PUNJAB and HARYANA HIGH COURT

Parkash Textile Mills Ltd

Vs

Mani Lal

(Falshaw, C.J. Kapur and B Narain, JJ.)

04.10.1954

JUDGMENT

Kapur, J.

1. The following question of law has been referred by a Division Bench for the opinion of a Full Bench in this Execution First Appeal:

> "Whether, when there is an application by a person claiming to be a displaced debtor either under Section 5 or under Section 11(2) of Act 70 of 1951 pending before a Tribunal constituted under the Act, the status of the said person can only be determined by the Tribunal or can the matter he placed in issue and decided by an ordinary civil Court in which proceedings are pending to which he is a party?"

2. The appeal out of which this reference arises is directed against the order of the learned Senior Sub-Judge, Amritsar, dated 22-10-1953 dismissing the objections of the decree-holder against sending the execution record to the Tribunal at Meerut and thus staying the execution proceedings of a mortgage decree. It is necessary to give the facts of this case at some length in order to understand the points which arise.

3. The decree-holders, the Parkash Textile Mills, Ltd., Amritsar, on 30-7-1946 sold certain properties in Amritsar, for a sum of Rs. 4,50,000/- out of which a part of the purchase price was paid and the balance remained due from the vendees Chuni Lal, Muimi Lal and Rajkumar sons of Salig Ram residents of Katra Sant Singh and proprietors of the firm Seth Spinning Mills, Grand Trunk Road, Amritsar, and they are respondents in this appeal. The balance remaining due from the vendees on 60-7-1946 was a sum of Rs. 1,80,000/-; and on 31-10-1949 the vendors brought a suit for the recovery of Rs. 1,80,000/- against the vendees Chuni Lal and others by sale of the property above mentioned describing themselves to be the mortgagees and the vendees to be the mortgagors.

In this plaint the defendants Chuni Lal and others were described as residents of Katra Sant Singh, Amritsar. On 2-1-1950 Chuni Lal and others, the defendants, made an application under Section 34, Indian Arbitration Act for stay of proceedings on the ground that there was an agreement to refer the matter to arbitration. On 27-6-1950 both the parties made an application referring the dispute to the arbitration of one Lala Chori Lal.

This application is signed by both parties and in the heading Chuni Lal, Muni Lal and Raj Kumar sons of Seth Salig Ram are described as residents of Amritsar, Katra Bhai Sant Singh and proprietors of the firm Seth Spinning Mills, Amritsar, and at the bottom of the application the description is as follows :

"Lala Chuni Lal son of Seth Salig Ram, Khatri, Amritsar, Grand Trunk Road. Sd/- Chum Lal Seth."

An award was made on the basis of which a decree \vas passed for a sum of Rs. 1,72,500/- and a mortgage decree followed in terms of the award and is dated 20-8-1950. In this decree the judgment-debtors are again described as proprietors of the Mills and residents of Amritsar.

4. In Execution First Appeal No. 122 of 1953 an affidavit was filed by Chuni Lal in order to obtain a stay. There he has described himself as Chuni Lal son of Salig Ram, caste Khatri, resident of G. T. Road, Amritsar. This was on 20-6-1953. In the order against which Crim. F. A. No. 122 of 1953 was filed the Court had described Chuni Lal, Muni Lal and Raj Kumar sons of Salig Ram as residents of G. T. Road, Amritsar, and that is the residence given in the memorandum of appeal dated 29-6-1953 by Mr. Bhagirath Das.

5. On 9-8-1951 execution was taken out for the recovery of Rs. 79,163/8/9. Several attempts seem to have been made to delay the execution by all kinds to applications made to the executing Court and appeals to this Court and ultimately the property was sold and was, with the permission of the Court, purchased by the decree-holders, for a sum which was less than the amount due from the judgment-debtors.

Before the sale, objections were taken under Section 47, Civil P. C., but they were dismissed. An appeal was brought against this order in this Court, but it was dismissed by me as having been withdrawn. This was E. F. A. No. 122 of 1953 in which counsel are, for Chuni Lal Mr. Bhagirath Das and for the decree-holder-purchaser Mr. Indar Dev Dua, the very counsel who argued before the Full Bench.

(6) While these proceedings were pending one. Hira Lal who, it is alleged, was formerly of Kucha Kagazian, Machhi Hatta, Lahore, and was residing at the time of the application in

Meerut, made on 28-7-1953 an application before the Tribunal at Meerut, under Section 10, Displaced Persons (Debts Adjustment) Act, 1951, hereinafter to be called the Adjustment Act', in which he alleged that a sum of Rs. 605/- was due from Chuni Lal Seth son of Seth Salig Ram and Muni Lal Seth, proprietors of the firm Muni Lal-Chuni Lal and there described as former residents of Lahore; on account of rent of a house in Machhi Hatta at the rate of Rs. 50/- per mensem out of which Rs. 70/- had been received.

It is significant that this is the only debt for which this application was made by Hira Lal at Meerut. He described this firm Muni Lal-Chuni Lal to be of Meerut.

7. Under the Adjustment Act, for a displaced person to make an application for adjustment under Section 5 of that Act, a period of one year's limitation is prescribed. By the filing of this application, Muni Lal Chuni Lal were afforded an opportunity, in spite of that one year's period having elapsed since the passing of the Act, of making an application under Section 5 and thus on 5-9-1953 Chuni Lal and Muni Lal made an application under Section 5 in which they mentioned twenty persons as their creditors and of them Hira Lal is the only one who is of Meerut the others arc of Amritsar, Calcutta, Bombay, Allahabad and Agra, the majority being of Amritsar and the biggest creditors are the appellants.

In the application under Section 5 they have shown the yearly income of Chuni Lal and Muni Lal. They have also shown a list of their property, but as far as I can see in the list of property only four items are given "a building known as Harness Factory, factory building, machinery plant and stocks with banks." Due to the present decree holders is shown a sum of Rs. 1,02,500/-. In this application the judgment-debtors Chuni Lal and Muni Lal have de scribed themselves as residents of Meerut It is not quite clear as to what has happened to the third judgment-debtor Raj Kumar. At least he is not a party to the applications made at Meerut and I must assume that he has no claim to being a displaced debtor. It is also significant to note that they have alleged in this petition that they were residing at Lahore, Machhi Hatta, previous to the partition and that after the partition they had shifted to Delhi and Meerut, and in para. 3 they have stated :

3. That the petitioners are residing and carrying on business at Amritsar, Meerut and Delhi. It is nowhere stated that they have come to reside at Amritsar nor when. And in para 5 they stated that they are mill owners _ "which is situated at Amritsar, which are not functioning due to financial difficulties" and that before the partition they were engaged in the sale of manufactured goods at Lahore. It was on these allegations that the Tribunal at Meerut entertained the application and on 5th September made the following order :

"Issue notice. Send for the record of these proceedings pending against the applicant."

The Adjustment Act gives no power to the Tribunal to send for the record. A copy of this order was forwarded to the District Judge, Amritsar, and on 8-9-1953 it was presented by Chuni Lal Seth to the District & Sessions Judge, Amritsar, who sent it down to the Senior Subordinate Judge for disposal. Objections were taken before the executing Court that the application in Meerut had not been made in good faith and the mortgage decree was in respect of the property at Amritsar and therefore the execution should not be stayed, but holding that the result of such an application was the stay of these proceedings, the executing Court stayed the proceedings and ordered the sending of the record to Meerut in spite of the fact that one of the mortgagor-judgment-debtors is not a displaced person.

The decree-holder has come up in appeal to this Court. The matter was placed before me and us I thought that there was some conflict of authority I referred the whole case to a Division Bench who in turn have referred the question which I have given in the beginning of this judgment for the opinion of a Full Bench.

8. It is under these circumstances that the question has to be decided, and, in my opinion, the question which has been proposed for the opinion of the Full Bench has to be answered in reference to these facts.

9. The Privy Council in -- 'Raja Raghunandan Prasad Singh v. Commr. of Income Tax, B. & O.', AIR 1933 PC 101 at p. 102 (A), said :

'Their Lordships deprecate the statement of Questions of law in this abstract form divorced from the facts of the particular case."

And it was in the circumstances of that case that their Lordships decided the question which was formulated by the Commissioner of Income Tax.

10. This is not a case of judicial review really as the power of civil Court to determine the jurisdiction of a Tribunal has been raised before the Tribunal has made any determination as to the status, of the applicants as displaced debtors nor have any facts been found by the Tribunal. All that has happened is that the respondents have made an application under Section 5 of the Adjustment Act.

Before 1 go into that question it is necessary to see what is the Tribunal which has been constituted for the purpose of adjustment of debts under the Adjustment Act. Under Section 2(12) of the Act 'Tribunal' has defined to mean :

" 'Tribunal' means any civil Court specified under Section 4 as having authority to exercise

jurisdiction under this Act."

and under Section 4 the State Government has been given the power by notification to specify any civil Court or class of civil Courts as the Tribunal or Tribunals.

11. In -- 'Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi', AIR 1950 SC 183 (B), the Supreme Court made u distinction between the word "Tribunal" and the word 'Court' as used in Article 136 of the Constitution, and their Lordships have in -- 'Durga Shankar Mehta v. Raghuraj Singh', AIR 1954 SC 520 (C), reiterated the same distinction : See also -- ' Western India Automobile Association v. Industrial Tribunal, Bombay', AIR 1949 FC 111 (D).

12. In -- 'Saskatchewan Labour Relations Board v. John East Iron Works Ltd.', 1949 AC 134 (F), me distinction between a 'Board' constituted under the Trade Unions Act and a 'Court' was given in the following words :

"It is a truism that the conception of the judicial function is inseparably bound up with the idea of a suit between parties, whether between Crown and subject or between subject and subject, and that it is the duty of the Court to decide the issue between those parties, with, whom alone it rests to initiate or defend or compromise the proceedings."

And merely because the functions to be performed under the Act have been delegated to a judicial officer who may also be presiding over a civil Court would not make it a Court and it will nonetheless be a statutory Tribunal as is shown by a judgment, of the Privy Council in -- 'George Edmund De Silva v. The Attorney General of Ceylon', AIR 1949 PC 2G1 (F), and therefore, in my opinion whether the functions are performed by a Judge even with a provision for an appeal to the High Court or its performance is by a layman, it still remains a statutory authority exercising its quasi judicial functions within the scope of the Adjustment Act and it cannot be elevated to the position of a civil Court Any other interpretation might be inconsistent with entries 3 and 65 of the State List (List II) and with Chap. VI of Part VI of tlie Constitution. In -- 'Colonial Bank of Australasia v. Willan', (1874) Lit 5 PC 417 (G) a Court of Mines was constituted under the Gold Fields Act by the Governor in Council and the Judge of the Court of Mines was given certain powers and an appeal from the Court was provided to the Supreme Court of Victoria and it was also provided that no proceedings under the Act could be removed or were removable into the Supreme Court ***.

It was contended in that case that the Court of Mines was a Court of superior jurisdiction, but the Privy Council held that 'qua' 'the Supreme Court this must be taken to be on the same footing as a Court of inferior jurisdiction, and therefore merely because a Judge was presiding over the Court, it could not be elevated to the position of a superior Court. See also -- 'Bennet & White v.

Municipal Dist. of Sugar City No. 5', (1951) AC 786 (II).

13. In America also this distinction has been drawn in -- 'United States v. Ferreira', (1869) 13 How 40 (I), where under special statute power was conferred upon a District Judge of the United States to adjudicate a claim arising under Article 9 of the treaties of 1819 with Spain. It was held that this does not make the proceedings judicial although the act to be done is judicial in its nature.

14. A Court is a place where justice is judicially administered: Coke on Litleton 58a. The definition of judicial power by Griffith C. J. in --'Huddart Parker & Co., Proprietary Ltd. v. Moore-head', 8 CLR 330 at p, 337 (J), was approved of by the Privy Council in --'Shell Co. of Australia v. Federal Commr. of Taxation', (1931 AC 275 at p. 283 (K)), where the question was whether the Board of Review set up under Commonwealth Tax legislation was a Court exercising the judicial power of the Commonwealth. The Australian High Court held it to be an Administrative Tribunal. Lord Sankey L. C. observed:

"The authorities are clear that there are tribunals with many of the trapping of a Court which nevertheless are not courts in the strict sense of exercising judicial powers."

In this case appeal to a Court was also provided. See also -- 'Toronto City Corporation v. York Township Corporation', (1938) AC 415 (L); (1949) AC 134 at p 149 (E). In the latter case Lord Simonds said at p. 149 :

"Any combination of such features will fail to establish judicial power if, as a common characteristic of so called administrative tribunals, the ultimate decision may be determined not merely by tlie application of legal principles to ascertained facts but by consideration ot policy also."

According to Robson a Court must possess both the trappings and the substance of judicial power.

15. In a Full Bench judgment of this Court 'Pitman's Shorthand Academy v. B. Lila Ram & Sons'. AIR 1950 EP 181 (FB) (M), it was held that a Rent Controller and an appellate authority under the Rent Restriction Act were not civil Courts subordinate to the appellate jurisdiction of the High Court even though the persons exercising powers as Rent Controllers and as appellate authorities were Subordinate Judges and District Judges respectively, and therefore 'qua' a civil Court, in my opinion, the Tribunal remains a statutory authority exercising powers under a special Act and this power must be circumscribed to the provisions of that Act.

16. The Tribunal under the Adjustment Act is not a Court but merely a Tribunal with many trappings of a Court deciding cases not according to application of legal principles to ascertain facts but by considerations of policy also, as will be seen from the scheme of the Act which I shall discuss at another place. It has been entrusted with the duty of adjusting a dispute of a peculiar kind and has extraordinary powers.

And this Tribunal can do what no Court can do, namely, it can add to or alter the terms or conditions of a contract and vary the effect of decrees : AIR 1949 FC 111 (D). Section 28 of the Adjustment Act itself recognises the distinction between a Civil Court acting as a Tribunal and as a Civil Court. And the mere fact of appeal being allowed to the High Court does not change the Tribunal from being a statutory Authority making determinations by applying amongst other things considerations -of policy into a Court which has to decide in accordance with legal principles as applied to ascertained facts.

17. Before proceeding further I may give the scheme of the Displaced Persons (Debts Adjustment) Act, 1951, in order to decide what exactly is its jurisdiction and how far a civil Court can have control over Tribunals constituted under the Act. The object of this Act is to make certain provisions for the adjustment and settlement of debts due by displaced persons and for matters connected there with or incidental thereto. Section 2 is the definition section and 'debt' is defined in Section 2(6) to mean "any pecuniary liability, whether" payable presently or in future, or under a decree or order of a civil or revenue Court or otherwise, or whether ascertained or to be ascertained, which "(a) in the case of a displaced person who has left or been displaced from his place of residence in any area now forming part of West Pakistan, was incurred before he came to reside in any area now forming part of India;

(b) in the case of a displaced person who, before and after the 15th day of August, 1947, has been residing in any area now forming part of India, was incurred before the said date on the security of any immovable property situate in the territories now forming part of West Pakistan.

(c) is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends; and includes any pecuniary liability incurred before the commencement of this Act by any such person as is referred to in this clause which is based on, and is solely by way of renewal of, any such liability as is referred to in Sub-clause (a) or Sub-clause (b) or Sub-clause (c), but does not include any pecuniary liability due under a decree passed after the 15th day of August 1947, by any Court situate in West Pakistan or any pecuniary liability the proof of which depends merely on an oral agreement."

18. 'Displaced persons' is defined in Section 2(10). Section 3 gives an overriding effect to the Adjustment Act and the rules made thereunder.

"3. Overriding effect of Act, rules and orders: Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any decree or order of a Court, or in any contract between the parties."

19. But this will have to be read subject to the plenary powers of the State Legislature as given in list II (State List) and the fundamental rights given in part III of the Constitution and certain essential principles laid down in decided cases particularly of the United States Supreme Court e.g., --Smyth v. Ames, (1898) 169 US 466 (N).

20. Under Section 5 a displaced person can make an application for adjustment of debts giving certain particulars, but this application has to be made within one year of the coming into force of the Act.

It is not necessary to deal with Sections 6, 7 and 8. Section 9 is the important section and if runs as follows:

"9. Proceeding after service of notice on respondents :

(1) If there is a dispute as to whether the applicant is a displaced person or not or as to the existence of the amount of the debt due to any creditor or the assets of any displaced debtor, the Tribunal shall decide the matter after taking such evidence as may be adduced by all the parties concerned and shall pass such decree in relation thereto as it thinks fit.

(2) If there is no such dispute or if the respondents do not appear or have no objection to the application being granted, the Tribunal may, after considering the evidence placed before it, pass such decree in relation thereto as it thinks fit."

21. Section 10 deals with claims of displaced creditors against displaced debtors. Section 11 gives the procedure on such applications and Section 11(2) provides:

"11(2). If, in response to a notice under subsection (1), the displaced debtor makes an application in accordance with the provisions of Section 5, the Tribunal shall proceed further in the matter as if it had commenced with an application by the displaced debtor under Section 5, "and all the other provisions of this Act shall apply accordingly; but, if the displaced debtor does not choose to make any such application, the Tribunal shall, after considering such evidence, if any, as may be produced before--it, determine the claim and pass such decree in relation thereto as it thinks

fit."

22. Consequences of application made by displaced debtors are given in Section 15:

"15. Consequences of application by displaced debtor.--Where a displaced debtor has made an application to the Tribunal under Section 5 or under Sub-section (2) of Section 11, the following consequences shall ensue, namely--

(a) all proceedings pending at the date of the said application in any civil Court in respect of any debt to which the displaced debtor is subject (except proceedings by way of appeal or review or revision against decrees or orders passed against the displaced debtor, shall be stayed, and the records of all such proceedings other than those relating to the appeals, reviews or revisions as aforesaid snail be transferred to the Tribunal and consolidated;

(b) all attachments, injunctions, orders appoint- ing receivers or other processes issued by any such Court and in force at the date of the said application in respect of any such debt shall cease to have effect and no fresh process shall, except as hereinafter expressly provided, be issued:

Provided that where an order appointing a receiver ceases to have effect under this section, the receiver shall, within fourteen days from the date on which his appointment ceases to have effect or within such further time as the Tribunal may in any case allow, submit to the Tribunal instead of to the Court which appointed him his outstanding accounts, and the Tribunal shall, in relation to such accounts, have the same powers with respect to the receiver as the Court which appointed him bad or could have had;

(c) no fresh suit or other proceeding other than any such appeal, review or revision as is referred to in Clause (a) shall be instituted against a displaced debtor in respect of any debt mentioned by him in the relevant schedule to his application;

(d) any immovable property belonging to the displaced debtor and liable to attachment shall not be transferred except under the authority of the Tribunal and on such terms as it thinks fit, until the application of the displaced debtor has been finally disposed of or any decree passed against him is satisfied in accordance with the provisions of this Act."

23. The rest of the provisions are not necessary for the purposes of this case at this stage.

24. According to our Civil Procedure Code civil Courts have jurisdiction to fry all civil suits unless barred. The power of Court over statutory Tribunal has been the subject-matter of decision in several cases both here and in England. There are also cases of America. I shall first rcter to -- 'Secretary of State v. Mask and Co.', AIR 1940 PC 105 (O). That was a case under the Sea

Customs Act and it was held that the order of the Collector of Customs as to the rate of duty leviable under a tariff excluded the jurisdiction of the civil Courts to entertain a challenge of the merits of the decision of the Collector. One of the provisions of that Act was:

"Every order passed in appeal under this section shall, subject to the power of revision confer red by Section 191, be final." _ Dealing with the jurisdiction of civil Courts Lord Thankerton held that the decision of the Assistant Collector fell within the terms of Section 188 and at page 110 his Lordship observed:

"It is settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either by explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases, where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

and a judgment of Willes J. in -- Wolverhampton New Waterworks Co. v. Hawkesford, (1859) 6 CB (NS) 336 (P) and of the -- House of Lords in Nevills v. London "Express" Newspapers Ltd., 1919 AC 368 (O) were quoted with approval. I shall quote from the observations of Willes J. at another place. According to their Lordships even where the jurisdiction of a civil Court is expressly excluded the civil Courts have jurisdiction to examine whether the provisions of the Act have been complied with or tne statutory Tribunal has acted in conformity with the fundamental principles of judicial procedure.

25. In -- Secretary of State for India in Council v. Fahamidaunissa Begum, 17 Cal 590 (PC) (R) at page 604 Lord Herschell delivering the judgment of the Privy Council said:

"But then it is said that the local revenue authorities having assessed the land, and the Board of Revenue having made an order confirming their action, such order is, by the very terms of Section 8, made final, and that there is an express provision in Section 9 that no action in any Court of Justice shall lie against the Government or any of its officers on account of anything done in good faith in the exercise of the powers conferred by this Act. Their Lordships cannot conceive that it was intended by these enactments to deprive the owner of a permanently-settled estate of the protection assured to him by the Regulation of 1819."

Continuing his Lordship said:

"Their Lordships cannot hold that the Board of Revenue can by purporting to exercise a jurisdiction which they did not possess make their order final and exempt themselves from the control of the civil Court."

26. In 1874 LR 5 PC 417 (G) at p. 443, Sir James W. Colvilc said:

"Objections founded on the personal incompetency of the Judge, or on the nature of the subject-matter, or on the absence of some essential preliminary, must obviously, in most cases, depend upon matters which, whether apparent on the face of the proceedings or brought before the superior Court by affidavit, are extrinsic to the adjudication impeached."

and his Lordship quoted with approval the observations of Blackburn J., in -- 'Pease v. Chaytor, (1863) 3 B and B 620 (S):

"It is a general rule that no Court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends and however its decision may be final on all particulars, making up together that subject-matter which, if true, is within its jurisdiction, and however necessary in many cases it may be for it to make such a preliminary inquiry, whether some collateral matter e or be not within the limits, yet upon this preliminary question its decision must always be open to inquiry in the Superior Court".

27. The powers of a civil Court over statutory Tribunals have been given at length by Mookerjee J. in -- Chairman of Girridih Municipality v. Suresh Chandra, 35 Cal 859 at pp. 864 to 867 (T) a case both parties relied on and I give relevant extracts from that judgment--

"To put the matter in a different way, the civil Court is not called upon to try the merits of the question, but to see whether the authorities possessed of limited jurisdiction have exceeded their bounds. A similar view has been taken in the English Courts in more recent cases: -- 'Ex Bradlaugh', (1878) 3 QBD 509 (U) and -- 'Reg v. Bradley1, (1893) 17 Cox CC 739 (V).....

The principle applicable to cases of this description was elaborately examined by ' their Lordships of the Judicial Committee in (1874) LR 5 PC 417 (G), where it was pointed out by Sir James Colvile that the Court would have jurisdiction to interfere and quash the order of the quasi-judicial authority upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order or of manifest fraud in the party procuring it. It was also ruled that objection on the ground of defect of jurisdiction may be founded on the character and constitution of the Court or on the nature of the subject matter of enquiry or on the absence of some preliminary proceedings, which was necessary to give the jurisdiction to that tribunal.

But the objection of defect of jurisdiction cannot be entertained, if it rests solely on the ground that the tribunal has erroneously found a fact which was essential to the Validity of the order and which it was competent to try.....

"In other words,, while mere erroneous exercise, of judgment is not re viewable by the civil Court, any excess of jurisdiction makes the act liable to challenge in such Court, -- State v. Williams, 1904-123 Wis 61 (W); -- Hooker v. Howe, (1904) 101 NW 255 (X); -- Douglas Co. v. Stone, (1903) 191 US 557 (Y); -- Stapley v. Board of Supervisors of the County of Albany, (1887) 121 US 535 (Z)......"

28. Farwell L. J. in - Rex v. Shoreditch Assessment Committee, (1910)2 KB 859 (Zl) said at page 880:

"No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction, such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it docs not possess whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise.

Subjection in this respect to the High Court is a necessary and inseparable incident to all tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it; it is a contradiction in terms to create a tribunal with limited and unlimited power to determine such limit at its own will and pleasure --such a tribunal would be autocratic, not limited --and it is immaterial whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact; a Court with jurisdiction confined to (the city of London cannot extend such jurisdiction by finding as a fact that Piccadilly Circus is in the ward of Chepe."

29. In an earlier English case -- Roberts v. Charing Cross, Euston and Hampstead Rly. Co., (1903) 87 LT 732 at p. 734 (Z2), Farwell, J., as he then was, said:

"If the Legislature has given powers and those powers are being used for 'the purpose of carrying out the work authorised and it is admitted that the mode in which they are being used is unreasonable, that is an abuse of the power so given and is therefore 'ultra vires."

And in -- Mayor and Councillors of East Fremantle Corporation v. Annois, 1902 AC 213 (Z3), Lord Macnaghten said:

"In a word, the only question is, has the power been exceeded? Abuse is only one form of excess."

30. In -- Price Bros, and Co. v. Board of Commerce of Canada, 54 DLR 285 (Z4), Duff, J. said at page 291:

"I think such orders are re viewable, in this sense that when in a proper proceeding thy validity of them is called into question, it is the duty of a Court of Justice to consider and decide wither the conditions of jurisdiction arc fulfilled and if they are not being fulfilled, to pronounce the sentence of the law upon the illegal order."

See also the opinion of Anglin, J. at page 295.

31. I may also refer to one other case --Dyson v. Attorney General, (1911) 1 KB 410 (Z5) at page 424, which was a case brought against the Attorney-General as representing the Crown although the immediate and sole object of the action was to affect the rights of the Crown in favour of the plaintiff. It was there observed at page 424;"

"As it is, the Courts are the only defence of the liberty of the subject against departmental aggression."

32. In--Mohamniad Nawaz Khan v. Bhagata Nand, AIR 1938 PC 219 (Z6), Sir George Rankin said at p. 221:

"On principle it is for the civil Court to determine in the last resort the limits of the powers of a Court of special jurisdiction and no statutory provision to the contrary has been drawn to their Lordships' attention in the present case."

This was a case where the question in dispute was whether Bhagta Nand was liable to pay 'haq buha' which is one of the cesses and the jurisdiction over which is exclusively given to the Revenue Courts under Section 77 (3) and Proviso l(j) of the Punjab Tenancy Act.

33. There are number of cases from the Lahore High Court which deal with the powers of the civil Courts in regard to matters which arc within the jurisdiction of statutory' tribunals. In -- All Muhammad v. Hakim, AIR 1928 Lab 121 (FB) (Z7). Sir Shadi Lal, C. J., delivering the judgment of the Full Bench said at p. 121:

"It is an indisputable proposition of law, and indeed it is expressly enacted by Section 9, Civil P. C., that the Courts have jurisdiction to entertain all suits of a civil nature except those, the cognizance of which is expressly or impliedly barred. It is, therefore, for the party, who seeks to oust the jurisdiction of the ordinary civil Courts, to establish his contention."

34. Tek Chand J. in -- Raghunath Sahai v. Panchayat Village Sahasai Kalirawan, AIR 1939 Lah 372 (Z8) held in the case of Village Panchayats that it is open to civil Courts to examine the jurisdiction of the Panchayats to see whether they have acted within the scope of the powers given to them under the statute, and if they find that they have acted in regard to private property

the action of the Panchayats would be 'ultra vires .

35. In -- Municipal Committee, Montgomery v. Sant Singh, AIR 1940 Lull 377 (FB) (Z9), the point for determination was whether a person hiring motor lorries and keeping them within municipal limits was liable to assessment under Section 61 (1) (c), Punjab Municipal Act, and it was held that where taxes were not covered by the provisions of , the Municipal Act a civil Court would have jurisdiction to decide the matter and that a Municipal Corporation is the creature of a statute and is bound to act according to law, and any action by it in disregard of its powers is a matter which is subject to the general law of the land, and a large number of cases were there referred to and Din Mohammad J. who bad previously given a contrary decision excluding the jurisdiction of the civil Courts was the learned Judge who wrote the leading judgment in this case.

36. Two cases of the Lahore High Court are of great importance because they deal with an Act which is in pail materia with the Act now before me. The first is -- Lachhman Singh v. Natha Singh, AIR 1940 Lah 401 (FB) (Z10). That was a case under the Punjab Relief of Indebtedness Act and the question to be decided was whether a usufructuary mortgage was a ,'debt' as defined within that Act. The Tribunal in that case had decided that it was a debt and had given relief on that basis, and there was a provision in the last paragraph of Section 7(2) of the Act that "if any question arises in proceedings under this part of the Act, whether a person is a debtor or not, the decision of a Debt Conciliation Board shall be final."

Therefore, it is clear that that paragraph made the Board the final judge as to whether a particular debtor possessed the qualifications required under the section. Dealing with the jurisdiction of a civil Court it was held:

"It is well-settled that the powers of a tribunal of special jurisdiction are circumscribed by the statute under which it was constituted. Such tribunal must act within its powers, and so long as it does so its orders -- whether right or wrong --cannot be challenged except in the manner and to the extent prescribed in the statute, and Courts of ordinary jurisdiction cannot question them. But where, and in so far as its actions are in excess, or in contravention, of the powers conferred on it, they are 'ultra vires' and of no legal effect and obviously cannot have the same immunity.

As pointed out by their Lordships of the Privy Council in the leading case (1874) LR 5 PC 417 (G), where all order of a quasi-judicial authority is objected to before a Court, it has to be seen whether the objection relates to defect of jurisdiction, founded on the character and constitution of the tribunal, the nature of the subject matter of the enquiry or the absence of some preliminary proceeding which was necessary to give jurisdiction of it.

If any of these things is established, the .order is coram nun judice and of no effect whatever, If, however, 'the objection rests solely on the ground that the tribunal has erroneously Found a fact which it was competent to try, the objection cannot be entertained.' Sec also the judgment of Mookerjee J. in 35 Cal 859 (T), where the question is discussed at great length and the authorities are collected, and the recent decision of a Full Bench of this Court in AIR 1940 Lah 377 (FB) (Z9)."

37. As I read this authority it means that a statutory Tribunal must act within the limit of its powers and as long as it does that its orders, whether right or not cannot be challenged except in the manner provided in the statute. But if its actions are in excess of that jurisdiction they are 'ultra vires', and where such a question arises, in my opinion, in spite of the overriding provisions of the Act it will be for a Court of general jurisdiction to see whether the objection made to such determination is well-founded and the three factors which have to be taken into consideration are;

1. a defect of jurisdiction founded on the character and constitution of the Tribunal;

2. the nature of the subject-matter of the enquiry; and

3. the absence of some preliminary proceeding which was necessary to give jurisdiction to it; and I would acid two others (a) whether the adjudication of the statutory Tribunal has been obtained by fraud or fraudulent conduct or (b) is an abuse of jurisdiction because it is in excess thereof or the mode of user is unreasonable.

38. In another Full Bench case of the Lahore High Court -- K.L. Gauba v. Punjab Cotton Press Co. Ltd., AIR 1941 Lah 234 (FB) (Z11) the question of jurisdiction of civil Courts again came up and Dalip Singh J. at page 236 said:

"The Courts of general jurisdiction, that is the Civil Courts, have always been jealous of the special tribunals which may be set up from time to time by the Legislature to determine certain questions which are considered more appropriately decided by special tribunals than by the ordinary Civil Courts. Whenever, therefore, the question arises, whether the Court of special jurisdiction has or has not jurisdiction to try a particular cause then the Court of genera! jurisdiction is always the final authority as to whether the cause is or is not within the special jurisdiction of the special tribunal.

This principle is, of course, without prejudice to the general principle that all Courts must have inherent jurisdiction to decide whether a certain cause is or is not within their jurisdiction to try. Thus the special Court would always have jurisdiction to try the question whether a particular cause did or did not fall within its jurisdiction because no Court is bound to try causes which it

holds do not come within its jurisdiction.

But from this principle it does not follow that a Court can merely by a wrong construction of law confer jurisdiction upon itself to try a cause and hence when the question arises as between the special Court and the Court of general jurisdiction as to whether a cause is within the jurisdiction of the special Court or the jurisdiction of the Court of general jurisdiction then the decision of the Court of general jurisdiction must override the decision of the Court of special jurisdiction. The same principle applies to all special tribunals or departmental authorities set up to try particular cases or to come to particular decisions on particular facts.

This rule of law is so well-settled that it is quite unnecessary to multiply rulings on the subject, more especially as the learned counsel for Mr. Gauba did not contest this proposition."

39. That Tribunals of special jurisdiction cannot by giving a wrong decision on facts assume jurisdiction which is not vested in them is also the law which was laid down, as I have said above, by Farwell L. J. in (1910) 2 KB 859 (Z1) at p. 880 and by Blackburn J. in (1863) 122 ER 233 (S).

40. In -- T.C. Basappa v. T. Nagappa, AIR 1954 SC 440 (Z12), B. K. Mukherjea J. delivering the judgment of the Supreme Court has quoted with approval the following statement of the law from Halsbury's Laws of England, Edn. 2, Vol. IX, page 880:

"When the jurisdiction of the Court depends-upon the existence of some collateral fact, it is well settled that the Court cannot by a wrong decision, of the fact give it jurisdiction which it -would not otherwise possess, vide -- Bunbury v. Fuller, 1854-2 Ex. 111 (Z13); -- R. v. Income-tax Special Purposes Commissioners, (1889) 21 QBD 313 (Z14)."

41. Another Full Bench of the Lahore High Court in -- Lahore Electric Supply Co. Ltd., Lahore v. Province of Punjab, AIR 1943 Lah 41 (FB) (Z15) where the question was whether any order made in exercise of the powers conferred by the Defence of India Act could be challenged in spite of Section 16(1) of the Act held that that section is no bar because an order to be screened from scrutiny by_ the civil Courts has to be under the Act and has to be a bona fide- one, and Young C. J., relied on several judgments -- AIR 1940 PC 103 (O); --Rex v. Governor of Brixton Prison, (1916) 2 KB 742 at p. 749 (Z16); -- (1903) 87 LT 732 at p. 734 (22); and 54 DLR 2S5 at p. 286 Canada (Z4) and --Galloway v. Mayor of London Corporation (1866) I HLC 34 at p- 43 (Z17). Section 16, Defence of India Act provided:

"S.16 (1): No order made in exercise of any power conferred by or under this Act shall be called in question in any Court."

42. It may perhaps be instructive to quote from the judgment of Young C. J. in - Harkishan Lal v. Peoples Bank of Northern India Ltd., AIR 1936 Lah 608 at p. 609 (Z18), where the learned Chief Justice said:

"We agree with the observation of Lord Campbell, a distinguished Lord Chief Justice of England, that where jurisdiction was subject to doubt it is the duty of a High Court to seize it. But in this case we do not think there is any doubt."

43. In Maxwell, Interpretation of Statutes, at page 128 (Edn. 10) the law is slated as follows:

"It is, perhaps, on the general presumption against an intention to disturb the established state of the law, or to interfere with the vested rights of the subject (see -- Jacobs v. Brett, (1875) 20 Eq 1 (Z18a), that so strong a leaning now exists against construing a statute so as to oust or restrict the jurisdiction of the Superior Courts (Scott v. Avery, (1856) 5 I1LC 811 (Z19))......"

44. In -- Earl of Shaftesbury v. Russel, (1823) 25 RR 534 (Z20), it was enacted "that if any question or difference shall arise upon taking any distress, the same shall be determined by the commissioners of taxes"; and it was held that as the jurisdiction of the superior Courts was not expressly taken away, an action at common law was maintainable for wrongful distress. Nor would the Court be ousted of its preventive jurisdiction to stop by injunction the misapplication of poor rates by reason of the statutory power given to Poor Law Commissioners to determine the propriety of all such expenditure: -- A.G. v. Guardians of the Poor of Southampton, (1849) 60 ER 1023 (Z21).

Nor did it follow in either case that because .

authority was given to the Commissioners it was taken away from the Courts. The matter is sum marised by Willes J. in (1859) 6 CB (NS) 336 at p. 356 (P):

"There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy.

The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at

the same time gives a special and particular remedy for enforcing it. .... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to casus of the second class (R. v. County Court Judge of Essex, (1887) 18 QBD 704 at p. 707 (Z22).)"

45. Another case of some importance is (1950 AC 786 at p. 811 (11). Section 53 of the Assessment Act in that case was in these terms:

"In determining all matters brought before the Commission it shall have jurisdiction to determine not only the amount of the assessment, but also all questions as to whether any things are or were assessable or persons were properly entered on the assessment roll or are or were legally assessed or exempted from assessment"

and it was submitted that jurisdiction had been conferred on the Commission to determine whether persons were legally assessed and that a decision of the Tribunal which had jurisdiction to make their decision must be res judicata, but this contention was repelled and it was held that the jurisdiction of the Court to determine question of liability to taxation can only be ousted by clear words and in their Lordships' judgment it is far from clear that Section 53 was intended to have that effect and that the words of this section were not unambiguous and their Lordships proceeded then to determine as to whether the appellants were precluded from maintaining the action and they held that they were not This case is of some importance because the words used are very similar in effect to the ones which are used in Section 9, Debts Adjustment Act which is pleaded as a bar to the jurisdiction of the civil Court.

46. In -- The Itchen Bridge Co. v. Local Board of Health of Southampton, (1857) 27 LJQB 128 (Z23), it was held:

"The common law power of the Court or a Judge to change the venue in an action, is not taken away by the 139th section of the Public Health Act, 1848, which requires that in action against a local board nf health for anything done under the Act, the venue shall be laid in the country or place where the cause of action arose, and not elsewhere." Earl J. said:

"I read the section as subject to the power of the Court to change the venue." And according to Lord Campbell C. J.:

'Not elsewhere' means 'not elsewhere in the common and ordinary course of proceedings'."

47. These cases show that the jurisdiction of Courts of general jurisdiction is not taken away by the use of such words as "if any question.......... shall arise, the same shall he determined by. . . ."

or "the Commission shall have jurisdiction to determine....." or "the venue shall be laid....."

(48) A review of these authorities shows:

(1) that a statutory Tribunal must act within the scrips of its power given to it by the statute;

(2) that if it acts within the scope of its powers and commits an error, the civil Courts cannot correct it;

(3) that it is for the Courts of general civil jurisdiction to determine what is the scope of the authority given to a statutory tribunal;

(4) that even where jurisdiction is given to the statutory Tribunal to. determine certain facts so as to give itself jurisdiction, it will be for the Court of general jurisdiction to adjudicate as to what are the powers which the statute has given to such an authority;

(5) that no tribunal of special jurisdiction can finally decide upon its own jurisdiction or give it self jurisdiction by a wrong decision on a matter collateral to the merits of the case upon which the limits of its jurisdiction depend;

(6) that if there is a manifest defect of jurisdiction in the Tribunal which makes a determination or there is manifest fraud in the party who procures a determination, the civil Courts will have jurisdiction to adjudicate upon the matter; and (7) that if the action of statutory Tribunal is arbitrary, careless or oppressive, the Court of general jurisdiction will have jurisdiction to investigate into that, and as was said by Lord Macnaghten in 1902 A. C. 213 (Z3) -- "In a word, the only question is, Has the power been exceeded? Abuse is only one form of excess."

(8) If the mode of use of power is unreasonable it would be an abuse of power conferred and thus be ultra vires and if it is oppressive, it is in the eye of law unreasonable "Per Tindal C. J. --Horner v. Graves', (1831) 33 R. R. 635 (Z24)."

49. In America it has been held that findings by statutory Tribunals are subject to judicial review; (1) to determine whether or not the tribunal has kept within the scope of its authority; (2) to determine questions of law; and (3) to determine questions of fact which raise constitutional questions but not other questions of fact; and in such a case trial 'de have is required (Ohio Valley Water Co. v. Ben Avon', (1920) 253 US 287 (Z25).

50. An Interstate Commerce Commission has been established in America and any determination hy this Commission has been held to be subject to review, by American Courts. In -- 'Interstate Commerce Commission v. Illinois Central Rail Road Co.', (1910) 215 US 452

(Z26), it was said;

"In cases thus far decided, said the court, 'it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of quest ions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power."

51. Another instance where the Court refused an order of the Commission because in the opinion of the Court the interpretation 'or the application of the law by the Commission was wrong is shown by the decision of the Supreme Court of America in -- 'Interstate Commerce Commission v. Alabama Midland Rly. Co.', (18981 168 US 144 (Z27), in which it was held that the Commission had not, as it should have, taken into consideration competition between rival routes as a circumstance statutorily required in determining whether the long and short haul clause of the law had been violated; (see also -- United Slates v. Baltimore & O. R. Co,', (1914) 231. US 274 (228); and -- 'Southern Pacific R. Co. v. Interstate Commerce Commission', (1911) : 219 UC 433 (Z29)).

In Willoughby's Constitution of the United States, Vol. 3, at page 1677, reference is made to Dickinson, Administrative Justice and the Supremacy of Law, Chap, VI, for a review of other cases, where the findings of fact by the Commission were examined by the Court. Over other Federal Trade Commissions also the Courts have exercised jurisdiction in a similar manner: (note 81 at page 1677 of Willough by on the Constitution of the United States).

52. In American Administrative Law by Schwartz at page 113 there is a discussion on the role of Courts in regard to judicial review of determination by Statutory authorities The object of Judicial review is to serve as a check on statutory authorities -- a check against excess of power and abusive exercise of power in derogation of private rights. Broadly speaking, adequate judicial control is assured where review can be had on the following grounds; (1) 'Ultra vires' to ensure that the determination was within the authority delegated to the agency; (2) Natural justice -- that at least minimum standards of fairness for the process of adjudication -- what the United States Supreme Court has called the fundamentals of fair play (see -- 'Federal Communications Commission v. Pottsville Broadcasting Co.', (1940) 309 US 134 (Z30)) -- were observed; (3)

Substantial evidence: that the determination has a basis in evidence of rational probative force. The scope of judicial review is limited to questions of law and to whether or not the findings of fact underlying the administrative conclusions arc ' based upon substantial evidence. That rule, it is said, is mainly "of judicial handiwork, although it has also been included in many statutory review provision,"

53. Ebrahim Aboobakar v. Custodian General of Evacuee Property, AIR 1952 SC 319 (Z31), where the observations of Lord Esher M. R. in (1889) 21 QBD 313 (Z14) have been quoted with approval and it is stated that the second case dealt with there excludes the jurisdiction of the civil Courts, would it was submitted be applicable to the present case, but that case must be confined to its own facts. There the whole of the Evacuee Law was a creation of the special statute and the remedies provided in and determinations made under that statute were held to be applicable and this case would fall in the third class of cases mentioned by Willes J. in (1859) 6 CB (NS) 336 at p. 356 (P) that is :

"Where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it..... .... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class (1887) 18 QBD 704 at p. 707 (Z22)."

54. The question arises whether the proceedings are 'bona fide' or they are so fraudulent that they would all within Rule 5 which I have mentioned above, or is not the mode of exercise of power so unreasonable as to be within R. 8 above in the present case the proceedings were initiated at the instance of on a Hira Lal who claimed to he a creditor of "the respondents in this case on account of arrears of rent. It is not shown that it is supported by a written contract; his application does not show this.

The appellants' attacked these proceedings as being 'mala fide' and the question will arise for the determination by a civil Court whether there is fraud in the party invoking the jurisdiction of the Tribunal and pleading it as a bar to the jurisdiction of the Executing Court.

55. The definition of the word 'debt' at given in Clause (a) of Section 2(6) of the Adjustment Act is, as. is pointed out by Gajendragadkar J. in -- Ram Chand v. Khub Chand, AIR 1955 Bom 138 at p. 140 (Z32), a peculiar one. It has reference to the status of the person owing a debt or to whom debt is owed. Clause (a) applies to a liability which was incurred before such person "came to reside" in what is India. And therefore it presupposes exclusive residence in what has become West Pakistan and cannot apply to those cases where Persons have not come to reside in India which would mean returning to reside in India and that is the case here.

56. In AIR 1955 Bom 138 at p. 144 (Z32), Vyas J. has thus defined the limits in regard to Cls. (a) and (b):

".........the import of the term 'debt' when adisplaced person asks for the adjustment of the debts owned by him is circumscribed by the time limit, the said limit in Clause (a) being that the debts, must have been incurred before the debtor came, to reside in any area now forming part of India....

57. In the present case the debtors were residing in Amritsar where, the liability was incurred because of the non-payment of the entire purchase price of the properties purchased by them and this ' ended in the decree passed on 20-8-1950. Can it be said therefore that the respondents are within Clause (a)? In my opinion they are not.

58. Besides it cannot be said that the respondents incurred the liability before they came to reside in what is India. Liability was either incurred when they were residing in Amritsar in 1946 or arose it a mortgage decree can be called a debt in 1950 when again they were residing in Amritsar. In either case they do not fall within Clause (a). It is at this stagy that the question arises as to who is to determine the status of the respondents--a civil Court or the statutory Tribunal.

The Supreme Court in AIR 1954 SC 440 (Z12), have pointed out that by wrong decision of collateral facts, a tribunal cannot give itself jurisdiction and therefore the determination should be by a Court of general jurisdiction which was also the view of the Lahore High Court in AIR 1941 Lah 231 (FB) (Z11). See also (1910) 2 KB 859 (Z1) and (1863) 122 ER 233 (S).

59. Looking at the application which was made by Hira Lal it is not shown how it falls within Clause (c) of Section 2(6) of the Adjustment Act, but it was urged that Section 9 of the Act confers exclusive jurisdiction on the Tribunal.

60. Tt may be necessary to go into the nature of the transaction between the appellants and the two respondents and their brother Raj Kumar who is not a party to these proceedings. The original liability arose because a part of the purchase price had not been paid and when the suit was brought in 1949 which ended in mortgage decree on an award in 1950 which was after the coming into Force of the Act, and, as I have said above Clause (a) applies to debts which were incurred before a displaced person comes to reside in any part of India: see AIR 1955 Bom 138 at pp. 141 and 142 (Z32). Besides the pre-existing debt, if any, merged: not the mortgage decree of 1950 which is not covered by Section 2(6)(a) of the Adjustment Act.

61. But it was urged that Section 9 of the Adjustment Act confers exclusive jurisdiction on the

Tribunal and precludes the civil Court from exercising jurisdiction which otherwise would be within its jurisdiction. Now this Court in -- Sulakhan Singh v. Central Bank of India Ltd., AIR 1954 Punj 66 (Z33) has had occasion to interpret the scope of this section and both Harnam Singh J. nd myself gave separate but concurring judgments, Harnam Singh J. said at p. 68:

"In a case falling under Section 19(1) of the Act the question may arise whether the company has made :all upon a displaced person in "respect of monies emainins unpaid on shares held by him"......

That question will have to be decided by a Court other than the Tribunal. If so, there is no warrant for the assumption that the Tribunal had exclusive jurisdiction to decide the question of the debtor being a displaced person."

At pp. 69-70, I gave my opinion. The respondents and of course the appellants accepted this interpretation to be correct, but Mr. Bhagiradi Das would circumscribe it to the facts of that case where the only question to be decided was whether the relief under Section 17 ot the Act can be given by the Tribunal alone or is available to the debtor even in a civil Court. But the interpretation given is general without any restriction or reservation which is particularly clear from the observation; of Harnam Singh J., and I there pointed out that one of the reasons why Weston C. J. held that the relief under Section 17 was available before the Tribunal alone was that Section 9 conferred exclusive jurisdiction, a proposition with which I was. though with great respect, not in agreement and I am still of the same opinion.

62. I would again emphasise that the language used in Section 9 of the Adjustment Act is similar in effect to that used in Section 53 of the Assessment Act in 1951 AC 786 at p. 811 (H). The latter was interpreted by the Privy Council as not to take away the jurisdiction of the Court to determine the liability to taxation for which purpose the Commission had been constituted under the statute and given jurisdiction to determine the liability. This case and other English cases to the same effect 1 have already discussed at another place. See (1823) 25 RR 534 (Z20) and (1849) 60 ER 1023 (Z21).

In both these cases jurisdiction was conferred on Statutory Bodies to make determination of certain facts but the jurisdiction of Courts was held not to have been taken away.

63. Not only Section 19(1) but Section 20 of the Act also provides for relief to a displaced person which has not concern with a proceeding before the Tribunal. Again Section 29(1) about eessor of future interest does not show clearly arid unambiguously that that is the power of the Tribunal alone and Sections 30 and 31 give relief against arrest and attachment and sale of certain properties which is available in a Civil Court also. If Section 9 has given exclusive jurisdiction to

the Tribunal then any dispute arising under these sections as to the status of a person claiming relief will only be determinable by a Tribunal which would defeat the objects of the Act.

The position will become similar to that under the Sikh Gurdwaras Act, i.e. all proceedings must he stayed till the questions of status exclusively within the jurisdiction of the Tribunal are determined. Otherwise the result will be that under certain provisions of the Act Section 9 would be interpreted as excluding the jurisdiction of Civil Courts and with regard to others it would be given just the opposite interpretation which would be contrary to the ordinary rules' of construction: see Maxwell, p. 276 Edn. 8 -- 'Gourtauld v. Leigh', (1869) 4 Ex. 126 (Z34); -- 'R v. Poor Law Commissioners', (1838) 6 Ad & E 56 (Z35) per Lord Den-man; -- 'Re. Kirk stall Brewery', (1877) 5 Ch. D. 535 (Z36).

64. Besides Section 9 in my opinion indicate that when after the application is made under Section 5 and then a question arises before the Tribunal it has to be decided by the Tribunal in an objective manner by evidence led by the parties. The words do not expressly or by necessary intendment exclude the jurisdiction of every Court to determine these questions, as is shown by Ss. 17, 21, 29, 30 and 31 of the Adjustment Act.

(65) A judgment of Mukherjea J. in -- 'Surendranath v. Haran Chandra', AIR 1946 Cal S3 (Z37) has been relied on by the respondents to support their submissions that words of Section 9 exclude the' jurisdiction of Civil Courts. In that case a said was effected by Haran Chandra, with an agreement of reconveyance to the vendor. The vendor applied for settlement of his debt which was ordered by the Board. The vendee brought a suit that the transaction was a sale and not a mortgage which was decreed and on appeal the District Judge, although he agreed that the transaction was a sale, held that the Civil Court had no jurisdiction. This was reversed by a Bench and Mukerjea J. delivering the judgment held that the Board could decide "any question relating to the extent or amount, of the debt, the legislature did not invest it with powers to determine exclusively whether a particular liability amounted to a debt at all".

But there are certain observations by the learned Judge which though 'obiter' and not necessary for the decision of that case are relied upon by the respondents. The learned Judge said at page 54;

"Ordinarily, when a tribunal exercises a subordinate or special jurisdiction, the question whether the condition essential to give it jurisdiction is l present or not is left to be decided by the ordinary civil Courts of the land vide AIR 1940 PC 105 (O). But the Legislature may invest a special tribunal with exclusive jurisdiction to determine its authority in certain matters and when it does so, the jurisdiction of the ordinary civil Courts must be deemed to have been taken away

to that extent."

66. But even there the learned Judge used the words "to that extent" and who is the judge of the extent it must be the Court of general jurisdiction as was said by Lord Thankerton in 'AIR 1940 PG 105 (O), which is referred to in that judgment and which 1 have discussed above. The learned Judge held that the amended Section 20, Bengal Agricultural Debtors' Relief Act, which runs as follows:

"20. Decision by Board as to whether a person is a debtor. -- If any question arises in connection with proceedings before a Board under this" Act, whether a person is a debtor or not, the Board shall decide the matter."

would not apply as the decision of the Board was anterior to the amendment. These observations as to the exclusive jurisdiction of the Board were (1) obiter' and (2) the exclusion of the jurisdiction of the civil Court is to the extent indicated by the enactment. The Punjab Relief of Indebtedness Act of 1934 before the amendment contained the same words which were subsequently introduced into the Bengal Act in Section 20. In the Punjab Act the words were:

"If any question, arises in proceedings under this part of the Act, whether a person is a debtor or not, the decision of a Debt Conciliation Board shall be final."

These words were held not to give exclusive, jurisdiction to the Boards constituted under the Relief of Indebtedness Act: see 'AIR 1940 Lah 401 at p. 407 (Z10)'. This portion of Section 7(2), Punjab Relief of Indebtedness Act was repealed and a new S 20A was enacted as under:

"20A. If any question arises in any proceedings under this part of the Act whether a loan or liability is a debt or not, or whether a person is a debtor or not, the decision of the Debt Conciliation Board shall be final, and shall not be called into question in any Court."

This section was very widely worded and in spite of that a Division Bench of the Lahore High Court in -- 'Dalip Singh v. Honda Ram', AIR 1947 Lah 240 at p. 242 (Z38), held that this section dad not affect the interpretation put by the Full Bench in 'AIR 1940 Lah 401 (Z10)', and therefore howsoever widely the words of Section 9 of the Adjustment Act may be, the legislature must be taken to have accepted the view of the Lahore High Court in 'AIR 1947 Lah 240 (Z38)' and it makes no difference whether the views are right or wrong: see --- 'D Emden v. Pedder', (1904) 1 Commonwealth LH 91 at p. 110 (Z39).; -- Trimble v.Hill, 1905 AC 342 (Z39a); --'Webb v. Outtsim', 1907 AC 81 at p. 89 (Z40) and -- 'Mohindra Supply Co., Delhi v. Governor-General in council', AIR 1954 Punj 211 at p. 224 (F.B.) (Z41).

67. Reference was next made to Section 15 of the Adjustment Act which lays down the consequences of an application by a displaced person. This section as 1 read it provides:

(a)(i) for the stay of all proceedings in respect of any debt except appeals against decrees or orders:

(ii) for sending of the records of all such proceedings to the Tribunal;

(b) attachments, injunctions, orders for receivers or other process by such Court in respect of such debt shall cease to have effect;

(c) no suits shall be brought against a displaced person; and

(d) displaced person shall not transfer except with permission of the Tribunal any immoveable property.

68. It was submitted that as the consequence is immediate and automatic stay of all proceedings and prohibition to bring suits, the Tribunal alone becomes the authority for the decision of all matters which are covered by the Act and therefore the jurisdiction of civil Courts is barred.

69. Now as I read the section, Clause (a) deals with original proceedings by way of suit, arbitration proceedings or proceedings in insolvency which can come within proceedings in respect of a debt. But proceedings under the Banking Companies Act although it may be in respect of a debt is not covered by Section 15 of this Act and it has been, so held.

70. Clause (b) relates to matters in execution and reference appears to be to Section 51, Civil P. C. wherein the various modes of execution are given. It is significant that although in Section 15(b) all modes of execution are given, sale has been omitted. And it would be legitimate inference that in the Adjustment Act any reference to sales has been deliberately excluded.

71. The words "other process" has to be read 'ejusdem generis' with the preceding words. It has been held that the general word which follows particular and specific words of the same nature as itself, takes its meaning from them and is restricted to the same genus as those words: -- 'Thames and Hersey Insurance Co. v. Hamilton', (1887) 12 A. C. 484 (Z42); Willes J. in -- 'Penwick v. Schmaltz', (1868) LR 3 P. C. 313 (Z43).

72. Nor is it a case of 'cansus omissus'. It has been held that "it is a strong thing to read into an Act of Parliament words which arc not there, and, in the absence of clear necessity it is a wrong thing to do." Per Lord Mersey in -- 'Thompson v. Goold & Co.', (1910) 79 LJ KB 905 (Z44) see also Lord Loreburn L. C. in -- 'Vickers Sons and Maxim Ltd. v. Evans', (1910) 79 LJ KB 054

(Z45).

73. I may also refer here to Section 141, Civil P. C. where the words "all proceedings in any Court of civil jurisdiction" have been held not to be applicable to proceedings in execution: Mulla's Code of Civil Procedure, page 447. And it is in my view for that reason that S, 15(b) of the Act was enacted

74. And therefore what has to be stayed aw proceedings of an original nature which are in respect of a debt. There is no provision made for the stay of execution proceedings which are dealt with in Clause (b) of Section 15. The second part of Section 15(a) makes provision for sending of the record of such proceedings to the Tribunal. The word 'such' in my opinion refers to original proceedings because the orders of the nature given in Section 51, Civil P. C. which are specifically mentioned in Section 15(b) of the Adjustment Act become inoperative and ineffective because of Clause (b) of Section 15.

75. Here again the question as to what is to be stayed will be for the Court to whom a prayer is made for the stay of proceedings. Unlike the Arbitration Act (Section 34) or the Arbitration (Protocol and Convention) Act of 1937 (Section 3) there is no provision for application by a party for stay or for an intimation like under Section 34, Bengal Agriculture Debtors Relief Act. The stay it is submitted is imperative and automatic. Therefore when information is conveyed, I should think, by an affidavit, the Court must determine it the application is under the Act and the rule in 'AIR 1940 Lah 377 (FB) (Z9), will apply. And it is for the Court to see 'whether its jurisdiction is excluded.

76. A mortgage is not merely a transaction in respect of a debt. It is transfer of interest in land pi property governed by the Transfer of Property Act and by statute certain liabilities are attached to the property mortgaged and one such liability is the liability of sale under certain contingencies. There is nothing to indicate in the whole of the Adjustment Act that the legislature intended to take away this right or affect or vary or annul-the transfer of property. Indeed, it could not be, as that would be contrary to the fundamental rights and would be wresting the property of one citizen for the benefit of another: (1898) 169 U. S. 466, at p. 503 (N), see also -- 'Munn v. People of Illinois', (1877) 94 U. S. 113 (240). I may quote from the judgment of Harlan J. in the former case.

"The equal protection of the laws which, by the 14th Amendment, no state can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is. without compensation, wrested from him for the benefit of another, or of the public."

77. In execution of mortgage decrees there is no attachment. The decree itself is one for sale of the property mortgaged and it is not left to the Executing Court to decide as to what property is to be sold to satisfy the decree: see Order 34, Rule 6 and the form of the decree. It appears to me to be unreasonable to infer that the Legislature intended by Section 15 of the. Adjustment Act to interfere with the vested rights of the decree-holder or the powers of the Executing Court; particularly when even under the Bankruptcy Laws mortgages have been left unaffected.

An Adjustment Act is not as drastic as Insolvency Acts. see also -- Mt. Rewati v. Chiranji lal, AIR 1944 Lah 29 (Z47) where it was held that the rights obtained by a decree-holder as from the date of decree are substantive ace! vested rights.

78. An argument, though not specifically raised by the respondents, seems to indicate that the words "in respect of" as used in Sections 8 and 15(a) are wide enough to cover every proceeding which has even the remotest connection with the realization of a debt. Merely because the legislature has chosen to use a phrase of wide connotation, it would not cease to be governed by the usual rule of construction in regard to restricting the words to the specific object in view. In Maxwell on the Interpretation of Statutes at page 81 (Edn. 10) there is one passage which aptly applies to the facts of the present case, and that is:

"One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares -- 'Aruther v. Boenham', (1708), 11 Mud. 148 (Z48)), either in express terms or by clear implication or, iii other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness (-- 'U. S. v. Fisher', (1855) 2 Cranch 358 (Z49), and to give any such effect to general words, simply because they have meaning that would lead thereto when used in either their widest their usual, or their natural sense, would be to give them a meaning order than that which was actually intended.

General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must usually, be construed as being limited to the actual objects of the Act.- It would be perfectly monstrous, (-- 'Leach v. R', (1912) A.C. 395 (Z50)), to construe the general words of the Act so as to alter the previous policy of the law (-- 'Minat v. Leman', (1855) 20 Beav. 269 (Z51). In construing the words of an Act of Parliament we are justified in assuming the legislature did not intend to go against the ordinary rules of law, unless the language they have used obliges the Court to come Lo the conclusion that they did so intend (-- 'River Wear Commissioners v. Adamson', (1876) 1 OB 546 (Z52)."

79. Another rule of construction of general words and phrases is:

"Sometimes, to keep the Act within limits of its object and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or in certain circumstances, or for certain purposes only though the languagfe expresses no such circumscription of the field of its operations".

Maxwell, p. 94 (Ch. III).

And a large number of instances are given in this Chapter where words of wide connotation were given restricted meaning and they are too numerous to be given here.

80. In this connection the judgment of the Full Bench in the -- 'Punjab National Bank Ltd., Ferozpore v. Firm Ram Karan Ramji Lal', AIR 1940 Lah 370 (FB) (Z53), may be helpful.

81. A case which was strongly relied upon by the respondents is a judgment of the Bombay Hign Court in 'Baburao K. Pai v. Dalsukh M. Panchor', (S) AIR 1955 Bom 89 (Z54), That no doubt is a case which goes entirely in favour of the respondents, it is based on the interpretation of Ss. 9 and 15 of the Adjustment Act. That was a case where a suit had been brought in Bombay against Dalsukh M. Pancholi and Pancholi had made an application in Delhi.

82. The facts in the Bombay case and the present case are dissimilar. There a suit for recovery of money had been brought in the High Court and an application made before a Tribunal at Delhi. It was not a case of execution of a mortgage decree where a sale had taken place though not con-finned. If the rule laid down there is the stay of all kinds of proceedings in a civil Court including proceeding like the one in the present case, I am unable, though with the greatest respect, to agree with this judgment and the reasons for this I have already given and it is not necessary to repeat them here.

I would only say this much that the previous cases which had been decoded either under the Punjab Relief of Indebtedness Act or the- Bengal Agricultural Debtors Act or the English cases which I have quoted do not seem to have been brought to the notice of the learned judges.

83. There is still another objection to the jurisdiction of the Tribunal at Meerut. The subject-matter of the execution proceedings is a mortgage decree which under Section 16 read with Section 38, Civil P. C. only a Court at Amritsar has jurisdiction to take cognizance of. There is 110 provision in the Adjustment Act to take cognizance of. There is no provision is the Adjustment Act for' such decrees.

84. There arc a large r, umber of cases under the Punjab Relief of Indebtedness Act and the

Bengal Agricultural Debtors Act of 1935, Taking the Punjab Act before the introduction of Section 20A into , the Act, the Lahore Court had consistently held that it is for the civil Court to determine as to whether the Debt Conciliation Board was acting within the scope of its jurisdiction and even after coming into force of Section 20A, Relief of Indebtedness Act in 'AIR 1947 Lah 240 (Z38)', a Division Bench of the Lahore High Court held that this provision will not affect the jurisdiction of the civil Court to make determination ol the extent of the Board's jurisdiction.

85. At page 242 the learned Judges said that the question whether a person was a debtor or not was couched in the same language in Section 20A as it was in Section 7(2) of the Act previous to the amendment. In no case that I know of was the correctness of the Full Bench of the Lahore High Court in 'AIR 1940 Lah 401 (FB (Z10)' doubted. And it seems to be in accord with decided English cases which I have discussed above.

. 86. In the Calcutta High Court at one time a large number of Division Benches took the view that the jurisdiction of the statutory authority under the Bengal Agricultural Debtors Act had exclusive ' authority to determine the applicability of the provisions of the Act, but the opposite opinion later came into favour and beginning with -- 'Nrishinfiha .Charan Nandi v. Kedar Nath', AIR 1937 Cal 713 (Z55) the Calcutta High Court held that before proceedings could be stayed under a notice under Section 34 the Court is entitled and indeed bound to satisfy itself that the authority of the notice actually existed and there could be no stay without the Court being so satisfied.

I shall not mention all these cases because that is the uniform opinion, of the Calcutta High Court right up to 1949 and in -- 'Dinanand Singh Jha v. Mahammad Saihiddin', AIR 1949 Gal 246 (Z56). Mitter an.d Sharpe JJ. held that die civil .Court had exclusive jurisdiction to try this matter. The respondents have referred to a judgment of B. K. Mukherjea]., in 'AIR 1946 Ca! 53 (Z37)'. I have already discussed this case. The observations of tlie learned Judge were 'obiter' as the question did not arise. But in my opinion the decision in 'AIR 1954 S. C. 440 (Z12)', affirms and accepts the Lahore view as given in the judgment of Dalip Singh J. in 'AIR 1941 Lah 234 (KB) (Zll).

87. Finally, another argument was raised as lo whether even if the jurisdiction of civil Courts is excluded there could as a matter of fact be a debt existing if the sale bad already taken place but had not been confirmed. In the first place this question really does not arise because the decree in this case . was for sale and not for realization of any debt although indirectly the effect of the sale would b" that the security on the basis of the mortgage to the extent of the amount of the purchase price in the sale would be wiped out. In a large number of cases it was held that if the

sale had taken place and before the confirmation an order of the Board came for stay it would be ineffective Because by the sale having taken place the debt was no longer in In 'AIR 1937 Cal 713 (Z55)', it was Held that there is no debt outstanding if the sale has taken place even though it has not been confirmed and therefore a civil Court is not required to stay proceedings it' a notice under Section 34, Bengal Agricultural Debtors Act it received. The same view was taken in

-- 'Manindra Mohan Roy v. Bepin Behari', 41 Cal WN 1366 (757), but it is submitted that this view was not accepted by the Lahore High Court in

-- 'Megha Ham v. Moti Ram', AIR 1944 Lah 325 (Z58;, where it was held that when the property is sold in execution of a decree, the debt under the decree cannot be said to have been realized until the sale is confirmed and reliance was there placed on 'AIR 1933 PC 101 (A)', where the question really to be decided was whether in the case of a person who is keeping his account on cash basis the fact that in realization of his debt property had been sold by an executing Court but the sale had not been confirmed would amount to the recovery and receipt of his debt and it was held that it would not amount to receipt because the purchaser docs not obtain an indefeasible right in the properly until an order confirming the sale had been made under Rule 92 of Order 21, and the process of realization, is completed only then and any profit or income would be realised by the decree-holder on that date and it was also held that this would apply to a case where a decree-holder himself is the purchaser because the right of set-off conferred is also dependent on the sale being rendered absolute by confirmation, but in my opinion the question docs not really arise in this case.

The present case is one of enforcement of a decree for sate in the execution department and therefore even though the opinion of the previous Lahore High Court must in this Court be taken, to be more authoritative than that of the Calcutta High Court, it would not affect the merits of this case. But it is significant to note that in this very case the Bench held that whenever a question arises whether the Court of a special jurisdiction is or is not to try a particular case the Court of general jurisdiction would always be the final authority as to whether the case is or is not within the jurisdiction of the special Tribunal.

88. I have already given the seven propositions of law which arise from the review of cases in regard to the jurisdiction of civil Courts vis-a-vis a tribunal of limited jurisdiction, and it is not necessary to repeat them. In the present case where a decree for sale was being executed and sale had taken place whether the automatic operation of Section 15 becomes operative or not is for the civil Court to decide and Section 9 would not bar the jurisdiction of the civil Court particularly when the case falls within one of the propositions which I have laid down above.

89. I would therefore hold:

(1) that a perusal of the record of the original case in which the mortgage decree was passed and the various affidavits which were filed at . ^various stages in appeals to this Court show

(a) that the respondents had described themselves and were described by the appellants as well as in the decrees as being residents of A in ri tsar carrying on business there and being proprietors of a Textile Mills; and

(b) that of the three persons who were under the decree liable only two have made the , application to the Meerut Court and in regard to the third the proceedings would be unaffected Iry the provisions of the Adjustment Act and must therefore go on..

(2) There is a distinction between a Court and a Tribunal & that is irrespective or whether the person constituting the Tribunal is a Judge of a Court or appeal is provided from the orders of the Tribunal to the High Court. There is authority of the Privy Council in support of this: and thus a Tribunal is not clothed with the powers of a Court which still remains a statutory body acting within the scope of the-powers given under the statute;

(3) from the cases decided by Courts in India as well as the Courts in England and America it appears that orders of a Tribunal of a limited jurisdiction are subject to judicial review;

(4) the object of the Act is to afford to the displaced debtors as well as the creditors within the time specified in the Act legislative protection and the use of special and speedy machinery for adjustment or debts and any abuse of power or fraud on the part of a person applying before the Tribunal will have to-be enquired into by a civil Court;

(5) Section 2(6)(a) of the Adjustment Act which is the only section we are concerned with in the present case applies to debts which were incurred before a debtor was displaced from West Pakistan and carne to reside in India and the Act has no application to pecuniary liabilities which came into existence after such persons came to reside in India;

(6) Section 9 docs not exclude the jurisdiction of civil Courts;

(7) Section 15(a) deals with original proceedings and Section 15(b) with those which may be called execution proceedings;

(8) Section 15 would not cover proceedings in execution for the enforcement of a mortgage decree which is a decree for sale and is not for the recovery of a debt although ultimately the effect may be that the debt is recovered; and (9) the Act is not retrospective except to the ex-l tent

it is expressly given in Section 2(6) (a) and (b).

90. Thus the jurisdiction of a civil Court is not taken away even though it is provided in the Act that any question arising should be determined by the Statutory Tribunal and even the determination of the effect of the overriding provision of Section 3 shall be within the province of civil Courts and it will be for those Courts to decide how far any provision of the Adjustment Act would modify the provisions of any other law or how far a decree or order of any other Court' or a contract is in conflict with anything falling within this Act.

91. In my view therefore in the present case the jurisdiction of civil Courts is not taken away and the answer to the question should be in the negative.

Bishan Narain, J.

92. The facts relevant for the decision of the point referred to this Bench lie in a small compass. The Prakash Textile Mills, Limited, obtained a decree for Rs. 1,72,500/- against Muni Lal, Chuni Lal and Raj Kumar, sons of Salig Ram who are shown as residents of Amritsar, on the basis of an award, front the Court of the Senior Subordinate Judge, Amritsar.

In execution proceedings the decree-holder obtained leave under Order 21, It. 72, Civil P. C. and purchased the property auctioned for Rs. 1,08,600/-in the auction held on 7-9-1953. The judgment-debtors have applied under Order 21, Rule 90, Civil P. C. to get the sale set aside and consequently the sale has not yet been confirmed.

In the meanwhile some time in July 1953 one Hira Lal applied under Section 10 of the Displaced;

Persons (Debts Adjustment) Act, Act 70 of 1951, to a Tribunal in Meerut for the determination of his claim against the sons of Salig Ram, and the latter on receiving notice under Section 11(1), applied under S.--11(2) and in accordance with the provisions of Section 5 of the Act, and in this application the debt due to the Prakash Textile Mills, Limited, is mentioned in -the schedule filed with it.

The tribunal thereupon sent a notice to the Amritsar Court requesting it to send the execution record to the Tribunal. The decree-holder applied under Section 151, Civil P. C. to the Amritsar Court praying that the record be not sent to Meerut, hut this application was rejected. He then

filed an appeal in this Court and Kapur J. ordered it to be heard by a Division Bench.

The appeal then came up before Falshaw and Dulat JJ., who finding that there was a considerable conflict in decisions of various Courts came to the conclusion that the matter should be decided by a larger Bench and after formulating the question of law involved in the case sent it to the Hon'ble the Chief Justice under whose orders the matter has come up before us. The question that requires consideration reads as follows:

"Whether, when there is an application by a person claiming to be a displaced debtor either under Section 5 or under Section 11(2) of Act 70 of 1951 pending before a Tribunal constituted under the Act, the status of the said person can only be determined by the Tribunal or can the matter be placed in issue and decided by an ordinary civil Court in which proceedings arc pending to which he is a party."

93. The contention of the appellant is that whether a person is a displaced debtor or not can be decided only by a civil Court before which the proceedings are pending and that this necessarily involves a decision on the points -- (1) whether the applicant under Section 5 or Section 11(2) of the Act is a displaced person and (2) whether 'qua' the proceedings i.e., pending in the civil Court the applicant is a debtor i.e., owes a debt as defined in the Act. He further contends that the civil Court has no jurisdiction to stay the proceedings pending before it in response to the notice sent by the Tribunal under Section 15 of the Act without deciding the points mentioned above as on their decision depends the jurisdiction of the Tribunal.

On the other hand the respondents content! that under the Act all matters are to be decided by the Tribunal and that the proceedings in the civil Court stand automatically, stayed as soon as an application under Section 5 or Section 11(2) of the Act is filed before the Tribunal, although in actual practice they will be actually stayed when the civil Court comes to know of such an application from the information conveyed by the Tribunal.

(94) Now, the scope and the object of the Act, as can be gathered from its provisions, appear to be that if a displaced person desires to get his assets and liabilities adjusted in one proceedings he should apply to the Tribunal and after that all his disputes with his creditors or debtors will be settled by the Tribunal. It is open to a displaced person (whether debtor or creditor) to avail of the procedure laid down under this Act, but he is not compelled to do so. The Act defines the expression "debt" (which is very comprehensive) and includes "all pecuniary liabilities, 'whether payable presently or in future, ... or whether ascertained or to be ascertained"

and also defines the expression "displaced person". A person alleging himself to be a displaced debtor may apply to the Tribunal having the necessary -jurisdiction for the adjustment of his

debts in a form laid down in Section 5 containing a schedule of all his debts and assets, and if an application is made by a displaced creditor against a displaced debtor under Section 10 of the Act, then the latter on receiving notice of this application under Section 11(1) can apply under Section 11(2) of the Act and such an application shall be treated as an application under Section 5. As soon as an application under Section 5 or . Section 11(2) is made, Section 15 of the Act becomes operative. Section 15 which is relevant for the present purpose reads as follows:

"15. Consequences of application by displaced debtor. Where a displaced debtor has made an. application to the Tribunal under Section 5 or under Sub-section (2) of Section 11, the following consequences shall ensure, namely:

(a) all proceedings pending at the date of the said application in any civil Court in respect of any debt to which the displaced debtor is subject (except proceedings by way of appeal or review or revision against decrees or orders passed against the displaced debtor) shall be stayed, and the records of all such proceedings other than those relating to the appeals, reviews or revisions as aforesaid shall be transferred to the Tribunal and consolidated and

(c) no fresh suit or other proceedings (other than any such appeal, review or revision as is re- . ferret! to in Clause (a)) shall be instituted against a displaced debtor in respect of only debt mentioned by him in the relevant schedule to his application."

After the records of all proceedings pending in other Courts have been transferred to the Tribunal and consolidated then it is open to any creditor under Section 12 to object to the correctness of the schedule of assets filed by the displaced person, and under Section 8 it is open to any respondent whose name is entered in the schedule filed by the displaced debtor to object to the maintainability of the application, and thereupon Section 9 comes into force. . This section reads as follows: (Already quoted in para. 20 Ed).

Again if a displaced person has a claim against a debtor who is not a displaced person then he can apply under Section 13 of the Act to the Tribunal, and if a dispute is raised regarding the status of the applicant or as to the existence of the debt or as to the amount thereof the Tribunal under Section 14 must adjudicate upon the dispute raised. After the Tribunal has decided all disputes raised by the parties under Section 9 of the Act, then it is given the power under Section 21 to revise decrees passed against the displaced person or to reopen compromises entered into by him.

After adjudicating upon his liabilities the Tribunal shall then determine the paying capacity of the debtor, i.e., his assets and then if necessary it shall scale down the debts according to the procedure laid down in Section 32. It is provided in Section 39 that under certain circumstances

the Tribunal shall accept an agreement between the displaced debtor and his creditors after hearing the remaining creditors who are affected by such a compromise. The fact then gives a right of appeal in Sections 40 and 41 in the following terms:

"40. General provisions relating to appeals! -- Save as otherwise provided in Section 41, an appeal shall lie from --

(a) any final decree or order of the Tribunal, or

(b) any order made in the course of execution of any decree or order of the Tribunal, which it passed in the course of execution of a decree or order of a civil Court would be appealable under the Code of Civil Procedure, 1908 (Act V of 1908), to the High Court within the limits of whose jurisdiction the Tribunal is situate.

41. Restrictions on right of appeal in certain cases--Notwithstanding anything contained in Section 40, where the subject-matter of the appeal relates to the amount of a debt and -such amount on appeal is less than rupees five thousand, no appeal shall lie,"

95. The Act contains other provisions which give certain privileged rights to a displaced debtor which are available to him whether he applies under Section 5 or Section 11(2) of the Act or not but these provisions need not be discussed in this case. It may be mentioned here that Section 4 of the Act contemplates that the Tribunals are to be appointed by the State Government by notification specifying any civil Court or class of civil Courts to act as such. It follows therefore that only some of the civil Courts which are authorised under this Act can act as Tribunals, but they are given additional powers which are peculiar to the Act and which were not exercisable by them as ordinary civil Courts.

96. Therefore it appears to me that the Act contemplates that the Tribunal is the only authority to adjust and settle all debts due to or by displaced persons. It constitutes a self-contained Code giving special rights to displaced debtors and creditors and then provides complete procedure for setting and adjusting the affairs of displaced persons who desire to take advantage of the Act. These rights along with the procedure laid down in the Act were not available to a displaced person under the ordinary law and he cannot get his lights and liabilities adjusted in one proceedings in any civil Court unless he applies for his insolvency, which is not a satisfactory remedy to a person who is anxious to get his affairs settled at an early date, whether he is insolvent or not. Moreover, Section 50 of the Act is a bar to an application in insolvency against a displaced debtor.

As I read Section is it provides that if a suit or other proceedings are pending at the time, of the

application under the Act, its record must be sent to the Tribunal and no fresh suit can be filed during the pendency of the application under the Act. Section 15 does not contemplate a decision on the allegations made by a displaced debtor before the proceedings pending in civil Courts are stayed.

It appears to me to be impossible to suggest that a civil Court on receiving intimation that an application under Section 5 or Section 11(2) is pending before the Tribunal can refuse to stay the proceedings or refuse to Send the record to the Tribunal till it has decided on the jurisdiction of the Tribunal by giving decision on the status of the applicant or on the existence of the debt. Section 9 specifically lays down that the Tribunal has to decide these matters, If the civil Court is allowed to interfere at this stage and to go into the evidence on questions of fact which are necessarily involved in an application under Section 5 or Section 11(2) then the very purpose of the Act will be completely defeated, as the Tribunal will find it impossible to continue its proceedings till all the creditors no the displaced debtor have got their disputes decided by civil Courts and the result will he that Ss. 8. 9 and 12 will be wholly redundant and unenforceable and often the Tribunal will find itself unable to act under Section 32 as in the meanwhile assets of the displaced debtor may disappear.

Moreover, the intention of the legislature appears to be that all the creditors of the displaced debtor should have a right to object to the list of assets given by the displaced debtor to the Tribunal and that all the persons mentioned in the schedule filed with the application under Section 5 or under Section 11(2) have a right to object to any debt alleged by the displaced debtor to be in existence. Obviously this right has been given to the respondents with a view to prevent a displaced debtor from getting collusive decrees passed, against him in civil Courts and to prevent him from concealing any part of his assets.

Now, if a civil Court is allowed to keep proceedings relating to a particular debt pending before it then the respondents before the Tribunal will be deprived of the right given to them under the Act. Moreover, Section 15 comes into operation immediately on the making of the application which means that on mere allegations of the displaced debtor Section 15 becomes enforceable and it is not the intention of the Legislature that Section 15 should become operative alter a decision has been given by the Tribunal or by a civil Court relating to the matters mentioned-in Section 9 of the Act.

Therefore it appears to me to be contrary to the scope and object of the Act that an alleged creditor of the displaced debtor should be permitted to carry on the proceedings in a civil Court thereby making all the proceedings before the Tribunal almost in fructuous. In my opinion this Act has set up a Tribunal on which jurisdiction has been conferred to decide all questions which

arise in respect of the matters for which it has been set up and it is not open to the civil Courts to decide on the status of the applicant before the Tribunal can exercise its jurisdiction.

The Act gives new rights to a displaced debtor and his creditors and entitles all the parties concern-ed to new remedies and on an application under Section 5 or Section 11(2) of the Act to the Tribunal the displaced debtor gets special and peculiar form of remedies different from the remedies which exist under the general law and it is within the exclusive jurisdiction of the Tribunal when so moved to determine those rights and remedies.

The Legislature has under the Act entrusted the Tribunal with a jurisdiction to determine whether the preliminary state of facts exist which will give it jurisdiction to proceed further in the matter. It has been laid down by their Lordships of the Supreme Court in 'AIR 1952 SC 319 (Z31)', that in such a case it is erroneous to say that the Tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their Jurisdiction depends, and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.

In the present Act, however, Section 40 gives right of appeal in certain circumstances to the High Court and if the Tribunal commits any error in deciding any of the matters mentioned in Section 9 of the Act it is always open to a party to the proceedings to appeal to the High Court.

97. Regarding the construction of the Act I am in respectful agreement with the observations of the Hon'ble the Chief Justice of the Bombay High Court in '(S) AIR 1955 Bom 89 at p. 92 (Z54)', "If the civil Court were to determine those questions, then it is difficult to understand what function is the Tribunal expected to perform under the Act. The Tribunal cannot divest itself of the mandatory obligation under which it is placed under Section 9 to determine the issue as to the status of the applicant or the nature of the debt. Therefore, we would have this rather anomalous situation that the civil Court, in order to decide whether the suit should be stayed or not will first try whether the applicant is a displaced person and whether the debt claimed from him, is a debt to which the Act applies.

Simultaneously, it would be open to the Tribunal under Section 9 to try and determine those very questions, and HO suggestion is made as to how, if there is a conflict between the decisions of the two authorities, that conflict is to be resolved. In our opinion it is precisely in order to avoid such a conflict that Section 15(a) and (c) were enacted. Parliament wanted only one authority to decide these questions, and that authority is the Tribunal set up under the Act."

98. It has been argued by the learned counsel for the appellant, however, that in the absence of a

specific provision in the Act ousting the jurisdiction of the civil Courts to go into the matters covered by Section 9 or Section 14 then this Court should prefer a construction which retains jurisdiction of the civil Court and not the one which takes it away. It is, however, clear that the Act has given special powers to the Civil Courts and the principle stated above has hardly any application.

In any case I am of the opinion that even if either interpretation was possible I should prefer to give effect to a construction which gives exclusive jurisdiction to the Tribunals empowered to deal with the matter. In this connection I may refer to the observations of Lord Shaw of Dunfermline in --'Shannon Realties v. St. Michel (Ville De)', 1924 AC 185 at pages 192-193 (259).

"Where the words of a statute arc clear they must, of course, be followed; but, in their Lordships' opinion, where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the work-ring of the system."

Applying this principle to the present Act under consideration I have no hesitation in holding that the Act gives exclusive jurisdiction to the Tribunal created by it to decide all disputes pending before it and that the" jurisdiction of the civil Court has been taken away to decide these matters. It is true that their Lordships of the Privy Council in the case reported as 'AIR 1940 PC 105 (O)', have laid down that the exclusion of the jurisdiction of the civil Court is not to be readily inferred but that such an exclusion must either be explicitly expressed or clearly Implied. In my opinion such an. exclusion is clearly implied in this Act. Their Lordships of the Privy Council in the same judgment have also laid down at page 110;

"It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

Their Lordships of the Privy Council in that case were dealing with the Sea Customs Act (Act 8 of 1878) where the entire jurisdiction to deal with the matters involved in the Act was given to authorities other than the civil Courts up to their final decision, and their Lordships after considering the provisions of the Act came to the conclusion that the civil Court had no jurisdiction in the matter and that the final decision rested with the authorities created by the Act.

Tt follows, therefore, that the rule laid down by their Lordships and cited above is subject to the limitation (and this limitation is implicit in the decision) that the Special Tribunal might be

invested by the Legislature with exclusive jurisdiction to determine its own authority in certain matters, and where it is so invested the jurisdiction of the civil Court must be deemed to have been taken away to that extent (vide observations of B.K. Mukherjea J., in-- 'Mohesh Chandra Shaha v. Abdul Gafur' AIR 1946 Cal 435 (262)). In the present case also the exclusive jurisdiction to determine its own authority in matters covered by Section 9 or Section 14 has been conferred on the Tribunal created by the Act.

99. The learned counsel for the appellant has further urged that the High Courts "of Lahore and Calcutta in similar circumstances and under similar Acts have held that the jurisdiction of the civil Court is not excluded and he has argued that those decisions should be followed by this Court. Before discussing those authorities I may state that the determination of this question must rest on the terms of this particular statute and decisions on other statutory provisions in other Acts are not of material assistance, except in so far as they discuss the general principles of construction.

In my opinion the main principles of construction applicable to the present case are formulated by Lord Esher, M. R.. in (1889) 21 QBD 313 (Z14) and these principles have been approved, by their Lordships of the Supreme Court in Ebrahim Abobaker's case (Z31).

100. The Lahore decisions are under the Punjab Relief of Indebtedness Act, 19S4, and the learned counsel for the appellant has relied on AIR 1940 Lab. 401 (FB) (Z10) and AIR 1941 Lah 234 (FB) (211) along with AIR 1947 Lah 240 (Z3S). In AIR .1940 Lah 401 (FB) (Z10) Tek Chand J. after quoting Section 7(2) of that Act observed at page 407 :

"It is clear that this paragraph makes the
Board the final judge as to whether a particular
debtor possesses the qualifications required under
the section. It does not refer to an adjudication
as to the nature of the transactions entered into by
him, i.e., whether or not they are debts as defined
in the Act. In other words, all that this section"
provides is that if the Board had decided that the
person concerned earns his livelihood in one of
the manners mentioned in the sub-section or that he has, or has not, lost his status for
any of the
reasons given in the "explanation" its decision cannot be questioned in a Civil Court."

The learned Judge in that case came to the conclusion that the Board has no authority to adjudicate whether a particular transaction amounted to
a debt or not within the Act and held that a usufructuary mortgage is not a debt within the definition of "debt" given in the Act. This decision
does not make any observation which can be considered to be in conflict with anything that I have
said above. The present Act specifically lays down
that the Tribunal must decide the existence or the
amount of the debt due.

101. After the decision of the Full Bench in
Lachhman Singh's case (Z10), the Punjab Legislature amended that Act, by introducing Section l5(a)
which came into force in September 1940. Section 15A of the Punjab Act gave the power to the.
Board to adjudicate upon the genuineness or enforcibility of any debt mentioned in the application and laid down that any order passed under
this section was not open to question in a civil
Court. After this amendment the matter came UP
again before another Full Bench, AIR 1941 Lah
234 (FB) (211), where Dalip Singh J. observed at
page 236 as follows :

" Thus is the special Court would always have jurisdiction to try the question whether a particular cause did or did not fall within its jurisdiction be cause no Court is bound to try causes which holds do not come within its jurisdiction. By from this principle it does not follow that a Court.

can merely by a wrong exercise of discretion or by a wrong construction of law confer jurisdiction upon itself to try a cause and hence when the* question arises as between the special Court and the Court of general jurisdiction as to whether a cause is within the jurisdiction of the Special Court or the jurisdiction of the Court of general jurisdiction then the decision of the Court of general jurisdiction must override the decision' of the Court of special jurisdiction.

The same principle applies to all special tribunals or departmental authorities set up to try particular cases or to come to particular decisions on particular facts. This rule of law is so well

settled that it is quite unnecessary to multiply rulings on the subject, more especially as the learned counsel for Mr. Gauha did not contest this proposition."

The matter does not seem to have been fully argued before him but in any case if the learned Judge by this observation meant to lay down that every case whatever be the provisions of the statute creating a Tribunal, a civil Court of general jurisdiction has power to decide whether a particular matter conies within the jurisdiction of the special Tribunal, I respectfully disagree with it. 'It is always open to the Legislature to entrust a Tribunal with a jurisdiction to determine whether the preliminary state of facts exists which gives it a jurisdiction or not.

It appears to me that the observation of the learned Judge is to a certain extent opposed to the principles of construction accepted by their Lordships of the Supreme Court in Ebrahim Abbobaker's case (Z31).

102. After this decision the Punjab Legislature again amended that Act in 1942 and introduced Section 20A by which the decision of the Board whether a loan or liability is a debt or not, or whether a person is a debtor or not, was made final. After this amendment the matter was again examined in AIR 1947 Lah 240 (Z38), where chhru Ram J. construed Section 20A and other provi(SIC) is of the Act and came to the conclusion that (SIC) 20A did not make the decision of the Board (SIC) on the question whether there is any liability (SIC) ting on the so-called debtor in respect of a particular transaction and then following AIR 1940 (SIC)ah 401 (FB) (Z10) upheld the jurisdiction of the (SIC)vil Court to go into the matter.

103. It is possible that the last two cases by require reconsideration in view of the decision in Ebrahim Abbobaker's case (Z31), but it is -not necessary to go further into the matter now, as I am of the opinion that the decisions under the Punjab Act are of no assistance in the present Act as besides other reasons the scheme of the two Acts is absolutely different.

104. In the course of arguments reference was made to a decision of another Lahore Full Bench case reported in AIR 1943 Lah 41 (Z15). In that case the Punjab Government served on the Lahore Electric Supply Company, Limited, a requisition order under Rule 75-A Defence of India Rules and on 16-11-1942 the Government issued an acquisition order under the same Rule and served it on the plaintiff company. Thereupon the Lahore Electric Supply Company, Limited, filed a petition alleging that the acquisition order was ultra vires.

The main dispute in that case was whether the orders of acquisition and requisition passed by the Government were bona fide or not, and as observed at page 44 both parties were in agreement that if an order was made under the Defence of India Act, which was not bona fide, Section 16 of that Act was not a bar to the Court dealing with the matter. I am, therefore, of the opinion, that

this case also is of no assistance to us in" the present reference.

105. The learned counsel for the appellant then relied upon certain Calcutta judgments given in cases under the Bengal Agricultural Debtors Act, 1935. Sections 18 and 20 of that Act give the Board powers similar to the powers given under Section 9 of the present Act, while Section 34 of the Bengal Act is also in terms similar to Section 15 of the present Act. I regret that I have not been able to reconcile all the decisions of the Calcutta High Court given during 1957, 1938 and 1939, Interpreting these sections the same Judges on different occasions seem to have expressed different views, but it is not necessary for me to refer to them in detail as all those decisions turn on the interpretation of the sections of that particular Act. It was only in AIR 1946 Cal 435 (Z60) that the rule relating to the construction of statutes conferring the special jurisdiction on special Tribunals was laid down as I have already discussed above. In no other Calcutta case which was brought to our notice was this matter considered on the basis of the rules of construction applicable to such statutes, and therefore it is not possible to draw any assistance from them.

106. Then finally the learned counsel for the appellant argued that as a matter of fact it is quite clear that there are no proceedings pending in the executing Court in respect of any debt to which the displaced debtor is subject as laid down in Section 15 of the Act. His argument is that after the auction-sale the debt ceases to exist and the proceedings that are pending in the executing Court at the time when the notice under Section 15 was served on it did not relate to any debt as defined in the Act and therefore a civil Court had no jurisdiction to stay the proceedings, but I have already held whether the debt exists or has ceased to exist is a matter which must be decided by the Tribunal under Section 9, and wo were informed at the Bar that this objection has been raised by the decree-holder before the Tribunal.

The learned counsel urged that in law the debt has ceased to exist and we should give effect to it and has relied on certain decisions or the Calcutta High Court in support of his proposition. I do not propose to go into the individual decisions of that Court on this point because those decisions were followed by Tek Chand J. in --- 'Mohd. Din v. Nand Lal', AIR 1943 Lah .97 (Z61), where it was held that once an auction has taken place the debt ceases to exist even before the sale has been confirmed under Order 21 Rule 92, Civil P. C., in spite of the fact that an application under Order 21, Rule 90, Civil P. C., is penning in the Court, but in AIR 1944 Lah 325 (Z58), the above decision of Tek Chand J in Mohd. dIN'S case (Z61) was overruled and it was held that the debt does not cease to exist even temporarily till the sale has been confirmed, and in that judgment the learned Judges relied on a dictum of their Lordships of the Privy Council in AIR 1933 PC 101. (A).

As I have already stated we have no jurisdiction to go into this matter at this stage. It is for the

Tribunal to decide whether the debt exists or not and any party aggrieved from that decisions can come to the High Court on appeal and then the High Court will have the power to decide the question raised.

107. For these reasons 1 am of the opinion that the question referred to us should be answered as follows : that the status of a displaced debtor who has applied under Section 5 or under Section 11(3) of the Act can be determined only by the Tribunal land cannot be determined by a civil Court in which proceedings relating to that debt are pending.

Falshaw, J.

108. I have had the advantage of reading the judgments of my learned colleagues in which conflicting opinions have been expressed regarding what, should be the answer to the question referred to the Full Bench, & I regret that in spite of the careful judgment of my learned brother Kapur J. I am unable to agree with his conclusions, and I consider that the correct view has been expressed by my learned brother Bishan Narain J.

109. I entirely agree with the former that the facts in this particular case throw a very unfavourable light on the conduct of the judgment-debtor, and give rise to the strongest suspicion that the filing of the claim against him by a so-called creditor before the Tribunal at Meerut, which gave him the opportunity to apply for the adjustment of his debts under Section 11 of the Act, is collusive. At the same lime I am completely unable to agree with him that this fact should in any way affect the answer which we have to furnish to the question referred to us, and which will be applicable in many other casts besides the particular case from which the question has arisen.

Even in this case, however, I cannot see any reason for supposing that the Tribunal at Meerut will not decide the matter properly, and should it fail to do so, an appeal will lie under the Act to the High Court at Allahabad. In the circumstances 1 can only express the opinion that the question should be answered purely on general principles and not with reference to the particular facts out of which it has arisen.

110. If I were to give my reasons at length for answering the question on the lines proposed by my learned brother Bishan Narain J. I should merely be repeating what he has already said. I do not think I could improve upon his statement of the case and shall not attempt to do so. I should only like to add that when the case came before Dulat J. and myself one of the main reasons for our derision to formulate the question and refer it to a larger Bench was the Full Bench decision of the Lahore High Court in -- 'K. L. Gauba v. Punjab Cotton Press Company Ltd.,' (Z11).

But for this decision I, at any rate should have felt no difficulty in deciding the matter, and I agree with the views expressed by Bishan Narain J.

regarding it with the utmost respect I consider that Dalip Singh J., expressed too sweeping a proposition of law in (hat case, and I cannot help feeling that this was due at least in part to the facts in that particular case, which do not appear to have been any better from the point of view of the debtors manoenvres than those of the present case. In the circumstances I adopt the reasoning of my learned brother Bishan Narain J. and agree w