company. The Amin Agencies Ltd. which was a new Pakistani concern run with vital connections with the Amin Brothers Ltd. took the liability on behalf of the Company for the loan due to Amin Brothers Ltd. In order to secure that debt, a deed of hypothecation and a deed of agreement were executed in Calcutta whereby the entire assets of the Company and the shares of some of its Muslim members were hypothecated to the Amin Agencies Ltd. which undertook a liability to provide future advances up to a limit of Rs. 5,00,000. At the time that the hypothecation deed of 20-11-1947 was executed, the Board of Directors of the Company consisted of Shri K. Lall who held 600 shares and Shri Abdul Jalil, Shri Abdul Bazzak and Shri Mohammad Amin who had between them 600 shares. The Muslim shareholders of the Company were vitally interested in Mohammad Amin Brothers Ltd. Against Amin Brothers Ltd. the Income-tax Department of the Govt. of India had some claims. The properties of some of the Muslim shareholders of the Amin Brothers Ltd. having been attached at the instance of the Income tax Department of the Govt. of India, some of the properties of that Company were actually sold at the instance of that Department in 1947. Thereafter on 7-2-1949 an application was presented to the Calcutta High Court for the compulsory winding up of the Amin Brothers Ltd. for non-payment of the alleged income-tax dues. In those proceedings a provisional liquidator was appointed by the Calcutta High Court. On 12-4-1949 the Amin Brothers Ltd. were ordered to be wound up by a single Judge of the Calcutta High Court sitting on its original side. An appeal was preferred against that winding up order to the appellate bench of the original side of the Calcutta High Court and an ad interim stay order was made in those proceedings on 3-5-1949 by Harries C. J. and N. C. Chatterji J. On 12-7-1949 Sbri S. Lall son of Shri K. Lall, returned to India from the United Kingdom. He was appointed as General Manager by his father in exercise of the powers vested in him under the Articles of Association with authority to him to operate on certain Banking accounts. This authority was given to Shri S. Lall, it is alleged, without notice to the other Directors. It is alleged that large sums were withdrawn in pursuance of that authority by the Lall group On 13-8-1949 the appeal filed by the Amin Brothers Ltd. was allowed and the winding up order was set aside on the ground that the debt was a hotly disputed one and the assessment had by that time been substantially reduced, there being possibilities of further deduction in future On 17-8-1949 the deed of hypothecation dated 20-11-1947 was renewed by another deed in favour of Amin Agencies Ltd. and it was registered under Section 109, Companies Act, with the Registrar of Joint Stock Companies, West Bengal. The amount due to the Amin Agencies Ltd. was over Rs. 5,00,000, the bulk of the advances having been made by cheques and Bank drafts, machineries having been purchased out of such advances.

8. This country became independent on 15-8-1947 on the basis of partition. The case of the petitioners is that the situation created by the partition added to the difficulties of the Muslim share holders and that, taking advantage of them, Kundan Lall and his group took complete control of the factory at Kanpur and London, Office. The petitioners allege that during the period represented by December 1948 and September 1949 much correspondence took place between the Head Office of the Company at Calcutta and the Lall group in regard to the handling of the finances by the Lall group but that group took no notice of the objections raised by the Head office. These letters containing directions for conducting the business of the Company appear to have been despatched from Calcutta where the registered office of the Company is situate. They

are intended to show that the Muslim Directors were making remittances from Calcutta for running the London and Kanpur offices and that at no time during this interval any question of removal of the assets from Kanpur or elsewhere by them arose. On 29-9-1949, subsequent to the termination of the winding up proceedings against the Amin Brothers Ltd., the Muslim share-holders filed an application in the High Court at Calcutta for the winding up of the Company. In this petition the Muslim share-holders prayed to the Calcutta High Court for the appointment of a provisional liquidator for taking over immediate possession of the stocks at Kanpur and elsewhere as they were dissatisfied with the Kundan Lall group and had a number of allegations to make against it. The provisional liquidator prayed for by the Muslim share-holders was appointed by the Calcutta High Court; but he was prevented, it is alleged, from taking possession of the Company's property when he endeavoured to do so on 3-10-1949 by the Lall group. The allegation of the Company is that it was on that date for the first time that the Lall group contacted the Deputy Custodian Evacuee Property, Kanpur, and represented to him that the Muslim share-holders were evacuees. Accordingly, on 5-10-1949 at the intervention of the Deputy Custodian Evacuee Property the provisional liquidator was refused possession for a second time. After the provisional liquidator had been refused possession on 5-10-1949, the Deputy Custodian intervened with the Lall group. He took over possession, made over the same to the Lall group and by a letter of that date declared the company as evacuee. On 18-10-1949 the Administration of Evacuee Property Ordinance which contained for the first time restrictions on transfers in U. P. in respect of properties of evacuees or intending evacuees came into force. It may be mentioned that under the previous Provincial Ordinance no such provision existed. It was confined to permitting the Custodian to take over a property which had been abandoned. It is important to note that from the operation of the Central Ordinance West Bengal and Assam were expressly excluded.

9. On 28-10-1949 the liquidator made a complaint to the Custodian, Shri R. P. Verma, against the action of the Deputy Custodian. The Custodian on that date declared by his letter that the taking over of the factory and refusal to make over possession to the liquidator by the Deputy Custodian on the ground that some of the share-holders were evacuees and the whole property had become evacuee property and vested in the Custodian was wrongful and illegal. It is important to note that it was stated in the letter that it should be noted that the Company as a whole could not be treated "as evacuee property", that claim could only be laid for the shares held by evacuees in the Company and that it was, therefore, not proper to obstruct the liquidator in his work of liquidation. Notwithstanding the said order, it is alleged that the Deputy Custodian took no steps for a period of nearly a week and the property remained with the Lall group in terms of his previous order. Ultimately, the provisional liquidator took possession of the property with the help of the police. On 18-11-1949 the provisional liquidator made a complaint against Kundan Lall to the Calcutta High Court to the effect that he was interfering with the receiver's possession. The Calcutta High Court passed a winding up order against the Company on 22-11-1949 and issued also on that date a notice for contempt proceedings against Kundan Lall for interfering with the receiver's possession. Kundan Lall was also threatened with misfeasance summons in those winding up proceedings.

10. We come now to 4-12-1949. On that date Kundan Lal proposed a settlement of the dispute between him and the Company by transfer of his shares through one of the Directors of Amin Agencies Ltd., namely, Mohammad Jalil. Mohammad Jalil having agreed to buy the shares, a deed was executed and the shares were transferred by Kundan Lall to Abdul Jalil, who eventually

transferred them to Amin Agencies Ltd. It is stated that this deed was entered into in Calcutta and in relation to shares held in Calcutta. The terms of the settlement thereafter were filed in the Calcutta High Court, Rs. 60,000 having been paid against the shares to the credit of Kundan Lall by Amin Agencies Ltd. who purchased the same to safeguard their interest as mortgagees. Under the terms which were agreed upon in the winding up proceedings in the Calcutta High Court, Kundan Lall appears to have agreed to submit accounts and to make over assets. He also appears to have undertaken under the agreement to do a number of things but it is unnecessary to consider them here in this connection. Suffice it to say that as a result of Kundan Lall's going out of the Company as a share holder and Amin Agencies' acquiring his interest, the winding-up proceedings terminated in favour of the Company on 4-12-1949. It is alleged that thereafter on the 26th December the receiver who had taken charge of the Company gave up possession of the property he had taken hold of. Thereafter, in January 1950 it is alleged that fresh proceedings were initiated by the respondents under the Evacuee Property Ordinance, XXVII of 1949. It is alleged that Kundan Lall, after he had effected the settlement at Calcutta, returned to Kanpur and influenced the Custodian of Evacuee Property to issue notice upon the Company and its share-holders. On 3-1-1950 fresh proceedings were initiated by the respondents. The Deputy Custodian declared that the shares of the evacuees vested in the Custodian and also demanded securities on that basis. This notice was followed up on 11-1-1950 by the Deputy Custodian by attachment of Kanpur properties. The Resident Director, Bhalwala, raised objections to that notice on behalf of Amin Agencies Ltd. whose nominee he was on 18-1-1950. On 8-2-1950 a Manager-cum-Accountant was appointed by the Custodian. To the appointment of the Manager-cum-Accountant objection was raised by the Company on 17-2-1950. On 8-9-1950 and 20-9-1950 there were fresh demands for securities on the part of the Custodian. On the 5th December an inventory was prepared at the instance of the Custodian. It may be mentioned that on 20-1-1950 Shri Bhalwala bad offered to furnish security without prejudice and that that offer was accepted by the Custodian by letter dated 1-2-1950 on 1-6-1950 the value of the security was increased. On 3-8-1950 there was a further demand for proper valuation without prejudice. On 20-3-1950 proceedings were initiated in the Court of the Deputy Custodian (Judicial) not against the Company but against the share holders under Section 7, Evacuee Property Act. On 6-9-1950, written statement was filed on behalf of the Company stating that notice on the foreign company may be withdrawn and a fresh notice under Section 7 on a gentleman by name Maqbool Ahmad issued. His order dated 6-9-1950 refused to eniertain objection to the jurisdiction of the Court, his view being that no proceedings were initiated against the Company as possession could be taken of the Company's assets and property in Kanpur on the basis that its share-holders were evacuees.

11. Written statements have been filed in both the cases by the respondents 1, 2, 3 and 5. They have been supplemented by affidavits filed, on our permitting to do so in the interest of justice, on a later date purporting to show that in their original petitions the petitioners have concealed certain material facts on the basis of which this Court was pleased to issue an interim order staying further proceedings under Section 7, Administration of Evacuee Property Act and that the petitions are liable to be dismissed on that ground. Respondent 1 is the Custodian General of Evacuee Properties, New Delhi, respondent 2 is the Deputy Custodian (Administration), Kanpur, respondent 3 is the Custodian Evacuee Properties, Lucknow and respondent 5 is the Assistant Custodian of Evacuee Properties, Kanpur. Respondent 4 is the Deputy Custodian (Judicial) Lucknow. No written statement has been filed on his behalf. Shortly put, the case of the respondents is that the Muslim share-holders and the. Directors of the Company are all evacuees

and cases against them are pending in the Court of the Deputy Custodian (Judicial), Lucknow, who is respondent 4 in the case. It is alleged that the petitioners have taken full advantage of (a) the non-applicability of the Evacuee Property Act, (XXI [21] of 1950), hereinafter referred to as the E. P. Act) to West Bengal and (b) the provisions of the Indian Companies Act to conceal the real nature of their operations. While admitting that the Company has its registered Office in Calcutta, it is alleged that the Company's principal place of business and the Office are at Kanpur. The case, as put forward by the respondents, is that the Directors and share-holders of the Company have from time to time been taking steps, in a skilful manner, to transfer the assets of the Company outside the Indian Union. While it is not denied that the Hindu share-holders are numerically more numerous than the Muslim share-holders, it is pointed out that the 12 Hindu share-holders of the Company hold only 12 shares, while the Muslim share-holders hold 1200 shares and that it is only as recently as February 1950 that the Hindu share-holders came to be allotted even these 12 shares. The respondents' main contention is that the petitioner Company is liable to be treated as an evacuee under the E. P. Act and they deny that the Company does not carry on business elsewhere than in the Indian Union. It is asserted that the share-holders and Directors of the Company have been taking steps to transfer the assets of the Company to Pakistan so that a parallel business may be started in that country. The respondents further assert that the E. P. Act can apply to the petitioner Company and that the proceedings under the Act against the Company are not wrongful acts, the attachment of the properties and the assets of the Company having been validly effected. It is admitted on behalf of the Custodian, Evacuee Properties that security was demanded from Mr. Bhalwala but he has not yet given such security. The appointment of a Manager-cum-Accountant to take charge of the Company's assets at Kanpur is not denied; but it is contended that that step was validly taken under the E. P. Act to safeguard the interests of the petitioner Company and the Govt. of India Relief Rehabilitation Department. It is further alleged (a) that it is not correct to say that the Custodian, Evacuee Properties has been interfering with the day-to-day administration of the Company and (b) that the Company has virtually stopped doing any business at Kanpur as its evacuee share holders and Directors are planning to remove the assets of the Company to Pakistan. It is admitted that the Custodian has called upon the petitioner Company to produce account-books and other papers in order that he might satisfy himself as to the true intention of the share-holders and Directors and it is also alleged that an inspection of these documents has revealed that they are contemplating a wholesale transfer of the Company's assets to Pakistan. It is denied that the acts of the Custodian, the Deputy Custodian or the Assistant Custodian are ultra vires the Evacuee Property Act or any other law in force or any rules framed under any law. It is contended that the provisions of the Evacuee Property Act are fully applicable to the Company and that proceedings can be taken against the petitioner Company in respect of properties situate in Uttar Pradesh and/or in respect of Directors and shareholders of the petitioner Company. Most importantly it is urged that the petitioner Company's status, as a distinct legal entity, constitutes no bar to the application of the Evacuee Property Act in respect of its properties. The allegation that the respondents have been actuated by any mala fide considerations is denied. On the contrary, it is alleged that the fact is that the Directors and share-holders are doing their best to evade the provisions of the Evacuee Property Act. The position is admitted that proceedings have been initiated against the evacuee share-holders of the petitioner Company under Section 7, Evacuee Property Act, and that the petitioner Company is not a party to the aforesaid proceedings. But it is denied that these proceedings are against any principle of natural justice or against any recognised, rule of practice or procedure. It is asserted that these proceedings were initiated after the Custodian had got reliable information that the Directors and share-holders were committing

various acts calculated to transfer their assets to Pakistan. Other pleas taken by the respondents are that the allegation that the proceedings under the Evacuee Property Act are illegal, wrongful, ultra vires or without jurisdiction is wholly without foundation. The position taken up by the opposite party is that notices can be issued under the Evacuee Property Act. The allegation that the Evacuee Property Act is ultra vires the Constitution or that Sections 4, 46, 47 or any part of it is ultra vires the Constitution is denied, it being claimed that the Constitution specially provides for such legislation. It is asserted that the Evacuee Property Act neither constitutes any violation of any of the rights secured under the Constitution nor imposes any unreasonable restriction on the property belonging to the petitioner Company and it is, in any case, not a discriminatory piece of legislation. It is further claimed that the respondents who held public offices and are under the control and supervision of respondent i have not violated any law or done any act which is ultra vires or without jurisdiction. The respondents further contend that the petitioner Company had an adequate remedy under the Evacuee Property Act inasmuch as that it can contest the proceedings before the Custodian of Evacuee Property (Judicial) and that even if the share-holders of the Company have become evacuees the Custodian can take charge of the Company's properties. It is asserted that the petitioner Company or its shareholders or directors will suffer no loss if the stocks and assets of the Company remain in the hands of the Custodian, pending the disposal of the Evacuee Property Act proceedings. Lastly, that the various acts of the Custodian complained against were with the consent of the applicants and in accordance with their wishes. On these various grounds it is claimed that the allegations made in the petitioner Company's petition do not establish any case for a writ of prohibition or certiorari or mandamus or injunction or any other order or direction under Article 226 of the Constitution and the petition is therefore liable to be dismissed.

12. We have considered it necessary to state in chronological order as far as the main facts relating to this case are concerned and to notice the written statement. We shall now proceed to state our views on the various points that have been raised in the very able learned and comprehensive arguments which were addressed to us both by Shri Chaudhary who appeared for the applicants and Shri Dhawan who appeared for the respondents.

13. Briefly put, learned counsel for the applicants contends that the notice of 3-1-1950 intimating to the Manager-cum-Accountant of the Company that Company's property is intended to be taken as evacuee property is invalid; that the various orders passed by the Custodian in relation to the property and assets of the Company at Kanpur are without jurisdiction as the Company, being a distinct person in law, cannot be declared evacuee merely because some or all its shareholders are evacuees; that the E. P. Act cannot apply to the property of a person not ordinarily resident in West Bengal; that the situs of the shares being in Calcutta, the Custodian has no jurisdiction to take control of them; and that, in any case, the Evacuee Property Act is invalid on the ground of its inconsistencies with Articles 14 and 19 (f) of the Constitution. On the side of the respondents it is urged that the petitioners have-misrepresented facts in their applications and affidavits; that this fact alone disqualifies them from getting any relief from this Court; that the E. P. Act covers a limited Company, the Directors or share-holders of which have become, according to the Custodian, evacuees; that the fact that the situs of the shares is in Calcutta is immaterial; and that the Act is not inconsistent with the Constitution.

14. Before dealing with the main argument which was advanced in this case, we should like to say a few words on the arguments that were addressed to us regarding the powers which this

Court enjoys under Article 226 of the Constitution and the principles which should guide it in granting the various writs, directions or orders indicated in the Article.

15. Learned counsel for the respondent has raised an objection that the petition in this case is not of a candid nature and does not fairly state the facts. According to his contention the facts are stated in such a way as to mislead and deceive the Court. Under those circumstances, it is urged by him that there is a power inherent in the Court, in order to protect itself and to prevent an abuse of its process, to discharge the interim order and to refuse to proceed further with the examination of the merits of the application. For this proposition learned counsel for the respondent has relied upon the case of *Rex v. Kensington Income-tax Commissioners*[1], In this case a rule nisi for prohibition to the General Commissioners for the purposes of the Income-tax Acts for the district of Kensington was issued prohibiting them from further proceeding upon an assessment made upon the applicant for the year ending 5-4-1913. It appears that the assessment was in respect of Income-tax payable for and in respect of annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whether, situate in the United Kingdom or elsewhere. According to the Income-tax Commissioners the lady was the owner of a house, namely, 213, King's Road, Chelsea and actually resided therein. In the affidavit in support of the rule nisi she described the house as belonging to her brother, Mr. W. M. G. Singer. She asserted that she had never since 1887 been in the United Kingdom with a view or intention of establishing her residence there. It was further stated by her that she had never resided in the United Kingdom for a period of six months in any one year. Her case in her affidavit was that the house belonged to her brother, that the house for which she had been assessed was not her house and she stayed in the house on occasions generally in company with guests of her brother. It is quite clear that the statement that she was not the owner of the house and that her brother was in fact its proprietor was a most material one for if she was not the owner, she could not be assessed to income-tax. The Taxing Authority, however, received information as to what the true facts concerning the house in question were. They were able to show that the facts stated by the lady were not correct; that before April 1913, the lady had been wanting to have a house in London with a view to residing there instead of going to hotels or staying with friends, but that she became aware that if she took a house she would become liable to taxation and to that she objected. She took legal advice to the effect that if she was merely a guest in her brother's house, she would not be liable to assessment to income-tax. Accordingly, she made an arrangement with her brother by which he became the nominal purchaser and the rated occupier of the house, and her name was not to appear but she paid for the house, the furniture, servants and general expenses of the house. The brother was what we would call in this country her benamidar. The position in regard to the house was that, except for the fact that the house had been purchased in her brother's name, she was in fact the owner and occupier of the house. Her case in the affidavit in reply was that the arrangement with her brother was that she should be there as a guest in his house; that is, she was to be a guest in a house which she had brought with her own money, which was kept up and furnished with funds supplied by her. It was obviously impossible in those circumstances for the Court to accept her statement that she was the guest of her brother. The Judges did not go into the question whether she was the real owner and occupier of the house but took very strong exception to the suppression of the material facts. "It is a case" observed Lord Cozens-Hardy, M. R.,

> "in which it seems to me there was plainly a suppression of what was material, and we cannot be too strict in regard to that which to the best of my belief has been a long

> established rule of the Court in applications of this nature and has been recognised as the rule."

Lord Cozens-Hardy quoted with approval the head note of a case of high authority, *Dalglish v. Jarvie*[2], decided by Lord Langdale and Rolfe B. The head-note runs as follows ;

> "It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction, and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward."

Lord Cozens-Hardy, M. R., further quoted with approval the observation made by Lord Langdale: "It is quite clear that every fact must be stated, or, even if there is evidence enough to sustain the injunction, it will be dissolved."

The line that Lord Langdale took was that where:

> "an applicant does not act with uberrima fide and put every material fact before the Court, it will not grant him an injunction, even though there might be facts upon which the injunction might be granted, but that he must come again on a fresh application". Rolfe B. referred to cases of insurance where:
>
> "a party is required not only to state all matters within his knowledge, which he believes to be material to the question of the insurance, but all which in point of fact are so. If he conceals anything that he knows to be material it is a fraud; but, besides that, if he conceals anything that may influence the rate of premium which the underwriter may require, although he does not know that it would have that effect, such concealment entirely vitiates the policy. So here, if the party applying for a special injunction, abstains from stating facts which the Court thinks are most material to enable it to form its judgment, he disentitles himself to that relief which he asks the Court to grant. I think therefore, that the injunction must fall to the ground." Lord Cozens-Hardy went on to observe that
>
> "on an ex parte application uberrima fides is required, and unless that can be established. If there is anything like deception practised on the Court, the Court ought not to go into the merits of the case, but simply say "we will not listen to your application because of what you have done."

He did not think that, the fact that there could not be a second application for a writ of prohibition except in the case of a purely formal defect, such as a mistake in the jurat of the affidavit or something of that kind, should be a consideration for refusing to give effect to the salutary rule of practice, namely, refusing to grant prohibition where in cases there has been a misstatement of material facts.

16. It was further pointed out that the case was one in which the Kensington Commissioners had

no jurisdiction to make the assessment but it could have been made by the Commissioner for the city of London. Nevertheless he felt that Court was entitled to say:

> "we refuse the writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us."

17. Lord Warrington, L. J. referred to the argument that there is a distinction between a case of a patent defect and the case of a latent defect and that in the former cases the Court was bound to grant the writ of prohibition whatever may have been the conduct of a person but that in the other case, the matter is in the discretion of the Court and it will grant or refuse the writ according to the merits of the parties. He came to the conclusion that the defect of jurisdiction was not apparent on the face of the proceedings.

18. It is interesting to note what Scrutton L. J. observed in that case:

> "It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-facts, not law .... the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

He held that the case was not one where excess of jurisdiction was obvious on the face of the record. Regarding the argument that in writs of prohibition the Court has no option but to grant it once the excess of jurisdiction is shown, Scrutton L. J, made the following important observations: -

> "Now the case of *Farquharson v. Morgan*[3], shows that, at any rate where the excess of jurisdiction is not patent on the face of the record, the Court itself may have jurisdiction to deal with the matter. The Court distinguished cases where excess of jurisdiction is patent on the face of the record on the ground that there was a public excess of jurisdiction which might grow into a precedent if not checked, and for that reason they distinguished the cases of patent excess from cases which can only be found by going into the evidence. They had not before them the case where the day to argue the writ of prohibition had been obtained by concealment of material facts; and I am not at all sure that if they had such a case before them they would have said that the Court had no remedy, but was bound to grant a writ of prohibition, though the day had been obtained by suppressing material facts. But in my view this case comes nowhere near a case where excess of jurisdiction is obvious on the face of the record."

19. We have quoted passages from the judgment of the learned Judges of the Court of Appeal on which reliance has been placed by the learned counsel for the respondents in order to indicate how important it is in ex parte applications where a party is asking for an injunction or stay to be completely honest with the Court. It is incumbent on the Court in its own interest in order to

protect itself against passing an unjust or erroneous order to insist upon an absolute standard of truthfulness on the part of those who approach it with ex parte applications of the nature we are dealing with. No doubt, a party is not required to state unessential and irrelevant facts to overload his application and affidavit, but it does strike us that there should be no suppression of material facts going to show that the party had any time acquiesced either willingly or under protest in any order or any arrangement which it wanted to be interfered with by an injunction or a writ by this Court. It is in the light of the law laid down above that we propose to consider the arguments which the learned counsel for the respondents has advanced to show that the affidavit or petition in this case has given facts which were misleading or has failed to disclose some material facts which might have influenced the decision of the Court in granting or refusing to grant the ex parte interim order which the applicant was able to obtain from this Court.

20. Keeping this background in mind we come now to discuss the facts on which the allegation that there has been a suppression of facts in this affidavit is based. Learned counsel for the respondent contends that there has been a suppression of material facts in regard to a number of important points According to him, those points are as follows : (1) Appointment of Manager-cum-Accountant of the Company's Kanpur property. (2) Furnishing of security; (3) Protest,

(4) Bias or personal interest of the respondent,

(5) Company's office in Karachi, (6) Doing business in Pakistan, (7) Hindu share-holders

being in a numerical majority, (8) Acquiring evacuee property in Pakistan, (9) Permanent residence of Muslims share-holders, and (10) Date of starting proceedings against the petitioner Company.

21. We shall first endeavour to ascertain whether there is any misstatement or suppression in regard to any of the points mentioned above, and thereafter proceed to consider whether that circumstance should be regarded as material from the point of view of issuing or not issuing the interim injunction granted to the applicant. We shall now deal with the points in seriatim.

22. In paragraph 9 of the petition, the petitioner has stated that diverse orders have been issued and proceedings initiated by respondents 1 to 4 against the petitioner purporting to affect the rights of the petitioner to hold and own properties belonging to it at Kanpur. The first allegation that needs consideration is that the respondents caused a Manager-cum-Accountant to be appointed of the properties belonging to the petitioner for a few months and compelled the Company to pay to him out of its own funds Rs. 250 per month. It is further alleged that fresh notices for fresh appointment of such Manager-cum-Accountant have been served on the Company. We have pointed out that the dispute between the company and the evacuee property department started from about 4-10-1941 when the assests of the Asiatic Engineering Co Ltd., Kanpur were attached by the Deputy Custodian, Evacuee property. We have also pointed out that after some correspondence between the Deputy Custodian and the Custodian, the official liquidator who had been appointed by the Calcutta High Court in the winding-up petition brought by the Amin group was handed over possession of the assets of the company on 31-10-1949 under a direction of the Custodian, dated 20-10-1949. We have also pointed out that the winding up proceedings terminated in the Calcutta High Court as the result of a compromise between the parties in favour of the company and that Mr. Kundan Lall's shares were first taken over by Mr. Abdul Jalil and later transferred by him to the Amin Agencies Ltd. We have also indicated that

the liquidator gave up his possession on 27-12-1949 and that the new proceedings were initiated on 3-1-1950. It was on 8-1-1950 that notice was issued to the Director/Proprietor, Occupant/Manager of the property that it was intended by the Deputy Custodian to take over the company's property as evacuee property and that an enquiry will be held by the Deputy Custodian (Judicial) and objections, if any, might be filed before him. It is therefore clear that it was within a few days of the liquidator giving up possession that the company, in relation to which the Evacuee property department had initiated proceedings as early as October 1949 came to initiate fresh proceeding on 3-1-1950. We may say here that we are satisfied that it would be more correct to look upon the proceedings of the 3rd of January as fresh proceedings for, with the giving up of possession to the liquidator, it can be argued that the proceedings initiated by the Evacuee Property department came to an end on the 31st October. This does not, however, mean that we think that it was not incumbent on the petitioner to make a reference to the proceedings which were initiated in October and which terminated on the 31st of October and were restarted on 3-1-1950. For one thing, it is quite clear from the affidavit which was filed on behalf of the company that the inventory in the case had been prepared prior to January 3. It would also seem to be the case that the Custodian, Evacuee Property never gave up his overall supervision even after the liquidator had taken possession of the company on the 31st of October. In any case, what we have not been able to understand is as to why the letter of 4-1-1950, which was sent by Mr. Bhalwala on behalf of the company to the Deputy Custodian, Evacuee Property was not produced or referred to as part of the document attached to the petition. This letter is of a most material nature. In this letter, the Director, Mr. Bhalwala, states:

> "that he had been deputed by the Directors of the company to take charge of the business of the Kanpur branch following the compromise between Mr. Kundan Lall and Mr. Abdul Jalil, that he understood that the assets of the company at Kanpur were taken over as evacuee property, that Mr. Jalil, at all events, is not an evacuee as he had been resident in Calcutta both before A after 14-8-1947 and had recently been appointed a member of the Export Advisory Promotion Committee and most importantly, that in order that the business of the company might not suffer due to suspension on account of sealing by the Custodian and the assets of the company might not suffer deterioration due to litigation the undersigned might be allowed to carry on the business of the company under the overall supervision of a Manager and Accountant to be appointed."

23. It will be seen from this letter that the suggestion that a Manager-cum-Accountant should be appointed by the Deputy Custodian to exercise an overall supervision over the company which should be allowed to be run by the Directors came on behalf of the Directors from the resident Director, Mr. Bhalwala himself. It is perfectly true that had there been no Evacuee Property Act and had no action been contemplated under it by the Evacuee Property Department against the company, the question of appointment of a Manager-cum-Accountant for the company by the Deputy Custodian, Evacuee Property Department would never have arisen. Nevertheless, the Deputy Custodian might or might not have been right in his estimate of the powers that he enjoyed in relation to the company under the E. P. Act. But the point nevertheless remains that the appointment of a Manager-cum-Accountant was the way out for the situation which was being created for the company by the line that the Deputy Custodian had taken emanated from the resident-Director of the company. On 6-1-1950, the resident-Director, Mr. Bhalwala, wrote a second letter to the Deputy Custodian intimating that he was leaving Calcutta with the notice in

order to notify the shareholders to file their objections to prove that they were not evacuees and reiterated his stand in regard to Mr. Abdul Jalil not being an evacuee. In this letter again, he assures the Deputy Custodian that he had instructed the manager Mr. Swami to see that nobody tampered with the property and that he would call on him whenever required. In this letter too, there is no going back on the suggestion made for the appointment of a Manager-cum-Accountant by the resident-Director. On 10-11th January 1950, the Assistant Custodian, Mr. M. Singh, wrote to Mr. Bhalwala desiring him to furnish security to the extent of Rs. 3,01,000 representing the approximate valuation of the assets and intimating that a Manager-cum-Accountant would be appointed to look after the property of the evacuees whose shares vested in him in the company. The most important piece of evidence on the point as to how a Manager-cum-Accountant came to be appointed by the Custodian is furnished by the statement of Mr. P. S. N. Aiyar, Chartered Accountant of Lakshmi Buildings, New Delhi. It has been filed on behalf of the company, by way of an answer to the allegation, of that material facts have been suppressed. In that affidavit, Mr. Aiyar states that in connection with the audit of the accounts of the company, he proceeded to Kanpur in January, 1950 for the purpose of looking into the books of the Kanpur branch. He understood from Mr. Bhalwala that the official receiver had given over custody to him on the passing of the compromise order and he accompanied Mr. Bhalwala on 3-1-1950, to Phool Bagh, Kanpur and there met Thakur Munshi Singh who was the Assistant Custodian of Evacuee Property, Kanpur division. From his statement it appears that a copy of the notice, dated 3-1-1950 taking over the assets of the Asiatic Engineering Co. Ltd. was handed over to Mr. Bhalwala. He states that there was a discussion on the basis of this notice and Thakur Munshi Singh suggested that Mr. Bhalwala should see the Deputy Custodian and arrange matters satisfactorily if the terms of the notice were not to be given effect to. He also said that formal service of the notice would be effected in due course. He goes on to add that the Deputy Custodian could not be interviewed on that day, but he gave an interview on the 4th of January to Mr. Bhalwala and Mr. Swami at which he was present. His version of what took place on the 4th of January is as follows :

> "The matter was discussed at length in which discussion I also participated. The Deputy Custodian gave us to understand that if the company conveys its agreement in writing to the appointment of a Manager-cum-Accountant to control and supervise the business of the company at Kanpur on behalf of the "Custodian, Mr. Bhalwala will be allowed to be in charge of the business of the company, in which case, the custodian will not take over the assets of the company. The letter dated 4-1-1950 addressed to the Deputy Custodian contains in the third para the informal agreement arrived at with him for future conduct of the business of the company. The letter was required immediately by the Deputy Custodian and it was handwritten in his office and handed over to him personally for his orders. To the best of my recollection, the offer to agree to the appointment of a Manager-cum-Accountant by the Custodian was not given by Mr. Bhalwala voluntarily and as stated above was given at the instance of the Deputy Custodian."

24. What we gather from Mr Aiyar's statement is that the Custodian, Evacuee Property was, as is clear from the notice of the 3rd January, taking a certain view of his powers, that Mr. Bhalwala was anxious that the company should continue to manage its own affairs, that there was an agreement of an informal nature between the two and that it was as a result of that informal

agreement that Mr. Bhalwala wrote the letter of the 4th January. We can see no element of compulsion or undue pressure in all this. The Deputy Custodian, rightly or wrongly took a certain view of what his powers and obligations under the E. P. Act were. The resident-Director was quite naturally anxious that the company should continue to function and as a result of the discussion both the resident-Director and the Deputy Custodian appear to have arrived at an informal agreement as to how their two points of view could be reconciled. Mr. Aiyar's recollection that the suggestion for the appointment of a Manager-cum-Accountant for the overall supervision of the company emanated from the Deputy Custodian is not borne out by the terms of the letter of the 4th of January to which we have made a reference. To this extent, we are bound to place greater reliance upon the letter of the 4th January. Had the suggestion emanated from the Deputy Custodian, it is only natural to assume that Mr. Bhalwala would have made some reference to the effect that in pursuance of or in accordance with his suggestion, he was agreeing that an Accountant cum. Manager should be appointed. In any case Mr. Bhalwala's letter of the 4th January, inasmuch as it was not brought to our attention at the time we were passing the interim order, shows that the agreement for the appointment of a Manager-cum-Accountant was the result of a compromise between the two. This as we shall show, is a material circumstance which it was incumbent on the company to bring to our attention particularly in a matter where an ex prate order was being sought to be passed by this Court. We do not think that the facts have been properly or correctly stated so far as this part of the case is concerned.

25. On 6-1-1950, Mr. Bhalwala had given an assurance on behalf of the management that he had instructed the Manager of the Company, Mr. S. N. Swami to take all possible care to see that nobody tampers with the property and that he was to call on the Deputy Custodian whenever required by him.

26. The second point on which it is urged by the opposite party that there is a misstatement is that in sub-paragraph (b) of para. 9 of the petition it is stated that the Assistant Custodian demanded and compelled the Director in charge of the company's Kanpur office to furnish security. It appears that on 10/11th January, 1950, the Assistant Custodian wrote to Mr. Bhalwala that he must furnish security to the extent of Rs. 3,01,000 representing the approximate valuation of the assets in his concern at a very early date.

27. On 18-1-1950, Mr. Bhalwala wrote a letter to the Deputy Custodian, Evacuee Property, in which he gave him information about the various Muslim share holders, namely, (1) Abdul Jail (2) Abdul Razzak (3) Ghulam Mohi Uddin (4) Saliha Begum (5) Salma Begum (6) Mohammad Amin and (7) Amin Agencies Ltd. and pointed out that Messrs. Abdul Jalil, Abdul Razzak, Ghulam Mohi Uddin, Saliha Begum and Salma Begum were permanent residents of the Indian Union and were permanently residing at Calcutta, that Mohammad Amin was in Karachi and was looking after his business there and that Messrs. Amin Agencies was a limited company incorporated in East Bengal on 18-10-1947 i. e, after the partition and that it had a branch office at Calcutta where it was carrying on its business and that this company was a foreign company and as such the Evacuee Property Ordinance had no application to it. He submitted in his letter that the company was a corporate body and had, as such, an independent legal existence, that the assets belong to it and not to its members, that the company could not be treated as an evacuee and that in these circumstances, no question of furnishing security arises. In these circumstances, he requested him to withdraw his notice and also pointed out that there had been some dispute and unpleasantness between Mr. Kundan Lall and his group and he hoped that he would not take

notice of any false report or propaganda on the part of Mr. Kundan Lall and his group. He expressed a desire that he should be given a chance to explain matters and satisfy him about the falsity thereof. On the 19th of January however, he wrote a letter to him again from which it appears that he had a personal interview on that date with the Assistant Custodian and that he had agreed that, in order that the position of the factory might not deteriorate by remaining indefinitely closed, that the company might not be but to unnecessary loss and various charges and in order to serve the national cause he would furnish a personal undertaking on the usual form to the extent of the face value of 1200 shares that had till then been issued by the company. He further assured the Deputy Custodian that he would not part with any of the 1200 shares, of course, without prejudice to the claim of the share-holders being Indian Nationals pending the final decision of the Deputy Custodian (Judicial).

28. A day later, that is, on the 20th of January, Mr. Bhalwala wrote a letter to the Deputy Custodian, Evacuee property thanking him on his behalf and on behalf of the company for the interim orders pending final orders either from him or the Deputy Custodian (Judicial) regarding personal bond. That letter runs as follows: "Dear Sir,

I thank you on behalf of me and on behalf of the company for your undernoted orders pending final orders either from you or the judicial.

> 1. I to give a personal bond duly registered for Rs. 1,20,000 (Rupees one lac and twenty thousand) being the face value of 1200 shares held by different share holders of the company as per my letter to you dated 18-1-1950 and that I to hypothecate my personal property to the extent of Rs. 1,20,000.
>
> 2. That I to hand you a balance sheet showing the true state of affairs as soon as the same is ready and handed over to me by the auditors, Messrs. Aiyar and Co., New Delhi who are the auditors of the company and Agree to increase or decrease the security given as per your direction.
>
> 3. I agree to the appointment of an Accountant by you at the company's cost for scrutiny of the accounts A to give you true state of affairs for your information and necessary direction,
>
> 4. That you will release the property and allow normal functioning.
>
> Thanking you,
>
> Yours faithfully,
>
> For Asiatic Engineering Co, Ltd.,
>
> Sd. D. bhalwala,
>
> Director."

29. From the above letter, it is quite apparent that Mr. Bhalwala had a satisfactory interview on the 19th with the Deputy Custodian and that as a result of his discussions with him, the orders

referred to in that letter were passed and that they had met his and the company's points of view and that he and the company were very grateful for them. We cannot understand how in the face of this letter, read with previous correspondence it can be said that Mr. Bhalwala A the company did not agree, in order to ensure that there was no further deterioration of the situation by having to close the company and putting it to further unnecessary loss by incurring expenses over the establishment and other charges and with the idea also of serving the national cause, to furnish a personal undertaking on the usual form to the extent of the value of 1200 shares which were the only shares which were, at that time, issued by the company. It is further clear that they had agreed not to part with any part of the profits or dividends to any of the said 1200 share-holders mentioned in the letter of the 18th January without prejudice to their claim that they were Indian Nationals, a fact which was to be decided by the Deputy Custodian (Judicial). It was on 6-2-1950, when the Assistant Custodian wrote to Mr. Bhalwala pointing out to him that the property pledged for release of the factory was situate in Calcutta and that, according to the Custodian, it was desirable that he should furnish property situated at Kanpur as security and that until the security was furnished, transfers and transactions in respect of the shares in the Company should remain suspended and should not, in any case, be effected without the prior permission of the Assistant Custodian that disputes regarding the extent of security that the Company was to furnish arose between the Custodian and Mr. Bhalwala representing the Company. On the 7th of February, the Manager, Mr Swami, wrote to the Assistant Custodian informing him that Mr. Bhalwala had left for Calcutta for a Directors' meeting, that from there he would proceed to Delhi and that necessary action on the letter of the 6th February would be taken by him on his arrival. We may point out that it was noted by the Company with painful feelings that the Custodian was adopting the methods of changing his orders every now and then. This is clear from the following sentence contained in this letter:

> "This sort of action naturally does not allow us to concentrate and restart our workshop and office to normal function."

The Manager, Mr. Swami, further added that if they were not allowed, for one reason or another, to start their business, they did not know whom to hold responsible for the terrible low they were sustaining. Finally he requested the Assistant Custodian not to take any judicial notice of the malicious reports and propaganda conducted and circulated by mischief mongers. Here again, it may be noted that there is no objection to the principle agreed upon between the company and the Deputy Custodian that security should be furnished. What we can read in this letter is a vague suggestion that the Deputy Custodian had changed the previous order, to which they had agreed, regarding the nature of the security required from the company inasmuch it was insisted upon that the property for the security must be situate in Kanpur. On the 8th of February, Mr. D. D. Sethi was appointed a temporary Manager-cum-Accountant on a salary of Rs 250 per month. On 17-2-1950, Mr. Bhalwala wrote a letter to the Assistant Custodian intimating the company's approval of the appointment of Mr. Sethi subject to the decision of the Custodian to whom representations and objections had been made on that date. On the same date, that is; the 17th of February, Mr. Bhalwala wrote another letter to the Assistant Custodian expressing surprise that the order of the Deputy Custodian had been superseded by him and that there was no reason and no law under which property situate only in Kanpur should be given as security and this was particularly objectionable as India was one Dominion consisting of several parts. He also wrote to say that he had placed these objections before the Custodian and had requested him to consider the case and if necessary, to institute a legal enquiry under section, 7 of Act XXVII of

1949 or amendment thereafter. It also contained an intimation to the effect that he was enclosing a copy of the representation made in this respect for his and the Deputy Custodian's perusal.

30. From a letter of 27-2-1950, it would appear that Mr. Bhalwala had 'the pleasure' of meeting the Custodian, Evacuee Property on the 20th February and had, at that time, personally handed over the petition concerning the company to him. It is further apparent from this letter that he wanted the Custodian to fix a date during his visit to Kanpur between the 27th of February and 1st of March for a personal interview in order to explain his point of view. On 2-3-1950, the Assistant Custodian wrote to the company that the undertaking and the property situate in Calcutta hypothecated by them on the 20th of January were accepted subject to para 2 of the Company's letter of 20-1-1950. On 6-3-1950, Mr. Bhalwala, on behalf of the company, wrote to the Assistant Custodian inviting his attention to the fact that as directed by the Custodian on 28-2-1950, he had not withdrawn his order of suspension of business, transfer or transaction as contained in his letter No. 280/k/e dated the 6th of February. The company wanted him to give effect to the directions of the Custodian. On the 6th of March, another letter was also despatched by Mr. Bhalwala reminding the Assistant Custodian that he had not given effect to the directions given to him on the 28th February and pointing out that his action in declaring the company as evacuee property was not, according to their interpretation of Section 7 of Ordinance No. XXVII of 1949 and the Central Govt's. directions, quite legal as no property could be declared evacuee property until thorough enquiries had been made and parties concerned properly heard. From a letter, dated 10-3-1950, it appears that Mr. Sethi was handed over a duty chart specifying the functions which he was to perform as Manager-cum-Accountant. On 12-3-1950, Mr. Bhalwala wrote a letter to the Deputy Custodian intimating that he differed from him on certain points specified in the duty chart of Mr. D. D. Sethi on account of the fact that according to their reading of Section 7 of Ordinance No. XXVII of 1949; the company's property at Kanpur could not be declared as evacuee property. He further requested the Deputy Custodian to allow him to discuss and finalise the points of difference which had arisen between the company and the Deputy Custodian regarding the duty chart which the Deputy Custodian had prepared for the Manager-cum-Accountant. On 2-6-1950, Mr. Bhalwala wrote to the Assistant Custodian a letter in which, among other things, he added that he had given a further undertaking that when the final accounts were audited and assets determined by the Auditor, he was prepared to increase or decrease his security in proportion to the final value of the shares held by the Muslim shareholders. He added, however, that even the security already furnished by him was neither necessary nor should it have been insisted upon by him in view of the fact that he had imposed the burden of a Manager-cum-Accountant on them. He pointed out that it was not proper to increase the security to an imaginary figure in the case of a limited private company registered in East Bengal where the Evacuee Property Act does not apply. Finally he requested the Assistant Custodian to help him in the disposal of the case and failing that he would hold him responsible for all losses and damages that the company or he himself may have to incur. He also expressed his apprehensions about persons like Chiranji Lal and others. He then added that the question of jurisdiction over the company was yet a matter of dispute and that he regarded his orders as uncalled for interference. On 20-7-1950, Mr. Bhalwala wrote to the Assistant Custodian saying that he was sorry to note that he was annoyed and prejudiced against him for writing to him honestly, sincerely and frankly about the harassment done to him and the company about the harassment done to him and the company and for Bending his letter to the Custodian, Evacuee Property, Lucknow. He requested him to be fair and to do justice falling which, he said, he would be the last person to take things lying down silently. On the 19-7-1950, the Assistant Custodian

wrote to Mr. Bhalwala that he had forwarded the case concerning the company to the Deputy Custodian (Judicial) on 31-5-1950 and that if the company had any grievance for non issue of summons or any other objection it might be referred to him. He further pointed out that objections had been filed in his Court on 31-3-1950 and that they had been forwarded on the 30th of May to the Deputy Custodian (Judicial). He also tried to make it clear that no undue delay had been made in forwarding the objection and he took strong exception to the allegation that the objections had been deliberately kept back by him for a long time (which?) was entirely false and baseless. He also drew his attention to the fact that whether a limited company was beyond their legal jurisdiction was a point to be decided by the Deputy Custodian and that it was undesirable that they should raise this controversy over and over again by writing official letters and that whatever may be done would and be consistent with reason and justice. On 26-7-1950, the Assistant Custodian wrote to Mr. Bhalwala intimating that the Custodian would be reaching Kanpur on the 28th of July at 10-30 a. m. and that he should see him on that date at the Court room situated within the Kutchery compound. On the 3rd of August, the Assistant Custodian wrote to Mr. Abdul Razzak intimating that he was to appear in person on 9-8-1950, before the Deputy Custodian with his evidence. On 25-8-1950, the Assistant Custodian, who was Mr. B. D. R. Pandey, wrote to Mr. Bhalwala that his letter dated 2-8-1950 regarding furnishing of security was not traceable on his file. He wanted him to send a copy of the letter at an early date. He further requested him to deposit the necessary security within four days, that is to say, by 30th of August. He added that in case there was any difficulty about the security, he could send his representative to understand the position from him. On 8-9-1950, the Assistant Custodian informed him that the Custodian, Uttar Pradesh had been pleased to order that a security of Rs. 2,00,000 should be obtained from him and that he had furnished security for a sum of Rs. 1,20,000 which was pending verification. What was needed now was that he should furnish a security for an additional sum of Rs. 30,000 by 19-9-1950 duly verified. He said that the security would be rejected if it was not duly verified. On 20-9-1950, the Deputy Custodian again wrote to the company pointing out that security to the extent of Rs. 2,00,000 had to be furnished by him duly verified and registered by the 22nd of September, otherwise a Manager-cum-Accountant would be appointed for such time as the security was not furnished or the case was not finally disposed of. It was also said that if the company obstructed the Manager-cum-Accountant in his duties, further action as already ordered by the Custodian would be taken. It was further clearly stated that if the security was not furnished or the case was not disposed of then a Manager-cum-Accountant would be appointed. It was also intimated that the Custodian had fixed the 16th to discuss the matter but as he had failed to be present there, the above orders were passed by him. He was requested to take immediate steps to furnish security instead of entering into further correspondence. On 25-9-1950, the present petition was filed in this Court. From a perusal of the affidavits, counter-affidavits and rejoinders and the correspondence which has been attached to these affidavits, counter, affidavits and rejoinders the conclusion that we have arrived at is that the company agreed, though it did so to escape the property being taken over by the Custodian, to the furnishing of security, and to its increase and decrease from time to time, that subsequently there was some controversy regarding the exact amount of security and tie nature of the property required for the security and that the facts relating to this controversy or to the furnishing of the security have not been correctly, properly and faithfully stated in the petition and the affidavits of the petitioner. The most important letter showing the circumstances in which security was demanded and furnished was that of 20-1-1950. It passes our comprehension how and why it did not occur to the petitioner to file it along with the numerous papers which accompanied the original petition. The interim order was obtained without bringing this letter to the notice of the

Bench issuing it. This obviously is a contention which cannot but be described as to have influenced the Court to issue the interim injunction. The impression from the way the facts have been put in the affidavits and the counter affidavits create is that the Company had never agreed, even under protest, to the furnishing of security. Actually what appears to have been the case is that the Company did agree, though there was some hesitation to the furnishing of security, because that was the only condition under which it could be allowed to function by the Evacuee Property Department. Later, it resiled from that position and controversies arose regarding the extent and character of the security. In view of this correspondence, the fact is apparent that it took the company eight months to make up its mind to file a writ application on the basis that the Assistant Custodian demanded and compelled the Director in charge of the Kanpur office, Mr. Bhalwala, to furnish security to the extent of Rs. 1,20,000 and had, therefore, arbitrarily raised the security in spite of protest and reasonable explanation to the extent of Rs. 2,00,000. It is quite clear from the correspondence that in the matter of furnishing security to the extent of Rs. 1,20,000, the company was, for the reasons, detailed in its letter of the 19th January, a willing, party. It was only later after the 6th of February that disputes regarding the quantum of security and, more particularly, the nature of the security arose between the parties. In fairness to this Court and to the Bench of which one of us was a member which issued the interim order, the attitude that the company had adopted initially should have been stated and the controversy which arose subsequently in regard to the two matters referred to by us should have been mentioned in the petition. All that the company states is that the Deputy Custodian demanded and compelled the company to furnish security and thereafter arbitrarily raised it in spite of protest from the company. We think that the words "demanded and compelled" are completely misleading. We can find no element of compulsion in what the Evacuee Property Department did. They were taking a certain view of their legal rights and if the company felt that their reading of their powers was not correct in law, it could approach the Court much earlier than the 25th of September. We can see that the word "compelled" suggests coercive action on the part of the Evacuee Property Department. But our reading of the correspondence has convinced us that there was no such coercion as would justify the use of the word "compelled". We are unable to say a fact that the use of the words "demanded and compelled" could not and did not influence the Bench which passed the interim order. We may point out that the allegations regarding the security have been repeated without in the slightest degree being toned down in the replies which the company has filed through its rejoinder affidavit to the affidavit which was filed on behalf of the Evacuee Property Department. That being the position, we are bound to come to the conclusion that the case, as put forward, was highly exaggerated and a completely misleading picture was put before this Court of what had actually occurred between the company and the Evacuee Property Department. Had the company taken the line that it agreed to the furnishing of security and that later when fresh demands were made for increasing the security and the security property being situate in Kanpur, it felt that it ought not to feel itself bound by its original undertaking and took its stand upon the legal ground that the Evacuee Property Department have no jurisdiction to deal with the matters relating to the company as it was a distinct legal person who did not come within the orbit of the Evacuee Property Act, the position might have been different. But this is not the case which was put forward and this is not the case which has been put forward at any stage on behalf of the company. Under these circumstances, we are bound to look upon this statement as grossly misleading and as one which was bound to influence and which does appear to have influenced the Bench granting the interim injunction. We note that as late as 8-12-1950, Mr. Bhalwala repeated in para 7 of his affidavit that after the security was furnished the respondents insisted on the registration of the same after a lapse of over seven

months and Shri Bhalwala thereupon agreed to have the same registered and in fact, asked the Assistant Custodian, Evacuee Property, for particulars thereof by his letter dated 22-7-1950. No reply was ever sent to the said letter of Mr. Bhalwala and on the contrary, the said respondents served a notice on him that a Manager-cum-Accountant would be appointed. We find that the position taken up by the petitioner company even in the affidavit which was filed by Mr. Bhalwala on 8-12-1950 is not of much help, There is no doubt that right upto 8-12-1950, letters or documents which go to show that the petitioner company had either itself suggested or had agreed willingly to the appointment of a Manager-cum-Accountant had not been produced. We also note that the letters of the 4th and 19th of January 1950, which go to show that the proposal for the appointment of a Manager-cum-Accountant or personal security was made either by the Company or was the result of an agreement between the Company and the Evacuee Property Department, were suppressed. We also find that Mr. Bhalwala's letter dated 20-1-1950 in which he indicated his acceptance of the arrangement and thanked the Deputy Custodian for agreeing to the arrangement was not placed before this Court by the Company. We are unable to understand what the meaning of the word "harassment" is when the arrangement was agreed to by the Company possible because it did not feel sure of its ground under the Evacuee Property Act. The explanation, which has been given to us, on behalf of the respondents, is that the Company's attitude towards the question which had been settled by the agreement of the 20th of January as also by Mr. Bhalwala's letter of the same date underwent a change when it added 12 Hindu share-holders. Thereafter, it felt that it was on stronger ground, inasmuch as even if the Muslim share-holders were evacuees it could be said that it had Hindu share-holders who were not likely to be evacuees. Undoubtedly it is true that after the exit of Lal group from the Company, the Company had no Hindu shareholders until the 6th of February. We do not think it essential to arrive at any positive conclusion in regard to the motives inspiring the Company in its action of adding Hindu shareholders. Nevertheless, we think that the statement in the petition that the Hindu share holders were in a numerical majority is completely misleading. As is well-known, this State knows no distinction between Hindu and Muslim citizens for all citizens are equal before the law and have equality of rights assured and guaranteed to them by the Constitution. We do not think why the petitioner should emphasise that the Hindu shareholders were in a numerical majority and suppress the fact that the Muslim share-holders were in virtual control of the Company by reason of the fact that barring 12 shares out of the 1200 or more shares were held by them and this is something which we have not been able to understand. We do not think that the position regarding the distribution of shares in this Company has been fairly stated.

31. From our review of the correspondence, it is quite clear that the allegation that the Company throughout protested against the alleged illegal acts of the Custodian is not correct. We have shown that it was a party to the proposal that a Manager-cum-Accountant should be appointed, that, indeed, the probabilities are that the suggestion that a Manager-cum-Accountant should be appointed emanated from the Company itself through its Resident-Director, Mr. Bhalwala, that it agreed to the furnishing of security and that the disputes at a subsequent date related to the extent and nature of that security. There are no doubt indications in the correspondence that the Company wanted an overall settlement of the points in dispute. But we do not think that the word "harassment" is really a proper word to use in connection with these controversies and it appears to us that it was only after a certain date that the Company's attitude underwent a change. We think, therefore, that the position, in regard to the various orders and the appointment of the Manager-cum-Accountant has not been fairly or fully stated in the petition.

32. We now come to another point and that is that the fact that the Company had an office in Karachi has been suppressed in para. 2 of the petition. That paragraph stated that the Company had its registered office at Calcutta and inter alia, at Kanpur and London. The words "inter alia" suggest that it had branch offices at places other than Kanpur and London. On this point, our attention was drawn to a letter written by the Secretary of the Company to its London office regarding the Reserve Bank's statement of London accounts. We think it best to quote this letter in full:

> Ref. No. AJ/1/351
>
> LONDON OFFICE
>
> Dear Sirs,
>
> Re. THE RESERVE BANK-STATEMENT OF LONDON A/C.
>
> We enclose a copy of a statement made out here for the month of January '49, from your statement of A/C. Please make out this statement in duplicate, original for us and the duplicate for the Reserve Bank. On the duplicate copy, please write "CERTIFIED TRUE COPY," put your office stamp and sign it. This statement is required immediately for submission to the Reserve Bank with our statement of account. A statement on the same lines is required every month, certified and signed by you. This statement must not show any figure relating to Karachi transactions. This statement should reach us by the last week of every month to facilitate our work.
>
> Your immediate attention to this matter is requested.
>
> Yours faithfully,
>
> For Asiatic Engineering Co, Ltd.
>
> Secretary.
>
> Encl: Copy of a statement.
>
> From this letter the inference that we draw is that the Company was doing business in Pakistan. We are not impressed by the suggestion that the Company had an account with the Pakistan Commercial and Industrial Bank Ltd. and the reference in that letter is to that account. The words "inter alia" go to support the suggestion that the Company had some office other than those at Calcutta, Kanpur and London. That office could only have been in Pakistan. Possibly the words "inter alia" were used as the Company was anxious that the fact of any connection with Pakistan should be kept back from this Court. The mere fact that the Company was carrying on business in Pakistan would not make it an evacuee. This country has trade relations with Pakistan and hopes that they will continue to improve. We are strengthened in our view that there was a deliberate desire to suppress the fact of the Company having a branch office in Pakistan from the fact that, amongst the

papers filed by the respondents, is a letter dated 27-12-1948 addressed by Mr. K. Lal to the Karachi office. It includes an invoice of goods sent by S. S. Jaljawahar to Karachi Asiatic Engineering Company Limited, Messrs. Pak Commercial and Industrial Enterprises Limited, 28, Motan Building, Bunder Road, Karachi (Pakistan). The inference to be drawn from the heading and the invoice address is that the company's branch office was situate in part of the building occupied by Messrs Pakistan Commercial and Industrial Enterprises Limited. Our attention has not been drawn to any statement which contains any categorical denial, in any of the affidavits, of the fact that the company had a branch office in Pakistan. In the absence of any satisfactory explanation the only inference, as to why the words "inter alia" were used to conceal the fact, is that the company tried to mislead the Court into believing that the company had no business in Pakistan, that it had some fear that further investigation might lead the respondents to come into possession of some evidence which might show that the company had acquired some interest in Evacuee property in Pakistan and that that fact might enable an argument to be addressed that the company had become an evacuee.

33. We may point out that another statement which the company has made is that it has had its business all along confined to the Indian Union. Appendix 'b' which is a letter dated 5-1-1950 by Mr. Bhalwala to the Assistant Custodian, Evacuee Property, Kanpur, Appendix 'c' which is a letter dated 15-10-1949 from the General Manager of the company to the Deputy Custodian, Evacuee Property, Kanpur, u. P. and Appendix A which is a letter from the Assistant Custodian dated 13/15-10-1949 to the company-all go to however corroborate the fact that the company had business relations with Pakistan. Here again we come to the conclusion that there has been a mis-statement of fact with the intention of keeping back information which might have enabled the respondents to bring home their contention that the company had business relations in Pakistan and had also acquired an interest in Evacuee property in that country.

34. We have already pointed that one of the statements which has been made in para. 4 is that the company has both Muslim and Hindu shareholders, the Hindu share-holders being numerically more than the Muslim share holders of the Company. Whether the Company has both Muslim and Hindu share-holders is completely irrelevant for the Evacuee Property Act does not proceed upon any communal or religious basis. In the first instance, what has been concealed so far as this statement is concerned, is the fact that the Hindu share-holders were allotted shares by an extraordinary general resolution at a special meeting which was held on 6-2-1950, and that from the time Mr. Kundan Lal gave up his interest in the Company right upto the 6th off February when the Hindu share-holders were introduced, there were no Hindu share-holders in the Company. There would appear to be some substance in the argument which was put forward vigorously by the learned counsel for the respondents that the main operative reason for giving a misleading picture in this respect was the desire to meet any possible argument that a Company can be declared an evacuee if all its share-holders are declared to be evacuees. We think that this statement is, in any case, made in a misleading form inasmuch as the Hindu share-holders held a negligibly small share in the total share capital of the Company. On the question whether the Company had acquired any interest in Evacuee Property in Pakistan or not, the position taken by the respondents is that the Company's office at Karachi is evacuee property. We hold that the Company had a branch office in Karachi, but whether the property is evacuee property or not is a

question into which we do not feel we would be justified, on the materials before us, in recording a finding.

35. We now come to a more important point which has reference to the permanent residence of Muslim share-holders. They are all stated to be permanent residents of West Bengal. From a pedigree to be found attached to Appendix 'c' of the papers filed by the respondents, it would appear that according to the information available, Messrs. Mohammad Amin, Ghulam Mohi Uddin, Abdul Jalil, Abdul Razzak, Abdul Latif and Shrimati Salima Begum are descended from a family which originally had property at Kanpur, Agra and in the province of Delhi. We do not look upon this fact as sufficient to indicate that the petitioners are residents of Uttar Pradesh and attach no importance to the fact that this was not brought out in the petition or the papers accompanying the petition. We have already indicated that, in one sense, the present proceedings against the company can be said to have started on 3-1-1950. Our attention has been drawn to a letter dated 1-12-1950 by Mr. Bhalwala to the Assistant Custodian from which it appears that a complete inventory of the property and the assets of the company had been made at the time of taking over the concern wrongfully in the 1st week of October, 1949. Reliance has been placed upon this letter to show that the proceedings were initiated in the 1st week of October, 1949 and that the notice of the 3rd of January was not a fresh notice, but merely a continuation of the old proceedings. We have said that we do not from a legal point of view, agree with this contention because there is, as we have pointed out, the fact that the respondents gave up their possession on the 20th of October. While initially it can be argued that action was taken in October, actually the present proceedings started on the 3rd of January.

36. We now come to the question as to whether the permanent residence of all or most of the Muslim share-holders and Directors is or is not in Pakistan. This is an important issue on the question as to where the control of the company vests, assuming that the principles of the Company law have in any way been modified by the Evacuee Property Act. From Appendix 'b' it would appear that the ordinary residence of the Directors and share-holders of the company was as follows:

1. Mohammad Amin ...Matin Building 28 Bunder Road, Karachi.
2. Abdul Jalil ... 67, Postha Lane, Dacca.
3. Abdul Razzak ... 67, Postha Lane, Dacca.
4. Ghulam Mohi Uddin ... 67, Postha Lane, Dacca.
5. Messrs. Mohd. Amin .. 220/2, Lower Circular Road, Calcutta.
6. Abdul Jalil's (Calcutta address) ... 220/2, Lower Circular Road, Calcutta.
7. Abdul Razzak's (Calcutta address) ... 220/2, Lower Circular Road, Calcutta.
8. Ghulam Mohi Uddin's (Calcutta address) ... 220/2, Circular Road, Calcutta.
9. Mst. Salima Begum's (Calcutta address) ... 220/2, Lower Circular Road, Calcutta.

10. Mst. Saliha Begum's (Calcutta Address) ... Do ... Do

37. That they had connections with the Indian Union is undeniable. If they were permanent residents of the Indian Union or if they were not evacuees or intending evacuees, there was no reason why they should have described their address or place of residence at Dacca. We think there is a mis-statement of fact on this issue in the affidavit filed in support of the application of a vital nature. We say 'vital' because the case of the respondents is that the shareholders named above who have migrated to Pakistan, are evacuees or intending evacuees and that that fact justified their taking over their assets and also that of the Company virtually vested in them. It may be that the Company is distinct in law from its share-holders and that the fact that its Directors reside in Pakistan is immaterial from the point of view of the commercial domicile of the Company. But the question of their exact position in relation to the Indian Union should have been clearly stated and we find that there has been an attempt to get over the fact that their usual place of residence is Pakistan.

38. We may now point out that an allegation which has been made in a reckless manner is that the respondents have a personal bias against the company and its share-holders. One of the respondents is the Deputy Custodian (Judicial). He has very properly not taken any interest in these proceedings as, if the case goes against the company, he will have to deal with the question whether the company is an evacuee whose property can be taken over or not. We have failed to discover any evidence of any personal bias which the respondents are alleged to have against the company. We feel from the admitted facts of this case that the Custodian was in touch with Mr. Kundan Lal in the same that initially some information leading to action was supplied by him or his group. Apart from that, however, there is nothing to show that the respondents had any personal grudge, malice or interest against the company. A charge of this nature was bound to weigh with the Court which granted the interim order. It is well known that the existence of a personal bias is itself a ground for granting relief to a party whose case is being tried by the person who is alleged to have a personal bias. We deplore that this charge was made against the officers of the Evacuee Department, particularly the Deputy Custodian (Judicial), in a somewhat reckless manner. It may be that the Company was not, after a certain stage, completely happy with the manner they were handling the case against it. But that, however, cannot and does not justify a reckless charge of personal bias.

39. We have thus come to the conclusion that, there has been material suppression and mis representation of facts in the petition and papers filed along with it. Some of the statements in the petition and also in the affidavits filed on behalf of the applicant Company are of misleading nature. It has been contended by the learned counsel for the respondents that these suppressions, misrepresentations and misleading statements are sufficient grounds for rejecting the application without consideration of it on merits. The learned counsel for the applicant Company has, however, argued that all these suppressions, misrepresentations and misleading statements are immaterial inasmuch as the main case of the applicant is based on a complete lack of jurisdiction in the Custodian, Evacuee Property, to take any proceedings against the applicant under the Evacuee Property Act. To be more explicit, the argument is that the Company is a distinct legal person different from its share-holders, that the fact that its share-holders or some of its shareholders or directors are evacuees or intending evacuees is irrelevant and cannot justify the

various orders that are passed in respect of the assets of the Company or the Company itself and that an incorporated company as such cannot be dealt with under the Evacuee Property Act by the Custodian. In fact, what is urged by the learned counsel for the applicant Company is that, in this case, there is a patent lack of jurisdiction and not a latent lack of jurisdiction in the Custodian to deal with the property of the applicant Company and therefore, any suppressions, misrepresentation and misleading statement in the application or the affidavits or papers filed in support of the application would not justify a dismissal of the application without consideration on merits.

40. We have, however, not found it possible to hold that, in this case, there is any patent want of jurisdiction. It appears to us that the various points urged on behalf of the applicant Company merely raise a question of latent want of jurisdiction in the Custodian. The point that the Company is a distinct legal person different from its shareholders and that the fact that its shareholders, or directors are evacuees or intending evacuees is irrelevant for the purpose of determining whether the Company is an evacuee or of determining whether the assets of the Company can be evacuee property which has to be decided in the light of the special provisions of the Evacuee Property Act and not merely on a consideration of the position of an incorporated company under the Indian Companies Act. The correctness of the proposition that a limited company has an independent corporate existence distinct from its members or shareholders cannot be doubted. It is unnecessary to refer at any length to the mass of case-law that was cited for this proposition. In the famous case of *Salomon and Co. v. Salomon*[4], the independent corporate existence of a company, as distinct from its share-holders or members was elaborately explained and expatiated upon by the House of Lords. It is beyond question that once a company is legally incorporated, "it must," to use the words of. Lord Halsbury in the case just referred to above, "be treated like any other independent person with its rights and liabilities appropriate to itself." The principle was followed by the Bombay High Court *in Re Dinshaw Manekji Petit* [5]Reference may also be made, in this connection, to the cases of the *Rangoon Electric Tramway and Supply Co., Ltd. v. Emperor*[6], *Indian Cotton Co., Ltd. v. Raghunath Hari*[7], and *Rainham Chemical Works, Ltd. v. Belvedere Fish Guano Co., Ltd*[8].,

41. This proposition laid down under the Indian Companies Law does not, however, preclude the possibility of the assets of a company coming under the jurisdiction of a Custodian under the Evacuee Property Act because of the special provisions of that Act. The Evacuee Property Act has defined evacuee property as follows:

> "(f) 'Evacuee Property' means any property in which an evacuee has any right or interest (whether personally or as a trustee or as a beneficiary or in any capacity), and includes any property -
>
> (1) Which has been obtained by any person from an evacuee after 14-8-1947, by any mode of transfer, unless such transfer has been confirmed by the Custodian, or (2) belonging to any person who after 18-10-1949, has done or does any of the acts specified in clause (e) of Section 2 in which any such person has any right or interest to the extent of such right or interest; but does not include
>
> (i) any ornament and any wearing apparel cooking vessels or other household effects in the immediate possession of an evacuee;

(ii) any property belonging to a joint stock company, the registered office of which was situated before 15-8-1947, in any place now forming part of Pakistan and continues to be so situated after the said date."

In considering this definition, full meaning must be given to every word used therein. The main definition of evacuee property uses the words 'any right or interest' and further goes on to elaborate that right or interest by using the words, 'whether personally or as a trustee or as a beneficiary or in any other capacity.' The use of the words, 'any right or interest in any other capacity' appears to make the definition of evacuee property very wide. It has been argued on behalf of the respondents that this definition is wide enough to cover the right or interest which a share-holder may have in the assets of an incorporated company. It is true that, under the Indian Companies Act, it has been held that the properties or assets of a company belong to the company and not to its individual share-holders. In *E. B. M. Co., Ltd. v. Dominion Bank*[9], Lord Russel pointed out that "the distinction should be clearly marked, observed and maintained between an incorporated Company's legal entity and its actions, assets, rights and liabilities on the one hand, and the individual share-holders and their actions, assets, rights and liabilities on the other hand."

In *In re George Newman and Co*[10]., Lindley L. J. observed, "an incorporated Company's assets are its property and not the property of the share, holders for the time being."

42. This point has been further clarified in the case of *Gramophone and Typewriter, Ltd. v. Stanley*[11], where Lord Cozens-Hardy M. R. observed :

"That an individual by himself or his nominees holds practically all the shares in a company may give him the control of the company in the sense that it may enable him by exercising his voting powers to turn out the directors and to enforce his own views as to policy, but it does not in any way diminish the rights or powers of the directors, or make the property or assets of the company his, as distinct from the corporation's. Nor does it make any difference if he acquires not practically the whole, but absolutely the whole, of the shares. The business of the company does not thereby become his business. He is still entitled to receive dividends on his shares, but no. more."

43. Sir Francis Gore-Browne in his book on the Formation, Management and Winding up of Joint Stock Companies, Ed. 38 p. 5, described the extent of the interest that a share-holder has in a joint stock company in the following terms :

"The company, moreover, is a distinct legal personality, and can own and deal with property, sue and be sued in its own name, and contract on its own behalf, and the members are not personally entitled to the benefits or liable for the burdens arising thereby; their rights are confined to receiving from the company their share of the profits, or, after a winding up, of the surplus assets, and their liabilities to paying the amounts specified as due from them to the company."

44. Lastly, a mention may be made of a recent decision of the Supreme Court of India in the case of *Chiranjit Lal v. Union of India1*[12], In this case, the holder of an ordinary share applied for a

writ of mandamus or some such writ under Article 32 of the Constitution on the ground that his property rights as a shareholder of the company had been affected by Act No. xxviii of 1950 passed by the Bombay Legislature and the action taken pursuant to it by the Bombay Govt. Fazl Ali J., held that the Company and the share-holders are in law separate entities and if the allegation is made that any property belonging to the Company has been taken possession without compensation and the right under Article 19 (f) of the Constitution has been infringed, it would be for the company to come forward or its agents and not every individual share-holder.

45. It was sought to be argued on behalf of the applicant Company on the basis of this case law that a share-holder has no right or interest in the assets of a Company and, therefore, the Custodian, in the present case, was not justified in proceeding against the assets of the Company if the share-holders only had become evacuees whereas the Company as such was not an evacuee. It appears to us that this argument completely ignores the language used in the definition of evacuee property which has been mentioned above. All the cases which have been cited above really deal with the question whether a shareholder has a right or interest in the assets of a Company in the sense of possessing some ownership rights in those assets. The proposition that the assets of a Company belong to the Company itself and not to its share-holders is the only proposition that is laid down in the cases cited above. They do not go further so as to lay down that a share-holder cannot have "any right or interest in any capacity" in the assets of the Company. Normally, when statutes use the words, "right or interest in the property," those words are interpreted to connote some kind of ownership or proprietary right in the property. If the intention of the Evacuee Property Act had been to restrict action against the property in which an evacuee had an ownership right or interest, there was no need for the legislature to use the word "any" before the words, "right or interest" and to add the words, "in any other capacity". An ownership right or interest in the property is only known to law as a right or interest possessed either personally or as a trustee or as a beneficiary. An ordinary right or interest connoting ownership rights cannot be said to be possessed in any other capacity. It is obvious, therefore that the word, "any" before the words 'right or interest' was added to cover not only a right or interest as an owner but the right or interest of any other kind which can be possessed by a person in property. Not only did the legislature use the word 'any' but it also mentioned an alternative manner of possessing the right or interest. The right or interest need not be possessed personally or as a trustee or as a beneficiary only. It may be possessed in any other capacity. These words are again extremely wide. We feel it difficult to hold that, giving the full wide meaning to the words used in this definition, it is still necessary to come to the conclusion that a shareholder does not have 'any right or interest in any capacity' in the assets of a company. In this connection, reference may be made to the remarks of Romer L. J. in the case of Paulin In re, Grossman, In re, (1935) 1 K. B. 26 at pp. 56 and 57. Romer L. J., when dealing with the nature of a share, agreed with the observations of Farwell J. in *Borland's Trustee v. Steel Brothers and Co., Ltd*[13]*.,*

> "A share is the interest of a share holder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders inter se in accordance with Section 16 of the Companies Act, 1862. The contract contained in the articles of association is one of the original incidents of the share. A share is not a sum of money settled in the way suggested, but is an interest measured by a sum of money A made up of various rights contained in the contract, including the right to a sum of money of a more

or less amount." He went on to say:

> "It is impossible to treat a share as being an interest in the company's assets or an aliquot share in the company's capital, A to regard the contract arising from and contained in the company's articles of association as a separate and independent thing. That contract A the rights a liabilities that flow from it are of the very essence of the share: When, therefore, the owner of a share dies, what passes upon his death A what has to be valued for the purpose of estate duty Is nothing more than the totality of his rights A liabilities as they exist under the provisions of the Companies Act A the constitution of the particular company." These remarks show that a share was treated as being an interest in the company's assets or an aliquot share in the company's capital subject to the contract arising from and contained in the company's articles of association. The learned counsel for the applicant Company purported to interpret these remarks of Romer L. J., as holding that a share is not a share in the company's assets or an aliquot share in the company's capital, but the whole passage taken together clearly indicates that what Romer L. J. meant was just the reverse. The same interpretation was placed on these remarks of Bomer L. J. by Palmer in his book on Company Law where, on the basis of these remarks, the nature of a share was defined in these words :
>
> "A share is a right to receive a proportion of the profits of the company A its assets on a winding up A all other benefits of membership, combined with an obligation to contribute to its liabilities, all measured by a certain sum of money, which is the nominal value of the share, and, all subject to A controlled by the regulations of the company."

Thus it cannot be said that it is free from all doubt that a share does not connote any right or interest whatever in the company's assets. Even the right to receive a proportion of the profits of the company and its assets on a winding up may, in a sense, be held to be covered by the words, "any right or interest" in the assets of the company.

46. In *Macaura v. Northern Assurance Co. Ltd.*[14], at page 626, it was held that no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest in it. He is entitled to a share in the profits while the company continues to carry on the business and a share in the distribution of the surplus assets when the company is wound up. Here again, the use of the words 'right to' clearly indicates that what was being considered was the ownership right in the assets of the company and not any right whatsoever in those assets. The right to receive a share in the distribution of the surplus assets when the company is wound up can, in our opinion be covered by the words, 'any right or interest' as used in the Evacuee Property Act. In any case, this is a question which, we feel, depends on an interpretation of the language of the Evacuee Property Act, as used, in the definition of evacuee property and has to be considered as a question of law. It cannot be said that because, under the Indian Companies Act, a share-holder has always been held to have no existing right of ownership in the assets of the company, it would necessarily lead to the conclusion that a share-holder has no right or interest of any kind, and in any capacity, in the assets of the company. It cannot, therefore, be said on this ground that there was a patent want of jurisdiction in the Custodian to treat the assets of the Company as evacuee property in proceedings against the share-holders.

47. The second contention, on the basis of which it is argued that there was patent lack of jurisdiction, is that, under the Evacuee Property Act, only a human being can be declared to be an evacuee or an intending evacuee and that an incorporated company cannot be held to be an evacuee at all. Evacuee has been defined under this Act as follows:

> "(d) 'Evacuee' means any person-
>
> (i) Who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leaves or has on or after 1-3-1947, left, any place in a State for any place outside the territories now forming part of India, or
>
> (ii) Who is resident in any place now forming part of Pakistan A who for that reason is unable to occupy, supervise or manage in person his property in any part of the territories to which this Act extends, or whose property in any part of the said territories has ceased to be occupied, supervised or managed by an unauthorised person, or
>
> (iii) Who has, after 14-8-1947, obtained, otherwise than by way of purchase or exchange; any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being In force in Pakistan;"

It was argued by the learned counsel for the applicant Company that only a human being can, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leave any place in a State for any place outside the territories now forming part of India. A company cannot leave a place because the company has its domicile and residence at the place where its registered office is located. This contention also raises and point which, we feel, is open to considerable argument. It does not appear to us that the language used in the definition of an evacuee precludes a comprehensive meaning being given to the word 'person' used in it. An incorporated company has invariably been treated as a person or a legal entity having the right to hold and acquire a property and to enter into contracts. It may be possible to argue that sub-clause (i) of clause (d) of Section 2, Evacuee Property Act, can only apply to a natural person or a human being though even this is not quite free from doubt. The residence or domicile of an incorporated company can also change under certain circumstances. During wartime, there was considerable legislation for dealing with corporations controlled by enemies. It was held in a number of cases that the residence or domicile of a company during war time, for the purpose of determining whether the company was or was not controlled by enemies, was to be determined with reference to the place from which the control and direction of the affairs of the company were exercised. Reference may be made for this principle to the cases of *Daimler Co. Ltd., v. Continental Tyre and Rubber Co.*[15], and Re Badische Co Ltd., (1921) 2 Ch 331. In this connection, the observations contained in Wether, The Effect of War on Contracts (Edn. 6 by Lauterpacht, 1944), p. 221, and McNair, Legal Effects of War, Edn. 3, 148), p. 63, may also be usefully referred to.

48. It has been contended on behalf of the respondents that inasmuch as there was a dispute between India and Pakistan relating to evacuee property the Courts would be justified in looking behind the corporate veil and discovering for themselves where the actual control of the company

rests in determining the commercial domicile of a private limited company. In the present case, the respondents have come with the allegation that the majority of the directors of the applicant Company have now become residents of Pakistan and, therefore, the effective control of the affairs of the company is being exercised from Pakistan. Whether this is actually so or not, it is not possible to determine without a full enquiry into the facts which will not be justified in these summary proceedings for issue of writs under Article 226 of the Constitution. In any case, we cannot see our way to agree with the contention of the learned counsel for the applicant Company that there can be no change of residence or domicile by a company or that a company cannot leave any place in a State for any place outside the territories forming part of India. Sub-clauses (ii) and (iii) of clause (d) of Section 2, Evacuee Property Act, further use language which can clearly cover the case of an incorporated company. A company registered in Pakistan can be an evacuee if it is unable to occupy, supervise or manage its property in any part of the territories to which this Act extends, or if its property in any part of the said territories has ceased to be occupied, supervised or managed by an authorised person. Similarly, an incorporated company could, on 14-8-1947, obtain any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under the law for the time being in force in Pakistan otherwise than by way of purchase or exchange. It is thus clear that the definition of the word "evacuee" can include the case of an incorporated company. The definition of evacuee property is also, in this connection, of considerable importance. After defining what evacuee property means, the Act goes on to exclude certain items of property from this definition. One item of property excluded is

> "any property belonging to a Joint Stock Company, the registered office of which was situated before 15-8-1947, in any place now forming part of Pakistan and continues to be so situated after the said date."

This exclusion of property belonging to a joint stock company from the definition of evacuee property, under certain specified conditions, itself indicates that, in the absence of those conditions, the property of a joint stock company could become evacuee property; for example, if a joint stock company had its registered office in any place forming part of Pakistan before 15-8-1947, but its registered office did not thereafter continue to be so situated after that date, the property belonging to the joint stock company could become evacuee property provided other requirements given in the definition of evacuee property happened to be satisfied. This provision in the definition of the evacuee property is, therefore, a clear indication of the fact that the Act is applicable to joint stock companies and even a joint stock company can be declared to be an evacuee and its property treated as evacuee property under this Act. This point raised on behalf of the applicant company also does not, therefore, disclose any patent want of jurisdiction. Again, it can, at best, be said that the contention raised by the applicant company raises a question of latent want of jurisdiction.

49. In these circumstances, it is our opinion that the applicant company has disentitled itself to a writ of mandamus or prohibition by its conduct in making misleading statements and by suppression and misrepresentation of facts in the application and the affidavit filed in support of it. The attempt to conceal the fact that the company had its office in Pakistan was obviously made in order to meet a possible argument that the company had obtained a right to or interest in or benefit from property which was being treated as evacuee or abandoned property in Pakistan. Clearly the suppression in this respect was relevant to the question of determination of the

Custodian to take action against the property of the Company. Similarly, misleading statements were made and inaccurate information was given about the residence of the share-holders and the directors of the Company. We have already pointed out that the majority of the directors of the company have shown their permanent residence as Dacca in East Pakistan. These suppressions and misleading statements were obviously included in the application and the affidavits for the purpose of avoiding any contention by the respondents that the share-holders themselves were evacuees and that the control and management of the company was being exercised from Pakistan. The misleading statement about the numerical majority of Hindu share-holders and the suppression of the fact that actually there were no Hindu share-holders at all on 3-1-1950, when the notice against the Company under the Evacuee Property Act was issued, was also calculated to give an impression to the Court that all the share-holders of the Company were not, on that date, evacuees and was clearly meant for the purpose of contending that there were, at least, some share holders who were not evacuees and, therefore, the Company could not be declared to be an evacuee. The use of the words 'numerical majority' would further indicate that the intention was to give an impression that the control of the Company was also being exercised from India where Hindu share holders were residing and that the control and management could not, therefore, be exercised from Pakistan.

50. Finally, the Company had made allegations of personal interests and mala fides against the respondents including the Deputy Custodian (Judicial). It has invariably been held that if the Presiding Officer of a judicial tribunal has a personal interest in any dispute or clearly acts mala fide, he will have no jurisdiction to deal with the proceedings before him and a, writ of prohibition would issue to remove those proceedings from his cognizance. In the present case, the Deputy Custodian (Judicial) is seized of the proceedings against the applicant Company and it is clear that allegations of personal interests and mala fides on the part of the Deputy Custodian (Judicial) were made specifically with the object of making them one of the grounds for obtaining a writ of prohibition from this Court. We have held at an earlier stage that these allegations of personal interests and mala fides were made without any foundation and were entirely baseless. In fact, the applicant Company was unable to produce any material at all from which a suspicion of personal interest or mala fide on the part of the Deputy Custodian (Judicial) against the applicant Company could even be remotely inferred. This is, therefore, another instance where an attempt has been made by the applicant Company to obtain a writ of prohibition by baseless allegations against the judicial tribunal of the Deputy Custodian.

51. In our opinion, the salutary principle laid down in the cases quoted above should appropriately be applied by Courts in our country when parties seek the aid of the extraordinary power granted to the Court under Article 226 of the Constitution. A person obtaining an ex parte order or a rule nisi by means of a petition for exercise of the extraordinary powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression, misrepresentation or misstatement of facts. Applying this principle to the pre sent case, we feel that, in this case, the petitioner Company has disentitled itself to ask for a writ of prohibition by material suppressions, mis representations and misleading statements which have been found by us above. Two different proceedings were pending. One set of proceedings were initiated against the petitioner Company itself by the

notice, dated 3-1-1950. Suppressions and mis-statements about the residence of the shareholders and the directors, the places of business of the petitioner Company and about the numerical majority of the Hindu shareholders were clearly directed to give an impression to the Court that the petitioner Company could not possibly be held to be an evacuee. The allegations of personal interest and mala fides against the Deputy Custodian (Judicial) were made without any foundation whatsoever for the purpose of inducing the Court to issue a writ of prohibition on the argument that a Judicial Officer acting mala fide or having a personal interest in the dispute has no jurisdiction to deal with the proceedings before him. The second set of proceedings were against the shareholders and in these proceedings also, the Custodian contended that steps could be taken against the property of the Company because some of the shareholders had become evacuees. Misrepresentations about the residence of the share holders were also made for the purpose of meeting this contention. Obviously this is a clear case where, on the principles enunciated by us, the petitioner Company, which actually obtained a rule nisi from a Bench of this Court, should be sent out of Court without hearing on merits. The only grounds for challenging the jurisdiction of the Custodian taken on behalf of the petitioner Company, which may be said to raise the question of patent lack of jurisdiction, are those relating to the contention that the Evacuee Property Act if itself ultra vires of the legislature as it contravenes the provisions of Articles 14 and 19 (f) of the Constitution. These points shall be dealt with by us later.

52. Of the powers of this Court to issue writs, directions or orders under Article 226 of the Constitution notwithstanding anything contained in Sections 28 and 46, Administration of Evacuee Property Act. there cannot be any doubt. No act of the legislature can override, cancel or affect any power given to this Court or any other authority by the Constitution itself. The Constitution is, to use the language of Marshall C. J., the paramount law of the land' and any provision in any enactment or law which is inconsistent with it is void and must be disregarded.'

53. Learned counsel for the respondents has, therefore, very properly not challenged the right of this Court to act under Article 226 of the Constitution, notwithstanding the fact that Section 28 and Clauses (a), (b), (c) and (d) of Section 46, Evacuee Property Act, are worded in very general terms and are couched in language which bars the jurisdiction of civil and revenue Courts. We think it unnecessary to labour this point any further. Suffice it to say that, in our opinion, those sections cannot take away rights under Article 226 of the Constitution.

54. The question whether any case has been made out for the grant of any of the writs, orders or directions claimed is, however, a different one and has to be considered with reference to the facts of this particular case. The terms of Article 226 of the Constitution are very wide. They enable this Court to issue, in suitable cases writs, directions or orders including the writs of habeas corpus, certiorari, prohibition, mandamus and quo warranto for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. It strikes us that the fact that the Constituent Assembly has vested this Court with such vast powers imposes a heavy responsibility upon it to use them with circumspection. We must not be understood to suggest that in a suitable case this Court will be hesitant in issuing the appropriate writ, order, or direction nor must we be understood to lay down that there is any universal or general principle which governs the grant or refusal of the writs, orders or directions referred to above.

55. As is well known, these writs have had different histories and are intended to secure the

maintenance and enforcement of different rights. Necessarily the principles applicable to them differ in some cases, with these preliminary observations. We shall briefly notice the nature of the various writs which have been claimed by the applicant in the particular case before us.

56. The writ of mandamus originated in Britain as a high prerogative writ of a most extensive remedial nature and was in form a command issuing in the King's name from the King's Bench directed to any person, corporation or Court of inferior jurisdiction, requiring him or them to do some particular thing therein specified in the writ which they were under a legal obligation to do by virtue of their office. Shortly put, it is a writ which compels a person to perform a duty the law has imposed upon him and it can be used to order things to be done as well as not to be done. The issue of this writ is entirely discretionary with the Court, and this being so, it is, in our opinion, open to a Court to refuse it in cases where, for example, a Court of equity would, in the exercise of a sound discretion, refuse to lend its protection. Essentially the purpose for which a mandamus exists is to ensure that justice is done in all cases where there is a specific legal right, and no specific legal remedy exists. For the endorsement of such rights, it is issued as a rule only in those cases where there is no legal remedy of an equally convenient, beneficial and effectual nature.

57. We were referred in the course of arguments on both sides to a number of authorities on the principles applicable to the issue of a writ of mandamus. We shall content ourselves on this part of the case by referring to the observation of Lord Goddard in the recent case of *R. v. Dunsheath; Ex parte Meredith*[16], His Lordship said that :

> "It is important to remember that mandamus is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty and specially affects the rights of an individual, provided there is no more appropriate remedy."

To the same effect is our decision in *Indian Sugar Mills Association v. Secretary to Govt. U. P*[17]*.,* where, when dealing with the issue of a writ of mandamus, we said :

> "The powers under this Article (that is Article 226) should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him."

58. Certiorari originated in Britain as an original writ issuing out of Chancery or the King's Bench, to Judges or officers of inferior Courts, commanding them to return the records of a cause pending before them. Initially it was a writ for the rectification of errors on the criminal side. It later became a remedial measure in civil cases at common law. At the present moment what certiorari or what the Court by the writ of certiorari does is to require the record of proceedings in some cause or matter pending before an inferior Court, judicial tribunal or quasi-judicial tribunal to be brought before it so that it may deal with it and ensure speedy justice. It has to be observed that the writ of certiorari can only be used with respect to judicial as distinguishable from administrative acts.

59. So far as the writs of prohibition and certiorari are concerned, it has been observed by Atkin L. J., in the *King v. Electricity Commissioner*[18] that:

> "Both writs are of great antiquity forming part of the process by which the King's Courts restrained Courts of inferior jurisdiction from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; certiorari requires the record or the order of the Court to be sent up to King's Bench Division, to have its legality inquired into, and, if necessary to have the order quashed. It is to be noted that both writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a Court of Justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, Courts of Justice, Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs. Thus certiorari lies to justices of the peace of a county in respect of a statutory duty to fix a rate for the repair of a county bridge: *Rex v. Inhabitants in Glamorganshire*[19]*,* "

Many cases illustrative of these principles were cited before us, and we do not think it necessary to review them at length as we are satisfied that in a proper case in England where there is a patent lack of jurisdiction on the part of the inferior Court, judicial tribunal or quasi-judicial tribunal or authority dealing with a matter, a writ of prohibition will lie as a matter of right, though not a matter of course (see The *King v. Electricity Commissioners*[20]; *Farquharson v. Morgan*[21]*,*.

60. The general rule that where there is a right of appeal, prohibition is not available, subject to the exception that it does not apply to a case in which orders are without jurisdiction or without authority, was considered in the case of the *King v. North*[22]*,* Attention may be drawn to the observations of Scrutton L.J. in that case where both the facts and the law applicable to it are discussed.

61. Lord Scrutton L. J. observes :

> "A faculty having been granted to the vicar and churchwardens of the parish of Eye to do certain work in the church in connection with a war memorial, an existing fresco was distempered over, the obliteration not being provided for by the faculty. The daughter of the gentleman who had painted the fresco, not unnaturally, felt aggrieved. Whether the vicar was responsible for that improper proceeding is not a matter which we have here to decide. This is not an appeal from the Chancellor's decision. It is an application to the secular Court to prohibit further proceedings on an order of the Consistory Court on the ground that that order was made without jurisdiction, and that application has nothing to do with the merits of the case.

There seems to be no doubt that if a special citation had been issued to the vicar by name reciting a petition that a faculty should issue ordering him to restore at his own expense the fresco which had been obliterated, the matter would have been entirely within the jurisdiction of the

Ecclesiastical Court, and if the evidence justified it, the order asked for might properly have been made whether he appeared or not. There seems to be ample precedents for such proceeding."

62. We feel it, however, essential to point out that a circumstance which differentiates the Indian legal system from the British legal system and to which Courts must attach importance is the existence of special provisions for revisional jurisdiction in the procedural Codes of this country. We think that the principle governing writs of certiorari and prohibition should be that Courts should refuse, normally speaking, to entertain applications for writs, directions or orders for certiorari or prohibition where the ordinary remedy of approaching this Court by an application in revision is available to the party concerned.This power of prohibition or certiorari should in no case be used to interfere with interlocutory orders in cases in which it is possible for an applicant to raise the question of its correctness or illegality at the time when the final order comes to be passed by way of revision. Though the historical background of these various orders in the nature of writs have to be borne in mind in considering whether a writ should or should not issue, there can be no doubt that Article 226 of the Constitution makes the issue of directions order or writs discretionary and it cannot be urged that any party has a right to any form of order as a matter of course; the discretion is a judicial discretion to be exercised according to judicial principles.

63. We now come to the last question in the case, namely, the argument that the Evacuee Property Act is invalid as being inconsistent with the Constitution.

64. Learned counsel for the applicant has urged that the fact that Assam, West Bengal and certain other parts of the country are excluded from the operation of the Evacuee Property Act makes it discriminatory, and therefore, opposed to the letter and spirit of Article 14 of the Constitution. From an examination of the Act as a whole it appears that it makes provisions for the Custodian to manage the property under the Act. The words 'evacuee,' 'intending evacuee' and 'evacuee property' have been defined in Section 2 (d), (e) and (f) of the Act respectively.

65. Now, Mr. Chaudhri's contention in regard to this Act is that it is based on discrimination in the sense that it reserves evacuees for separate treatment not applicable to all classes. In the first place he says that the evacuee cannot be looked upon as a class; he can be only looked upon as an individual. In the second place, he urges that there is discrimination as the Act applies only to certain parts and does not apply to other parts of the country. It is said that the powers given under the various sections of the Evacuee Property Act are vast in nature. They enable the Custodians to declare a person as an intending evacuee. They set up and establish new Courts.

66. It is obvious that in order that a law may be invalid, the opposition between the Constitution and the law must be of the clearest nature possible. It is a well established principle that it is incumbent on the Court to adopt such a construction of a statute as will, without doing violence to the language of the statute or the words used, reconcile it with the Constitution. We may refer to chap. 15 of Cooley on Constitutional Law at p. 198 where that learned author quotes with approval the following observations made in the case of *Ogden v. Saunder*[23]*,*

> "It is but a decent respect due to the wisdom the integrity, and the patriotism of the legislative body by which any law is passed to presume in favour of its validity, until its violation of the Constitution is proved beyond all reasonable doubt."

Mr. Cooley further observes :

> "Legislatures have their authority measured by the Constitution ; they are chosen to do what it permits and nothing more, and they take solemn oath to obey and support it. When they disregard its provisions, they usurp authority, abuse their trust, and violate the promise they have confirmed by an oath. To pass an Act when they are in doubt whether it does not violate the Constitution, is to treat as of no force the most imperative obligation any person can assume. A business agent who would deal in that manner with his principal's business would be treated as untrustworthy; a witness in Court who would treat his oath thus lightly and affirms things concerning which he was in doubt would be held a criminal. Indeed, it is because the legislature has applied the judgment of its members to the question of its authority to pass the proposed law, and had only passed it after being satisfied of the authority, that the judiciary waive their own doubts, and give it their support."

67. The words of Mr. Cooley go to suggest that the presumption is strongly in favour of the constitutionality of the Act. The legislators must be assumed to know the elements of their authority and respect the Constitution which they are working. It is with this presumption that we approach a consideration of the point raised in this case.

68. Now the most important discrimination on which stress has been laid is that the Act applies to certain States and not to others and that that division cannot constitute a basis for a reasonable classification.

69. Article 14 of our Constitution lays down two things : It enacts that :

> "The State shall not deny to any person (1) equality before the law or (2) the equal protection of the laws within the territory of India,"

Obviously, these two phrases have different meanings to some extent. We consider it unnecessary to discuss at length the meaning of the expression 'equality before the law,' as no point in connection with it seriously arises in the case. It appears to have been taken from the Constitution of the Irish Free States. Professor Dicey described the rule of law as one of the characteristics of the British Constitution. Of this rule of law one of the main features is, according to that great writer, 'equality before the law.' Professor Dicey contrasts it with the idea of droit administratif, or administrative law, which exists in many continental countries and concluded that by the expression 'equality before the law' which is one of the features of the rule of law, is meant, the equal subjection of all classes to the ordinary law of the land administered by the ordinary law Courts; the 'rule of law' in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals: there can be with us nothing really corresponding to the "administrative law" (droit administratif or the "administrative tribunals', (tribunaux administratifs) of France" (See Ch. XII and Cf. Intoo pp lxvii, ante and Jennings, The Law and the Constitution, Edn. 2, 1948, App. 11). The notion which lies at the bottom of the 'administrative law' known to foreign countries is, that affairs or disputes in which the Govt. or its servants are concerned are beyond the sphere of civil Courts and must be dealt with by special and more or less official bodies. It is

said that this idea is utterly unknown to the law of England. and indeed is fundamentally inconsistent with our traditions and customs. It has been lastly suggested that what Professor Dicey was emphasising is that if a public officer commits a tort he will be liable for it in the ordinary civil Courts. Some jurists have pointed out that administrative Courts can be as ordinary as civil Courts and that there is no adequate justification for calling them extraordinary for they can be as independent of administrative influence and control as Courts in a system based upon the British model. Now it strikes us that this expression 'equality before the law' does not imply that the same laws should apply to all persons in the same State. It does not refuse to take note of differentiations in economic and social functions, nor of the need for special types of quasi-judicial tribunals due to the growing tendency towards the enlargement of State intervention in the economic and social life of the country.

70. The Act has laid down a special procedure and constituted special Courts for declaring any property as evacuee property and that that procedure is of a summary nature is not sufficient, in our opinion, to justify the conclusion that there has been any violence of the letter and spirit of Article 14. The Article does not even necessarily imply political equality in the sense that every citizen, be he an adult, lunatic or a minor, must be given the vote. What it asserts is that among equals that laws should be equal. What it emphasises is that they should be administered with equal fairness and that like should be treated like. What it, in other words, seeks to ensure is that the right to sue and be sued, to prosecute and be prosecuted for the same kind of action shall be the same for all citizen and that the distinction of race, religion, wealth, social status, or political influence shall not make any difference in those rights.

71. In this case argument has more directly centred round the question of the meaning to be attached to the words 'equal protection of laws.' It is well known that this clause which was inserted in the United States Constitution by the 14th amendment applies only to State Legislatures and was intended to assist the Negroes who had been freed from slavery. Actually its application to all classes is regarded as one of the most important fundamental freedoms secured by the American Constitution. It has been the subject-matter of interpretation in numerous cases by the Supreme Court, and the process of interpretation which has been a long drawn out one cannot be said to be yet complete as new cases frequently crop up under the Article. Now on a superficial view, the guarantee assured by this clause might seem to require absolute uniformity in the treatment of all persons but actually this is not so. According to the interpretation given to it by American Courts, a considerable degree of variation permitting classification which is not arbitrary, unfair or based on unwarranted discrimination is allowed. What we mean to say is that where a reasonable basis can exist for treating one class of people in a different manner from others, the Courts uphold the classification. For example, it has been held that persons with large incomes and inheriting sizable estates can be made to pay more in aggregate taxes at a rate which becomes progressively higher. Notwithstanding this clause, the U.S.A. Supreme Court held the laws prohibiting Japanese from acquiring land in California to be valid.

72. Now the important point about this clause is that it does not require that persons be treated alike. In fact, an analysis of the decisions of the Supreme and State Courts in the U.S.A. would disclose that this clause has not been held to prevent tarrif on uncut diamonds being lower than on polished diamonds; races being required to attend separate schools or ride in separate cars; differentiation in minimum wage rates for women from those of men and children; differentiation

in maximum hours for men employed in hazardous employment from those employed in non-hazardous ones; prohibition of aliens from the practice of medicine, law, or other professions; imposition of taxes upon retailers of certain products, like liquors, and not others; heavier taxation of chain stores than independent concerns; and taxation of the rich at higher rates than the poor.

73. We have given instances, by way of illustration of the basis of reasonable classification which have been permitted in the U.S.A. under this 'equal protection clause.'

74. The guarantee of equal protection is not to be understood, therefore, as requiring that every person in the land shall possess precisely the same rights and privileges as every other person. The classification must be based upon reasonable grounds; it cannot be a mere arbitrary selection. (See chap. XXIV, p. 283 of the Constitutional Law by Cooley, Edn. 4).

75. Undoubtedly, the State has no right to bestow favourable treatment towards some and establish an unjust discrimination against others but it occasionally happens that in the interest of general welfare it becomes necessary to endow a particular class with some special function or privilege or treat it, for special purpose, differently from others.

76. We hold that what the Article contemplates is that both in the matter of the laws applicable and the mode in which they are administered, all persons, in like circumstances and conditions should possess the same privileges and be subject to the same liabilities.

77. Now this being the position in regard to the equal protection clause, let us examine the grievance of the applicant. His grievance is that the Evacuee Property Act applies only to some parts and does not apply to certain other parts of the country. The emphasis is laid upon the words 'within the territory of India,' It is said that classification on a territorial basis is ruled out by the above words. We are unable to look upon these words as laying down that while classification is permissible in other spheres, the legislature must proceed upon the assumption that conditions in all parts of the country are identical and make no distinction based upon territorial considerations if reasonable grounds exist for doing so. There may be circumstances which may justify differentiation between different parts of the territory. We can imagine restrictions being imposed on movement of persons in a disturbed area which it would be unjust to apply to other parts of the country. Similarly, it is possible for us to imagine cases where divergent economic conditions such as famine necessitate divergent economic orders on the basis of territorial classification. Famine conditions in one part may require restrictions and controls that may be considered unnecessary in other parts. The Constitution itself contemplates the possibility of different laws being passed for different States by their separate legislatures. Thus there is a territorial basis of classification in the Constitution itself. According to the view of the Supreme Court in the case- *A. K. Gopalan v. State of Madras*[25], and *Chintamanrao v. State of Madhya Pradesh*[26], the basis in regard to the reasonableness or otherwise of a classification, is objective and not purely subjective, it is only in the clearest cases that Courts could be justified, if at all, in jumping to the conclusion that the equality clause is offended because of some classification which the State has made either for political, economic security or safety reasons.

78. India is a vast sub continent and conditions differ in various parts of the country and one uniform rule-may not suit all territories comprised within it. The equality clause does not contemplate an identical treatment but a similarity of treatment in the class of category accepted

by the legislature as suitable. We merely take the words 'within the territory of India' to mean that the equality clause applies to all India inclusive of the Union and the States. We do not think that Article 15 which is a supplement to Article 14 inasmuch as it rules out discrimination on the ground of religion, race, caste, sex, has a relevance to the discussion of this question. It is well known that in some cases in the U.S. A. the view has been taken that discrimination and reservations etc. for particular classes is not discrimination such as would run counter to the equality clause. It is perhaps because the legislature did not favour segregation or classification of this type for special purposes that Article 15 of the Constitution was added. Approaching the case from this point of view we are not prepared to say that the classification is, in this case, unjust. After all, the effects of large scale disturbances in both the Punjab were mostly felt in territories nearest to them and that may well have been a ground for exempting other parts of the country not equally affected or with divergent conditions from the operation of the Act. Special conditions may have existed in States bordering East Bengal which may have made it undesirable to enforce this Act in them.

79. The second criticism levelled against the Act is that evacuees cannot be treated as a class and that being an evacuee cannot be the basis for any reasonable classification. Now according to section 2 (d) which we have already quoted, an evacuee is a person who according to Clause (1) left any place in a State for any place outside the territories now forming part of India for any of the three reasons given below: (i) on account of the setting up of the Dominions of India and Pakistan or, (ii) on account of civil disturbances, or (iii) the fear of such disturbances.

80. We fail to see anything unreasonable in this definition. After all it is a historical fact that there were disturbances and that on account of these disturbances or fear of them people did leave this country on or after 1-3-1947 The class of persons who are covered by the term 'evacuee' including those who were residents, in any place now forming part of Pakistan who for that reason are unable to occupy, supervise or manage in person their property. Obviously, the persons, who had ceased to occupy or were unable to occupy, supervise or manage in person their property, have to be cared for. We see nothing wrong with this definition.

81. We now come to the third clause. According to this clause, the evacuee is a person who has, after 14-8-1947 obtained, otherwise than by way of purchase or exchange, any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan. Obviously purchase and exchange of property was not ruled out. The other methods made a person an evacuee because it was not considered fair that he should acquire interest in Pakistan in evacuee property and yet continue to be a citizen with all the rights of ownership in India. We do not think it is necessary to consider the explanation. In our opinion, there is nothing that can reasonably be urged against the point of view adopted by the legislature. We are really unable to read anything in the definition of "intending evacuee" of an unreasonable nature. It is said that the definition of the words 'evacuee property' would include not only the share in the property of the evacuee but also the shares of his joint owners, if any, and that provision read with Section 10, would place in the hands of the Custodian vast powers for the purpose of securing and managing evacuee property belonging not only to the evacuee but also to his co-owners. It is said that these provisions vitally affect the proprietary rights of persons now classed as evacuee and violate not only Article 14, but also Article 19 (f). The language used is not very happy and the meaning of it would appear to be that the portion of the property belonging to the non-evacuee would, if inseparable from the property of the

evacuee, be taken by the Custodian.

82. Undoubtedly, at first sight, a provision which amounts to this that on account of a co-sharer being declared an evacuee, the property of other coshares will also become evacuee property and subject to the control of the Custodian seems to be harsh and opposed to principles of natural justice, as we conceive them to be. The history of the Act and the circumstances in which it was enacted have, however, to be borne in mind in arriving at the conclusion whether it is ultra vires or not. This Court is not in possession of all the materials which led to the enactment of provisions which, at first sight, appear to be opposed to principles of natural justice. The legislature which passed the Act is not before us to support it and to explain the reasons which moved it to pass it; we can only speculate for the legislature must not be confounded with the Executive Govt. which is supporting the constitutionality of the Act. The presumption certainly is that legislatures act reasonably and full effect will be given to Acts passed by them unless they are so unreasonable, having regard to all the circumstances of the case, that no reasonable man could say that they could be reasonable. While the Courts have the ultimate responsibility of deciding whether the classification can be reasonable or not or whether the category of the classification can be reasonable or not, the Courts are bound to attach the greatest weight possible to the opinion of the legislature. On this part of the case we may quote the observations of Marshall C. J. in the famous case of *Fletcher v. Peck* [27]known as the Yazoo Land Fraud Case:

> "The question whether a law be void for its repugnancy to the Constitution is, at all times, a question of such delicacy which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The Court, when impelled by duty to render such a judgment, would be unworthy of its high station could it be unmindful of solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers and its acts to be considered void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other,"

83. We may also quote the observations of Holmes J. in Otis and *Gassman v. Parker*[27],

> "While the Courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the Judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view, as well as for possible peculiar conditions which this Court can know but imperfectly, if at all. Otherwise, a Constitution instead of embodying only relatively fundamental rules of right as generally understood by all English speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held sember ubique et ab omnibus."

84. This Court cannot be, in the very nature of things, a better judge than the legislature itself in a matter of this kind. Keeping this background in mind, we are driven to the conclusion that drastic as the provision might appear to be at first sight on account of our unawareness of the various reasons which may have actuated the legislature in coming to the conclusion that provisions of

this drastic nature were needed for the purpose of safeguarding not only evacuee property but the interest of displaced persons in this country and of the country itself that we would not be justified in declaring this part of the act as ultra vires, of the Constitution on this ground.

85. We now come to the question whether the Evacuee Property Act runs counter to Article 19 (f) of the Constitution. That Article, as is well known, enumerates the various liberties, freedoms of rights, whichever words we like to call them by, which are necessary, from the point of view of the moral and material perfection of man.

86. Mr. Dhawan's contention is that Article 19 (1) merely enumerates the various rights which the individual must possess in order to enable him to lead the 'good life' and give concrete meaning to the freedom of human personality as recognized by the Constitution, and defines its scope and prescribes its limits. Article 19 (f) recognizes that human personality can develop only if all citizens have an equal right to be property holders. It guarantees that all citizens shall be equally free to hold, acquire or dispose of any property. In this sense the words "a citizen shall have the right to "must be interpreted as equal to" a citizen shall not suffer any disability from exercising his free choice to acquire, hold or dispose of property."

87. Dealing with Article 19 one of us said in Moti Lal's case:

> "Viewed in this light, these rights are in the nature of an absolute guarantee to the effect that there shall be no interference, by way of regulation, restriction or control, of any profession, trade or business They are, it strikes me, rather intended to assure citizens that subject to such restriction, as the State may, at any time deem to be in the public interest by legislation, all persons shall have an equal right to carry on any profession, trade or business." (See *Moti Lal v. Uttar Pradesh,*[28]*.)*

88. Mr. Dhawan has argued that the idea underlying fundamental rights is that man has certain inalienable rights by virtue of his being a man and that it is the function of the State to give recognition to those rights and provide that all men shall be free to possess them. The Article does not rule out reasonable restrictions in the general interest, to control those rights In the U.S. A. the Courts had to invent the doctrine of police powers to enable the State to control them.

89. Now under clause (f) it has been held by a Full Bench of this Court in *Moti Lal v. State of Uttar Pradesh*, referred to above, that reasonable restrictions can, in suitable cases, amount to prohibitions or deprivations, and it is unnecessary to repeat the arguments which were employed in that case. Undoubtedly, the provisions of the E. P. Act are of a very drastic nature. They enable the Custodian to hold and manage the property of the evacuee and, as we have said, also of his co-sharers. But this control or regulation cannot, under all the circumstances which existed in India by reason of the fact that this country which was at one time one had been partitioned and that that partition had given rise to a number of problems between the two countries, be said to be opposed to public interest. It was in fact the view of the legislature that it was in the public interest that these restrictions should be put and we are not prepared to go to the extent of saying that the legislature was wrong in coming to that conclusion. In fact, we think that upon a fair consideration of all the factors involved, the enactment can be justified as satisfying the requirements of Article 19 (5). For this reason we think that there is no force in the argument that the Act is void under Article 19 (f) of the Constitution, no can, in our opinion any argument be at

all advanced under Article 31 of the Constitution. It is thus clear that, in our view, the Evacuee Property Act is a valid law and we are supported in this conclusion by a recent judgment of the Bombay High Court with which we agree.

90. We come now to the question of the relief which will be given to the applicant in this case. We have stated that we do not think that we would be justified in issuing a writ of mandamus as prayed for in respect of reliefs (a) the appointment of the Manager-cum-Accountant, (b) furnishing of security and (c) divergent orders passed from time to time by the Custodian of the Property. We are refusing mandamus be cause, in our opinion, we ought not to exercise our discretion in favour of a party which has not been frank in its statement of the facts.

91. As regards prohibition, we should not be understood to have held that a Custodian is entitled to take possession of the property on the ground that some or all of the share-holders of the Company are evacuees or that for the purposes of the Evacuee Property Act a share holder in a Company must be deemed to have an interest in the property of the Company as defined by that Act. All that we hold is that in view of the language of the Evacuee Property Act it cannot be said that there was a patent lack of jurisdiction in the Custodian. We have already held that under Article 226 of the Constitution it is not possible to urge that any party has a right to a writ of prohibition as a matter of course and we are not entitled to disbar him from his remedy on the ground that he has deliberately tried to mislead the Court. In the circumstances we are satisfied that the application in regard to prohibition also must fail.

92. As regards the application by the Amin Agency Limited (writ Application No. 288 of 1950) we have pointed out that under the Evacuee Property Act it is possible under certain circumstances to declare an incorporated Company an evacuee. Whether such circumstances exist which would entitle the Custodian to take charge of the property of the Amin Agency Limited is a matter for decision by the Deputy Custodian Judicial. It is not necessary at this stage for us to go into the matter when the applicant can have his rights determined by another Tribunal. Lack of jurisdiction, if any, cannot be said to be patent, but it may be a latent defect on the proof of facts and circumstances into which it is not possible for us to go.

93. We, therefore, dismiss both the applications, but in the circumstances of the case we make no order as to costs.

94. By the Court.- We certify that the case involves a substantial question of law as to the interpretation of the Constitution.

Applications dismissed.

Cases Referred.

1(1917) 1 K. b. 486
2(1850) 2 Mac, and G. 231, app. 238
3(1894) 1 Q. B. 552
4(1897) A. C. 22
5(51 Bom 372)
611 Rang. 162
7AIR 1931 Bom 178
8(1921) 2 A. C. 465

9AIR 1937 PC 279
10(1895) 1 Ch. 674 at p. 683
11(1908) 2 K. B. 89 at p. 95
12AIR 1951 SC 41
13(1901) 1 Ch. 279 at p. 288
14(1925) A. C. 619
15(1916) 2 A. C. 307
16(1950) 2 all e. r. 741
17AIR 1951 All 1
18(1924 1 K.B. 171) at p. 204
19(1700-1 Ld. Raym. 580)
20(1924) 1 K. B. 171
21(1894) 1 Q. B. 552
22(1927) 1 K. B. 491
2312 Wheat 213 at p. 270
24AIR 1950 SC 27
25AIR 1951 SC 118 (1951 April p. 118)
266 Cranch, 87
27(1903) 47 Law Ed. p. 323:
28AIR 1951 All 257