**ANDHRA PRADESH HIGH COURT**

Mehrunnissa Begum

Vs.

Govt. of Andhra Pradesh

Writ Appeal No. 486 of 1969 and Writ Petns. Nos. 797 of 1966, 2635, 4876 of 1968, 1127, 1207, 1231, 1664, 2249, 2567, 2692, 3129, 3397, 3398 and 3434 of 1969, 337 and 2910 of 1970

(Narasimham and Parthasarathi, JJ.)

13.11.1970

**JUDGMENT**

**Parthasarathi, J.**

1. Because of a common ground urged by all the parties for impeaching the provisions of the Madras Land Encroachment Act, 1905, all the writ petitions and Writ Appeal have been set down together for hearing. The statute, and more particularly Sections 6 and 7 are called in question as being violative of concept of equality underlying Article 14 of the Constitution.

2. It is not necessary to set out the facts that have given rise to the several writ petitions because the argument has been confined to the preliminary question of the constitutional validity of the Act.

3. Stated in bare outline, the contention is that the Madras Land Encroachment Act, (the provisions of which are made applicable to the Telangana region too) provides a remedy for eviction of persons in unauthorised occupation of land which is property of Government, within the meaning of the Act, and that this remedy is more drastic and prejudicial to the party concerned than the common law process in a court of law and that the choice of the remedies is left to the arbitrary and unguided discretion of the Collector or Tahsildar. The provisions of the Act leave it to the sweet will or pleasure of the officers concerned to use or not to use the harsh and drastic process under the impugned Act by picking out some persons or properties according to their whims or caprices. It is urged that discrimination inevitably arises inasmuch as there are two available procedures, one more drastic or prejudicial to the party concerned than the other and there is no guiding principles enacted by the law which enables discriminatory selection among persons similarly situated: the choice of remedy is dependent solely on the arbitrary will of the authority.

4. The counsel appearing for the petitioners or appellants placed strong reliance on the decision of the Supreme Court in *N. I. Caterers (P) Ltd. v. State of Punjab*[1], where the

[1] AIR 1967 SC 1581

question in controversy was in regard to the validity of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. The decision of the majority of the bench upheld the contention that Section 5 of the Punjab Act referred to above was unconsitutional. By applying the harsher and more drastic provisions of the Act in preference to the common law remedy of a suit, the Collector could evict a person found to be in unauthorized occupation of public premises.

5. Shelat, J. who delivered the opinion of the majority of the Court. said:

> "The procedure under Section 5 is obviously more drastic and prejudicial than the one under the Civil Procedure Code where the litigant can get the benefit of a trial by an ordinary Court dealing with the ordinary law of the land with the right of appeal, revision, etc., as against the person who is proceeded against under Section 5 of the Act as his case would be disposed of by an executive officer of the Government, whose decision rests on his mere satisfaction, subject no doubt to any appeal but before another executive officer, viz., the Commissioner."

It was held that Section 5 of that Act confers an additional remedy and provided two alternative remedies to the Government. The majority of the Bench observed:

> "In leaving it to the discretion of the Collector to resort to one of them and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic procedure under Section 5 that section lent itself open to the charge of discrimination and as being violative of Article 14."

Accordingly Section 5 was declared to be void.

6. The pronouncement in the Supreme Court in the above case ( AIR 1967 Supreme Court 1581) has been strongly relied upon by Shri P. Babul Reddy and Shri P. A. Chowdhary. The Principal Government Pleader, on the other hand, submitted that the several provisions of the Punjab Act when juxtaposed with the provisions of the impugned Act, reveal striking features or dissimilarity and that there is a fundamental divergence in as much as the Punjab Act invests the executive decisions made under the special enactment with a finality making them immune from review by a civil Court, whereas the impugned Act expressly provides resort to a civil Court by any party aggrieved by the action taken under the Special enactment. It is urged that the rationale of the decision of the Supreme Court is founded on the drastic effect of the Punjab Act which precludes a challenge of the merits of the executive action and decisions by resort to a civil Court. In contrast to this the impugned Act expressly allows a review of the Collector's action by a civil Court. The learned Government Pleader, Mr. Venkatarama Sastry, laid considerable emphasis on this disparity. He dilated on the distinction that the Punjab Act erects an impenetrable barrier to a scrutiny by the civil Court of the merits of the executive action or of the conflicting claims to the right of possession, whereas the position here is that the aggrieved party can have an adjudication on the merits of his right to remain in possession of the disputed property. He argued that the impugned Act is thus free from the infirmity from which the Punjab Act was not immune.

7. He also emphasized on the object of the impugned Act which is "to provide measures for checking unauthorized occupation of lands which are the property of Government." The legislative intendment clearly formulated in the preamble furnishes sufficient guidance for the exercise of the power conferred by the statute.

8. He analyses the several provisions of the impugned Act to reinforce his broad thesis that the two enactments though analogous to some extent are not comparable in content and do not have provisions equally drastic in their effect nor productive of the same degree of prejudice to the occupants of Government property. Finally, he rested his submission on two decisions, one of the Madras High Court which upheld the constitutionality of the very Act here in question and the other, a decision of the Patna High Court which related to a similar enactment. He has pointed out that the two decisions were rendered subsequent to the pronouncement of the Supreme Court which struck down the Punjab Act, his endeavor has been to impress on us that the distinction adopted by the two subsequent decisions of the Madras and Patna High Courts is equally valid in the present case the Madras decision affording a more persuasive precedent.

9. It is necessary to examine the provisions of the impugned Act as also the Punjab Act in order to appreciate the contentions of the learned counsel on both sides. The impugned Act, Madras Act III of 1905, was sequel to the decision of the Madras High Court in *Madathapu Ramaya v. Secy, of State*[2], Before the decision in that case was pronounced, the Government used to levy on unauthorized occupants of Government lands a levy which was described as penal or prohibitory assessment or charge and was resorting to the processes prescribed by the Revenue Recovery Act for realization of the prohibitory assessment as though it was an arrear of land revenue. In (1904) ILR 27 Mad 386, it was held that it was not competent for the Government to treat the penal or prohibitory assessment as land revenue recoverable under the Revenue Act. Land Revenue is payable by a person who has title to and has an interest in the land whereas the essence of the penal and prohibitory assessment was that the person charged with liability has no title to or interest in the land occupied by him. The Madras High Court therefore held the process under the Revenue Recovery Act inapplicable for the realization of the penal assessment or charge in respect of the unauthorized occupation.

10. It was to meet the situation arising out of the decision in (1904) ILR 27 Mad 386 (supra) that the impugned Act was enacted. The main object of the legislation was to enable the Government to levy an assessment in respect of Government land in unauthorized occupation. While designing a statutory machinery for the realization of the penal assessment, it was considered expedient to provide also for the eviction of persons unauthorisedly occupying the land belonging to Government.

11. Levy of penal assessment and the recovery thereof were conceived of as the primary measures for the checking of unauthorized occupation of lands. The eviction of unauthorized occupants was also provided for presumably as an auxiliary measure. The history of the legislation clearly bears out that the enactment was primarily intended to clothe the executive authorities with powers to realize+++++ the penal assessment as if the assessments or penalty were arrears of land revenue.

[2](1904) ILR 27 Mad 386

12. Section 2 declares property of Government to include all public roads, streets, bed of the sea

and all harbours, rivers, streams, tanks, canals etc., and all lands, wherever situated, subject to the exceptions enumerated in clauses (a) to (e) of the section. These clauses relate to the property held by zamindars or inamdars etc., or of any person claiming through or holding under them and also of any other registered holder of land in proprietary rights, or of any person holding under ryotwari tenure. The main intention of the enactment as disclosed by Section 2 is to preserve inviolate and free from trespass public roads, streets, beds or rivers, channels etc. It is evident that the enumeration of the several types of the property catalogued in Section 2 is to ensure that the several species of property essential for the welfare and normal life of the community should not be allowed to be trespassed upon. It is necessary to stress on the fact that Government property as understood and defined by Section 2 is primarily such property as is material for the common weal of the community at large. The section relates only to lands, beds of rivers, channels, etc., and not to buildings. It is also noteworthy that the provisions of Section 2 clearly and in specific terms exclude all property held under any recognized system of tenure or under a grant from the Government otherwise than by license. It follows from this that the remedial measures designed by the Act including the levy and assessment or the eviction of unauthorized occupants can be invoked only in cases where there is no vestige of title associated with the occupation of property.

13. Section 3 of the Act enables the law of the assessment on Government property in the unauthorized occupation of a person and Section 4 makes non-justifiable the rate or amount of assessment imposed under Section 3. Under Section 5 a person liable to pay assessment under Section 3 may also be subjected to penalty levied at the discretion of the Collector or other officials authorized in that behalf. Then follow the sections relating to eviction. It is provided in Section 6 that any person unauthorisedly occupying any land for which he is liable to pay assessment under Section 3 may be summarily evicted by the Collector or the Tahsildar. The mode of eviction is specified in sub-section (2) of Section 6. A notice under Section 7 is a condition precedent for action resulting in eviction. Notice is to be served on the person reputed to be in unauthorized occupation calling upon him to show cause why he should not be proceeded against under Section 6. If such notice is not obeyed and the person in unauthorized occupation does not vacate the land the power to remove him may be exercised by the Collector or the Tahsildar. If there is resistance by the person in occupation, an obligation is imposed on the Collector to hold an enquiry into the facts of the case. The resistance or obstruction can be overcome only if the Collector after the enquiry is satisfied that there is no just cause for such obstruction. The Act provides for an appeal against the order of the Tahsildar or the Collector as the case may be. There is also a remedy by way of a revision to the State Government. The State Government may call for the records at any time either suo motu or on an application made by any party and examine the records relating to any decision or order passed by any subordinate authority to satisfy themselves as to the legality or propriety of the decision or order and the regularity of the proceeding. Section 14 enacts that nothing contained in the Act shall be held to prevent persons deeming themselves aggrieved by any proceedings under the Act from applying to a civil court for redress within the period of six months from the date at which the cause of action has arisen. In other words the decision of the dispute by the civil court is made expressly a part of the scheme of the Act.

14. The essential feature of the Punjab Premises and Land (Eviction and Eent Recovery) Act, 1959 is that it was enacted expressly for the purpose of eviction of unauthorized occupants from public premises whereas impugned Act was conceived of as a preventive or regulatory measure for checking unauthorized occupation of lands. The Punjab Act was designed solely for the

purpose of securing eviction of unauthorized occupants by summary process. The definition of "public premises" in Section 2 of the Punjab Act provides a contrast to the provisions of Section 2 of the impugned Act. Though the purview of the Punjab Act includes land whether used for agricultural or non-agricultural purposes, the essential purpose of the Act appears to be to provide machinery for eviction of unauthorized occupants of premises allotted or leased or granted to such persons.
In other words, the Act was mainly intended to secure speedy recovery of possession of Government buildings in the possession of third parties. Under Section 4, the Collector, if he is of opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted is to issue a notice in the manner to show cause why an order of eviction should not be made. After considering the cause, if any, shown by the person and on consideration of the evidence that might be produced the Collector may, if he is satisfied, that the public premises are in unauthorized occupation, make an order of eviction. He may direct that the public premises shall be vacated by the persons in unauthorized occupation. If the order is not complied within thirty days possession of the premises may be taken by use of force, if necessary. The Act provides for an appeal to the Commissioner. Section 10 of the Act is important because it attaches finality to orders made under the Act. It reads:

> "Save as otherwise expressly provided in this Act, every order made by the Collector or Commissioner under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding."

15. The decision of the majority of the Judges in AIR 1967 Supreme Court 1581 rests on two essential features of the Punjab Act. It was held that Section 5 confers an additional remedy over and above the remedy by way of suit and that the provision of two alternative remedies to the Government and leaving it to the unguided discretion of the Collector to resort to one or other and to pick and choose some of the persons in occupation of the properties for the application of the more drastic procedure lent itself open to the charge of discrimination. The rationale of the decision is therefore two-fold. The Act provided a more drastic alternative than the ordinary process in the court of law. The second feature of that Act stressed in that decision is that the resort to the more drastic alternative is left to the unguided discretion of the executive authority. The question for consideration is whether on the application of these two criteria, the impugned Act has lent itself to the charge of discrimination and is violative of Article 14 of the Constitution.

16. Before applying these tests, to the provisions of the impugned Act it is necessary to bear in mind that the legislature has power of making special laws to attain particular objectives and for that purpose it has the competence of selection or classification of persons and things upon which such laws are to operate. The classification will be legitimate and valid if it is based on a real and intelligible distinction bearing a just and reasonable relation to the object of the enactment. So long as the legislature adheres to the fundamental principles underlying the doctrine of equality, it has a power of wide range and flexibility. The argument before us has proceeded on the undisputed premise that there is a valid classification of occupiers of public or government property as a separate class distinct from occupants of other types of property. It is accepted by learned counsel for the petitioners and appellant that the classification of unlawful occupation of government property as a peculiar one justifying differential treatment has a rational nexus with

the objectives and the policy of the Act. The controversy thus resolved itself to the limited problem whether among the class of unlawful occupants of government property there is a discrimination violative of Article 14 of the Constitution.

17. The impugned Act itself does not contain any provision which by its own terms brings about a hostile discrimination derogatory to the constitutional guarantee of equality. The argument of counsel therefore stressed on the possible use of statutory remedy in a manner violative of the terms of Article 14. It is clear that to maintain a challenge on grounds of discrimination there is no need to establish that the legislature has done "with an evil eye or an unequal hand." The distinction must be borne in mind between the law and the administration of the law. Chagla. C. J., said: (See *Dhanraj Mills Ltd. v. B. K. Kocher*[3]*,)*.

> "If the law itself permits discrimination, even though the law may appear fair and undiscriminatory the court may interfere."

18. Mr. P. A. Chowdary pursued the line indicated in the above mentioned case by Chagla. C. J. He laid considerable emphasis on the decision of the United States Supreme Court in *Yick Wo v. Peter Hopkins*[4].

> "Though a law be fair on its face and impartial in its appearance, yet if it is administered by public authority with an evil eye and an unequal hand so as practically to make illegal discriminations between persons in similar circumstances, material to their rights the denial of equal justice is still within the prohibition of the Constitution.

19. Quite apart from the caution enjoined on courts in the application rules derived from American decisions, there are other reasons for holding that the dicta quoted above cannot be applied to the present case in their literal sense.

20. In the *State of West Bengal v. Anwar Ali Sarkar*[5]) Fazl Ali, J., adverted to the American decisions that applied the rule involved in executive action done "with an evil eye and an unequal hand" said his Lordship:

> "I suggest most respectfully that it will be extremely unsafe to lay down that unless there was evidence that discrimination was "purposeful or intentional" the equality clause would not be infringed. In my opinion, the true position is as follows: As a general rule, if the Act is fair and good, the public authority who has to administer it will be protected ..... The basic question however still remains whether the Act itself is fair and good, which must be decided mainly with reference to the specific provisions of the Act".

[3] AIR 1951 Bom132 [5]1952 SCR 284, 311 : ( AIR 1952 SC 75 (85)

[4](1886) 118 US 356 : 30 Law Ed 220

In the same case, at page 325 (of SCR) Mukheriea, J., said:

> "I agree with the Attorney-General that if the differences are not material there may not be any discrimination in the proper sense of the word and minor deviations from the general standard might not amount to denial of equal rights".

21. It is pertinent to notice that in (1886) 118 US 356 the discrimination was systematic and that it was directed against a class of persons, the Chinese. It was held in that case that there was habitual refusal of an administrative Board to issue laundry licences to Chinese persons and there was violation of the 14th amendment. In subsequent cases, on the other hand, the rule laid down was that where the unjustifiable denial of a licence was not habitual and was directed against an individual rather than a class, it does not offend the 14th amendment. (See the critical note at page 1020 of 26 Harvard Law Review). An ordinance conferring upon the board of health unlimited discretion to grant or withhold licences for the selling of milk has been held valid. (See *New York Ex. rel Libeberman v. Van De Carr*[6].). It was observed:

> "These cases leave in no doubt the proposition that the conferring of discretionary power upon administrative boards to grant or withhold permission to carry on a trade or business which is the proper subject of regulation within the police power of the State is not violative of rights secured by the 14th amendment. There is no presumption that the power will be arbitrarily exercised, and when it is shown to be thus exercised against the individual, under sanction of State authority this court has not hesitated to interfere for his protection, when the case has come before it in such manner as to authorize the interference of a Federal Court. (1886) 118 US 356 : 30 Law Ed 220".

The decision in (1886) 118 US 356 (358) : 30 law Ed 220 (relied on by Mr. Chowdary) was deemed to be an instance of correction by the court of an unreasonable use of power by the executive. The question about the vires of the Act has to be determined in the light of the precedents of courts in our country rather than by the application of the ratio of the American decisions.

22. It is useful at this stage to turn our attention to some decisions of the Supreme Court although they were not referred to in the argument. In *Kathi Raning Rawat v. State of Saurashtra*[7]. the question determined was whether the constitution of Special Courts and investing them with powers to try certain specific offences or cases as the Government may by general or special order direct, was discriminatory and invalid. An ordinance was passed providing for the establishment of such Courts and trial of some offences in cases that might be directed to be so tried. The ordinance was held to be valid by a majority of the Court. Some dicta of the learned Judges are apposite in the present context. Patanjali Sastri, C. J., observed that "any variation of procedure which operates materially to the disadvantage of the accused" cannot necessarily be said to be violative of Article 14. Fazl Ali, J. was of opinion that the recital of a definite objective in the earlier ordinance and the impugned ordinance furnished a tangible and rational basis of classification Mukherjea, J., alluded to the preamble as also to the surrounding circumstances as

[6](1905) 199 US 552 : 50 Law Ed 305

[7]1952 SCR 435 : ( AIR 1952 SC 123)

indicative of a definite legislative policy and objective. On a consideration of the legislative policy and objective, he held that merely because the legislation vested in the Government the authority to constitute Special Courts and the power to specify the classes of offences triable by such courts, the provisions cannot be said to be unconstitutional. The notification issued by the Government was also held to be not void as it did not proceed on any unreasonable or arbitrary basis. The learned Judge further observed:

> "Though it is a sound and reasonable proposition that when the nature of two offences is intrinsically the same and they are punishable in the same manner, a person accused of one should not be treated differently from a person accused of the other, yet in determining the reach and scope of a particular legislation it is not necessary for the legislature to provide abstract symmetry. A too rigid insistence on anything like scientific classification is neither practicable nor desirable".

Das, J., negatived the contention that the Act conferred uncontrolled and unguided power on the State Government. In repelling the contention, the learned Judge said at p. 474 (of SCR) thus:

> ".....this power is controlled by the necessity for making a proper classification which is to be guided by the preamble in the sense that the classification must have a rational relation to the object of the Act as recited in the preamble. It is, therefore, not an arbitrary power. The Legislature has left it to the State Government to classify offences or classes of offences or classes of cases for the purpose of the ordinance".

The learned Judge proceeded to add that

> "If at any time, however, the State Government classifies offences arbitrarily and not on any reasonable basis having a relation to the object of the Act, its action will be either an abuse of its power if it is purposeful, or in excess of its powers even if it is done in good faith, and in either case the resulting discrimination will encounter the challenge of the Constitution and the Court will strike down, not the law which is good, but the abuse or misuse or the unconstitutional administration of the law creating or resulting in unconstitutional discrimination."

23. In the earlier decision of the Supreme Court already referred to (Anwar Ali Sarkar's case), 1952 SCR 284 which also dealt with a similar legislation under the West Bengal Special Courts Act. Das, J., expressed the opinion that the power conferred on the State Government to direct offences or classes of offences or classes of cases to be tried by a special court contemplates by necessary implication a proper classification to be made by the Government charged with the use of that power.

24. In *Ram Krishna Dalmia v. Justice S. R. Tendolkar*[8], (Dalmia's case) it was laid down that a statute may leave it to the discretion of the Government to select and classify persons or things to whom its provisions should apply.

[8]1959 SCR 279 : ( AIR 1958 SC 538)

25. The decisions of the Supreme Court adverted to above lead to the result that although the legislation itself has not classified the special classes of cases to which a different pattern of trial is applied and left it to the discretion of the State Government, the power thus conferred does not come within the constitutional prohibition of Article 14. It is true that in the relevant Act or Ordinance dealt with in the two cases in 1952 SCR 284 ; (1952 SCR 435 : AIR 1952 Supreme Court 123) the legislation contemplated the classification of a group of offences or classes of cases and not the reference of a single case or a few cases to the Special Courts. We do not,

however, think the distinction to be material for, even a single case could, in conformity with law, be referred to the special tribunal. There is clear authority to support this view. The choice of the particular offences or classes of cases for trial by the Special Courts was upheld on the basis that the preamble or the objects of the legislation by necessary implication made it incumbent on the State Government to make a classification in tune with the policy and intendment of the legislation. This was held to be sufficient guidance for the exercise of the power. The provision seemingly conferring unchartered or arbitrary power, was tested with a reference to the legislative objectives and policy, surrounding circumstances, and other matters of common knowledge and repute. If these factors condition or control the exercise of the power the prohibition under Section 14 cannot be said to have been violated. This principle emerging from the above-mentioned pronouncements of the Supreme Court governs the case on hand because the power conferred on the Collector or Tahsildar by the impugned Act furnishes a close parallel to those cases.

26. We may now turn our attention to some cases which throw light on the question whether a more drastic provision is made by the impugned Act. In *Suraj Mall Mehta and Co. v. A. V. Visvanatha Sastri*[9], sub-section (4) of Section 5 of the Taxation on Income (Investigation Commission) Act, 1947 was struck down as a piece of discriminatory legislation because the procedure prescribed by the Act was substantially more prejudicial and more drastic to the assessee than the procedure under the Income-tax Act (XI of 1922). In reaching the conclusion that the special enactment was substantially more prejudicial or drastic the Supreme Court was influenced by the fact that,

> "the constitution of the commission by itself cannot be held to be a sufficient safeguard and a good substitute for the rights of appeal and second appeal and revision given by the Indian Income-tax Act".

It was held that the procedure prescribed by that Act deprives a person who was dealt with thereunder of the valuable rights of appeal, second appeal and revision to challenge question of fact decided by the Judge of the first instance. The special legislation impinged on the right of the aggrieved party to call in question by way of appeal, findings of fact made in the first instance. It also deprived him of the right to have a further appeal and resort to a proceedings in revision.

27. It is clear that when the validity of a legislation is attacked on the ground that the vice of discrimination is rooted in the relatively more drastic or harsh provisions contained in it in contrast to the general alternative, the test to be applied is whether the aggrieved party has the right to resort to appellate tribunals or to a civil court is substantially the same degree or form under the impugned legislation. One of the criteria and a material

[9]1955-1 SCR 448

one at that is, whether, the aggrieved party who is, under the less onerous procedure, allowed on appeal, the opportunity to impeach findings of fact of the authority deciding the matter in the first instance, has in substance the same remedies under the more drastic procedure. A material difference arises when a finding of fact made in the first instance is rendered unchallengeable by the impugned legislation.

28. This is clearly indicated in the dicta of the Supreme Court at Page 464 of 1955-1 SCR

Mahajan, C. J. observed:

> ".....there can thus be no doubt that the procedure prescribed by the impugned Act deprives a person ..... of these valuable rights of appeal, second appeal and revision to challenge questions of fact decided by the Judge of first instance. There is thus a material and substantial difference....."

29. We shall now examine the cases that considered the effect of the decision of the Supreme Court in AIR 1967 Supreme Court 1581. The Madras High Court considered the identical enactment now in question before us and upheld the validity of Section 6 of the Land Encroachment Act in *Abdul Rashid v. Assistant Engineer (Highways)*[10], The judgment of the Division Bench delivered by Veeraswami C. J. expressed the opinion that the Land Encroachment Act does not suffer from the vice "which Section 5 of the Punjab Act suffered from as held by AIR 1967 Supreme Court 1581." The learned Judges also expressed the opinion that it is not possible to say that under the Madras Act, the Collector has been given the choice without any guidance. Contrasting the provisions of the Madars Act with analogous provisions in the Punjab Act, the learned Judges pointed out that Section 14 of the Madras Land Encroachment Act preserves the remedy of resort to civil court for redress. The Punjab Act on the contrary invested the decisions of the Collector or on appeal, of the Commissioner with finality and enacted that they were not liable to be questioned in a court of law. Veeraswami C. J. also observed:

> "Though the Collector under the Madras Act may choose the remedy under its provisions viz., Summary eviction, it cannot be described as drastic because as we said, the Collector is not vested with power to adjudicate a dispute as to the ownership of the land, and that in any case he can remove resistance or obstruction to summary eviction only if he is satisfied that there is no just cause for it - a question which is open to review and correction in proceedings under Article 226 of the Constitution."

With respect, we are unable to subscribe to the proposition so enunciated. When the Collector on considering the objections of the obstructor is empowered to overrule the objections and take possession of the property, how can it be said that it is not tantamount to an adjudication of the dispute? It is true that there may be no formal pattern of adjudication on the question of ownership but the essence of the procedure is that the Collector overrules the resistance and evicts an occupant. Nor are we satisfied that the resort to a proceeding under Article 226 of the Constitution is a remedy particularly applicable to an action taken under the Madras Act. In our opinion, a proceeding under Article 226 was equally open to a person proceeded against under the Punjab Act. It is well known that the constitutional remedy under Article 226 cannot be taken away or

[10] AIR 1970 Mad 387

abridged by legislation in the nature of the Punjab Act. It is therefore not easy to grasp the relevancy of the observation implying that the resort to a proceeding under Article 226 of the Constitution is a distinguishing or a peculiar feature of the Madras Act. We, however, respectfully agree with the view expressed by the learned Chief Justice that the express provision enabling an aggrieved person to resort to a civil court is in sharp contrast to the provisions of

Section 10 of the Punjab Act which barred to the aggrieved person access to a civil court for redress. There is thus a clear distinction the effect of which is that the harsher and more drastic feature in the Punjab Act is not present in the Madras Land Encroachment Act.

30. The learned Judges also came to the conclusion that the power given to the Collector cannot be said to be unguided or uncontrolled. We are however not able to gather from the judgment the reasons that prompted them to reach that conclusion. We have come to the conclusion that on a consideration of the legislative history, the objects of the legislation and the other circumstances, there is sufficient guidance afforded by the Act to canalise or direct the discretion of the Collector or the Tahsildar in conformity with the intendment of the legislation.

31. In *M/s. Bhartiya Hotel v. Union of India*[11], where the Court was concerned with the validity of a similar legislation, the Court came to the conclusion that the provisions of the local Act were not so drastic as the provisions of the Punjab Act. In coming to that conclusion, the learned Judges relied upon the fact that whereas the Punjab Act provided for an appeal from the executive authority to another executive officer, the Bihar Act, on the contrary, provided for an appeal to the District Judge. This in the opinion of the learned judges, was a vital distinction, and, on this they sustained their view that the procedure under the special enactment was not so drastic as to constitute a material departure from the ordinary process of law in a Civil Court. The validity of the Bihar Act which contains provisions analogous to the provisions of the Punjab Act was upheld by the Patna High Court which on an examination of the provisions of the statute came to the conclusion that the special procedure was in no way more prejudicial to the party concerned than the procedure under the ordinary law. The ratio of the decision of the Supreme Court was held to be distinguishable because the main basis for the decision of the Supreme Court was that the special enactment prescribed a mode of procedure which was more drastic or prejudicial.

32. In *Meharunnissa Begum v. State of Andhra Pradesh*[12], which has given rise to Writ Appeal No. 486 of 1969 (Andh Pra) Chinnappa Reddy J. formulated a two-fold distinction. Our learned brother observed that under the impugned Act, the Collector and the Tahsildar are not left without guidance in the exercise of their discretion. He has also reached the conclusion that the modus operandi of the executive action and also the remedies open to the aggrieved party under the impugned Act constitute a material departure from the provisions of the Punjab Act. The provision of redress in a civil court is an essential feature of distinction and the right to resort to a court of law for redress assimilates the position of an aggrieved party under the impugned enactment to the position obtaining under the ordinary law of the country. In summing up the effect of the Punjab Act, Chinnappa Reddy. J., observed:

[11] AIR 1968 Pat 476

[12]1970-1 Andh LT 88 : W. P. No. 3303 of 1967

> "The effect of the Act, was to vest in executive officers of the Government certain ordinary powers exercised by the Civil Court and to set them up as parallel Tribunals as it were, giving finality to their orders and totally excluding the jurisdiction of Civil Courts. There was a complete substitution of Civil Court by executive officials of the Government. The position under the present Act, however, is altogether different".

We are in agreement with the position so stated, although certain other dicta of the learned Judge

may not be subscribed to. It was observed that the enquiry under the Land Encroachment Act is comparable with the summary enquiry by a criminal court under Section 145 of the Criminal Procedure Code. With respect, it must be stated that this analogy is misplaced. The tentative decision rendered by a criminal court under Section 145 of the Criminal Procedure Code is made by a judicial authority whereas under the impugned Act, the executive authority interested in regaining the possession of land is the authority that gives the decision resulting in the eviction.

33. The learned Judge considered it relevant to draw the presumption that "the executive officers acting under the Land Encroachment Act may also be expected to discharge their functions in a just and *bona fide* manner". With respect, we consider that the test adopted by the learned Judge on the strength of the presumed validity of the executive action does not indicate a correct approach. The question is not whether the executive officers may not be expected to discharge their functions in a just and *bona fide* manner. If this is the test, the conferment of unguided power cannot be struck down as invalid. The question is whether unguided power or discretion has been entrusted to them and there is an inherent possibility or inevitability of discrimination. It is in this context that the objectives of the legislation and the circumstances under which the discretion is to be exercised are relevant as laid down by the Supreme Court in the cases already adverted to by us.

34. Our learned brother referred to the principle discernible from the Preamble and the provisions of the Act to ascertain whether they furnish any guide to such exercise of the discretion by the Collector or the Tahsildar. The legislative history of entire enactment and the object of the Act have been considered by our learned brother and we are in agreement with the observations made by him in the last paragraph at page 95. We have also indicated earlier that the dominent object of the legislation is to curb or restrain unauthorized occupation of land by the imposition of a penal assessment. Process of summary eviction is conceived of by the statute as a means of checking unlawful occupation of Government land. We have also laid stress on the provisions of Section 2 which furnish an indubitable indication that the entire machinery under the Act is devised primarily for the purpose of keeping inviolate such species of Government lands as are indispensable for the welfare and normal life of the community. It is not superfluous to reiterate that the categories of Government property referred to in Section 2 comprised public roads, streets, bridges, the bed of the sea, canals and water-courses and rivers, lakes and tanks etc. It is obvious that all these types of property have to be kept free from trespass in public interest. The nature of the property catalogued in Section 2 gives the clue to the legislative intention that the power of eviction is to be exercised primarily keeping in view the urgent need for eviction as also the indispensable nature of the property for the common weal. The preamble and the object of the legislation leave none in doubt that the main purpose of the enactment is to enable the recovery of deterrent levies of penalties as if they are arrears of land revenue. Taking into consideration the object of the Act, its preamble and the provisions of Sections 2 and 3, we have no doubt that they collectively furnish sufficient guidelines to control or canalise the exercise of discretion in taking action under Section 6.

35. From what has been stated above, it is clear that the provisions of the impugned Act do not place the persons against whom the provisions are applied in a position materially different from other against whom the ordinary process of law is applied. It is no doubt true that a person can be summarily evicted under Section 6 and the deprivation of possession inflicts an immediate injury on the person in possession whereas a person against whom the ordinary process of law is

applied is left in undisturbed possession. Although to this extent there is a dissimilarity, this by itself is not sufficient to hold that the process under the impugned Act involves such an element of prejudice as was apparent in the case of the Punjab Act.
36. In testing the validity of the legislation on the ground that it provides a more drastic or harsher remedy than the ordinary process, it is not permissible to determine the question by the comparative assessment of a tentative result or situation. We have to take into account the entire or overall picture as it emerges from the impugned legislation. Judged from this angle, we are of opinion that a party against whom the provisions of the impugned Act are applied occupies very much the same position vis-a-vis the Government as he would have occupied if the ordinary process of law had been applied. We say this because Section 14 places no limitation on the role of the ordinary courts in scrutinizing the executive action taken under the impugned Act.

37. The clause in the Punjab Act precluding the Civil Court's review places the persons subject to the special process under an obvious disadvantage or handicap. Under Section 14 of the impugned Act, no limitation is placed on the Court's jurisdiction. It is true that notwithstanding the preclusive provisions in statutes civil courts may entertain suits to examine whether the special tribunals have acted in confirmity with the provisions of the relevant statute. In that sense, access to the Civil Court might have been possible even under the Punjab Act but then the Court's power of review in such cases is very limited.

38. The position under the impugned Act is that the entire merits of the controversy under the Act are capable of being adjudicated upon by the civil court uninhibited by limitations that arise by reason of an ouster of civil court's jurisdiction.

39. For the reasons set out above, we are of opinion that the provisions of the impugned Act do not lead to the result that a harsher and a more drastic remedy has been applied against parties subject to the provisions of the Act. We are also of opinion that the Act gives sufficient guidance in the exercise of the discretion by the Collector or Tahsildar under Sections 6 and 7.

40. The result is that the ground urged by the petitioners and the appellants for impeaching the validity of Sections 6 and 7 fails. The objection regarding the vires of the legislation is therefore overruled.

41. As the only question in this appeal relates to the vires of Sections 6 and 7 of the Act, the Writ Appeal fails and is dismissed with costs. Advocate's fee Rs. 100/-.

42. Learned counsel has represented to us that the Writ petitioners would seek redress in a civil court as contemplated under Section 14 of the Act and that time may be given for institution of a Civil Suit. Learned Government Pleader has no objection to this course being pursued by the writ petitioners and he also represented that a notice was given to the Government on 31-7-1969. The writ petitioners are therefore given time of four months for applying to the civil Court for redress and till the expiry of that time they will not be evicted under the provisions of the Land Encroachment Act (Act No. III of 1905). With this direction, the writ petition fails and is dismissed with costs. Advocate's fee Rs. 100/-. Writ Petitions Nos. 2010/70, 1127/69, 1231/69, 2692/69, 797 of 1966, 2567/69, 3128/69, 3434/69, 4876/68, 3378/69, 1664/69, 337/70, 1207/69, 2635/68.

43. Learned counsel for the petitioners in these Writ petitions have represented to us that the writ petitioners would seek redress in a civil court as contemplated under Section 14 of the Act and that time may be given for institution of a civil suit. Learned Government Pleader has no objection to this course being pursued by the writ petitioners. The writ petitioners are therefore given time of four months for applying to the civil court for redress and till the expiry of that time they will not be evicted under the provisions of the Land Encroachment Act (Act No. III of 1905). With this direction, the writ petitions are dismissed with costs. Advocate's fee Rs. 100/- in each case. W. P. M. P. No 2766 of 1968 in W. P. No 2916 of 1970 is dismissed.

44. In addition to the argument regarding the validity of the Act, the only ground on which the eviction proceedings under the Act are impugned is that the notice which is mandatory under Section 7 of the Act was not issued. This allegation is denied in the counter: at the hearing of the petition, the learned counsel for the petitioner has perused the relevant record produced by the learned Government Pleader where a notice prescribed under Section 7 of the Act was issued and served in the manner specified under the Act. The Writ petition therefore fails and is dismissed with costs. Advocate's fee Rs. 100/-.

Order accordingly.