

RAJASTHAN HIGH COURT

Mohd. Hussain

Vs.

Rajasthan Board of Muslim Wakf

Civil Writ Petns. Nos. 705 and 706 of 1998
(Anil Dev Singh, C.J. and Rajesh Balia, J.)

14.02.2003

JUDGEMENT

Rajesh Balia, J.

1. These two writ petitions are by unsuccessful occupants of wakf properties, which are public premises within the meaning of Section 2(b)(viii) of the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 (Act No. 2 of 1965) (for short 'the Act).
2. The case of the petitioners is that vide rent deed dated 13-5-1988, they have been inducted as tenants in the properties situated at Jodhpur belonging to Rajasthan Board of Muslim Wakf, *Jaipur* (hereinafter to be referred to as 'the respondent-Wakf Board') on the conditions that they will pay rent @ Rs. 200/- per month for the first 5 years and thereafter, 15% rent will be increased after every five years till the rent is brought to Rs. 304.17P. per month. It was agreed that the rent will be paid only by obtaining a receipt. The petitioners paid the rent regularly up to 30-6-1990. Thereafter, since the receipt was not given, the rent could not be paid.
3. As a result of non-payment of rent, the petitioner Mohd. Hussain was served with a Notice dated 18-9-1996 and petitioner- Mohd. Aslam was served with a Notice dated 12-9-1996 whereby their tenancy was terminated by the respondent-Wakf Board with effect from 20-10-1996 and 14-10-1996 respectively or from one month from the date of commencement of the tenancy after the receipt of the notice according to the petitioner himself. The respondent-Wakf Board also demanded interest @ Rs. 2000/- per month from September 1996. In reply to the above notice, the petitioner Mohd. Hussain submitted that he remitted a sum of Rs. 32800/- vide Demand Draft dated 1-11-1996 calculating the rent @ Rs. 400/- a month, which has been duly received by

the respondents. He further remitted a sum of Rs. 50600/- vide Demand Draft dated 5-9-1997, which has also been duly received by the respondents. Likewise, petitioner-Mohd. Aslam submitted that he remitted a sum of Rs. 16,400/- vide Demand Draft dated 28-10-1996, which has been duly received by the respondents. He further remitted a sum of Rs. 2530/- vide Demand Draft dated 5-9-1997, which has also been duly received by the respondents.

4. However, the respondents moved the Estate Officer, Wakf Board, *Jaipur* for initiating proceedings for evicting the petitioners on the ground that after termination of the tenancy, the petitioner have become unauthorized occupants of the wakf property as per the provisions of the Act. The Estate Officer issued two Notices to the petitioners under Sections 4(1) and 7(2) of the Act on 30-6-1997 and 10-7-1997 respectively.

5. In response to the aforesaid notices, the petitioners made an application under Section 8 of the Act on 18-9-1997 raising objections for initiating proceedings against him for his eviction from the Wakf property. After hearing the petitioners and further giving them an opportunity to furnish further particulars, ultimately the objections were overruled vide order dated 16-1-1998.

6. By the application dated 18-9-1997, the petitioners prayed for supplying them the copy of the Notification appointing *Sri Jagannath Puri* as Estate Officer. They also desired to know under which provision of law, the Wakf Board has approached the Estate Officer for initiating proceedings against them for their eviction from the Wakf properties. However, by the impugned order dated 16-1-1998, the applications filed by the petitioners have been rejected holding that it is apparent from the notices that applications have been filed for evicting the petitioners from the public premises as their tenancy has been terminated by giving them a notice and after termination of tenancy, they are alleged to be unauthorized occupants of the Wakf properties which are public premises. The Estate Officer asserted his jurisdiction to decide the applications moved by the Wakf Board under the provisions of the Act, under which the application lies to the Estate Officer.

7. Aggrieved with the order dated 16-1-1998 passed by the Estate Officer, the petitioners have filed these writ petitions challenging the constitutional validity of the provisions of Sections 2(b)(viii) and 3 of the Act. They have also prayed that the Notification dated 20-8-1976 exempting all premises owned by Wakf registered under the Wakf Act from the operation of all the provisions of the Rajasthan Premises

(Control of Rent and Eviction) Act, 1950 may be declared as invalid. In the alternative, it was prayed that appointment of only one Estate Officer for the entire Wakf properties situated and scattered throughout the State of Rajasthan by locating its Office at *Jaipur* be declared to be invalid. The two Notices issued to the petitioners by the Estate Officer on 30-6-1997 and 10-7-1997 under Sections 4(1) and 7(2) of the Act and the proceedings initiated in consequence thereof may be set aside and quashed.

8. We may notice that no final order has been passed by the Estate Officer so far, as further proceedings pending before him have been stayed by this Court vide its order dated 4-3-1998 after the writ petitions were admitted for consideration. The said stay order appears to be continuing since then.

9. At the outset, we may notice that the learned counsel for the petitioners has not pressed his contention about declaring the Notification dated 20-8-1976 exempting all premises owned or managed by Wakf Board and registered under the Wakf Act from the operation of all the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 to be invalid. In our opinion, he has rightly done so.

10. The Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 came into force with effect from 11-1-1965 when it received the assent of the President of India. Section 2(b)(viii) of the Act defines 'public premises'. Concerning the Wakf property, it clearly lays down that 'public premises' means any premises belonging to, or taken on lease or requisitioned by, or on behalf of the State Govt. and includes any premises belonging to a Wakf as defined in the Wakfs Act, 1954 (Central Act 29 of 1954) and entered in the register of Wakfs maintained under Section 26 of that Act. Since then the Wakf Act 1954 has been repealed and replaced by Wakf Act, 1995.

11. The provisions of Section 2(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 empowering the State Govt. to exempt from all or any of the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 any premises owned by any educational, religious or charitable institution, the whole of the income derived from which is utilised for the purpose of the institution have been held to be valid by a Bench of this Court in *Smt. Sushila v. State of Rajasthan*¹ *Fakir Mohd. v. State*² on the basis of the principle enunciated by the SC in *M/s. S. M. Mahendru v. State of T. N.*³ *P. J. Irani v. State of Madras*⁴ and *S. Kandaswamy Chettiar v. State of Tamil Nadu*⁵ The very same Notification has also been held to be

valid by a learned single Judge of this Court in *Fakir Mohd. v. State* ⁶ by upholding the validity of Section 2(3) of the Act of 1950.

12. Apart from the aforesaid, one more factor which is to be taken into account is that while the properties which are being managed and controlled by the Devasthan Department of the State Govt. have been granted exemption from provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 but no such exemption from the provisions of the said Act has been granted to the Wakf properties a priori. It was left to the State Govt. if it deems proper to exempt the properties of Wakf which are held for pious, religious and charitable purposes from the operation of the Act of 1950 by a Notification. However, under Section 2 of the Act, the premises belonging to Devasthan Department of the Govt. of Rajasthan or premises managed or controlled by it or the premises of a Wakf as defined in the Wakfs Act, 1954 and entered in the register of Wakfs maintained under Section 26 of the Act have been considered at par to be included in the category of 'public premises' and to such premises, the provisions of the Act have been made applicable to properties belonging to and controlled and managed by Devasthan Department of State or the properties which are Wakf dedicated by Muslims for pious, religious or charitable purposes by Muslims alike.

13. Since the Wakf properties are held in trust of religious or charitable purposes and whole of income derived from it can be utilized for the pious, religious or charitable purposes, the State Govt. has granted exemption to Wakf properties duly registered under Wakf Act from all the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 while exercising its powers under Section 2(3) of the said Act by issuing the Notification dated 20-8-1976. By doing so, not only a dichotomy has been removed but the contingency of availability of two procedures to be adopted in respect of the Wakf properties in evicting the unauthorized occupants has also been obviated. That results in silencing any challenge on the envil of giving a discretion to the respondent-Wakf Board in adopting different procedures for evicting the tenants of Wakf properties after termination of their tenancy on the whims and caprice of Wakf Board.

14. Mr. M. Mridul, the learned counsel for the petitioners has contended that the provisions of Section 3 of the Act, which provides for appointment of any Gazetted Officer or any other Officer of equivalent rank as the Govt. may think fit, as an Estate Officer for the purpose of implementing the provisions of the Act suffers from conferment of unguided and unanalyzed powers in the State Govt. in appointing any person who may or may not be well-versed in discharge of functions of quasi-judicial

authority. The said arbitrariness, according to the learned counsel, is further compounded by the fact that jurisdiction of the Civil Court to try any dispute concerning eviction of unauthorized occupant has been excluded under Section 10 of the Act. In this connection, the learned counsel has placed reliance on the decision of the SC in *A. N. Parasuraman v. State of Tamil Nadu*,⁷ In short, according to the learned counsel, Section 3 of the Act insofar as it confers power on the State Govt. to appoint any Gazetted Officer of the State or any Officer of the equivalent rank as the Govt. thinks fit as an Estate Officer suffers from the vice of excessive delegation without providing guidelines, and results in vesting of discretion in such estate officer which can be exercised in arbitrary and discriminatory manner which can be exercised on the whims and caprice of the estate officer.

15. On the other hand, it has been contended by the learned Advocate General that Section 3 of the Act does not suffer from any such vice of conferring unguided and unbridled power on the State or in the person appointed as an estate officer under the Act. The State Govt. may appoint only an Officer not below the rank of a Gazetted Officer of the State or an Officer of equivalent rank of the Municipal Board or Council or Improvement Trust to implement the provisions of the Act and suitability of such appointees depends upon the subjective satisfaction of the Government. Conferment of powers of the quasi judicial authority of determining certain matters for the purpose of implementing a particular Statute and to achieve its object is not the same thing which falls within the domain of delegation. In fact, the Estate Officer is only envisaged as a statutory authority under the Act who is to be appointed to implement the provisions of the Act for administering the Act, power has not been conferred on the State Govt. to act as an Estate Officer and, therefore, the question of delegating the powers to a sub-ordinate Officer to discharge functions conferred on the State Govt. is not the correct perspective of the problem posed by the learned counsel for the petitioners. An Officer appointed for the purpose of implementing the provisions of the Act has to discharge his duties to achieve the object of the Act, which is clearly delineated from various provisions of the Act. The guidelines which govern exercise of powers by the authority appointed under the Act for its implementation is clearly discernible from the reading of the provisions of the Act and, therefore, it cannot be said that appointment of a Gazetted Officer or an Officer of the equivalent rank of the Municipal Board or Council or Improvement Trust as an Estate Officer under Section 3 of the Act is without any guidelines about the functions and duties to be discharged by him or about the manner in which such duties are to be discharged by him. It is only in absence of such guidelines about the exercise of powers by the implementing

authority, such provisions can be held to be ultra vires.

16. We have given our careful consideration to the rival contentions raised by the learned counsel for the parties.

17. We find substance in the contention raised by the learned Advocate General that in making appointment of a Gazetted Officer or an Officer of the equivalent rank of the Municipal Board or Council or Improvement Trust in exercise of the powers conferred under Section 3 of the Act, the question of delegation of authority does not at all arise. Every Statute which is enacted for the purpose of achieving certain objects is to be implemented through the agency of Officers to be appointed under the said Statute. Obviously such Officers are to be designated under the said Statute and appointing authority is also conferred by the Statute on the State. However, merely because authority to appoint is conferred on the State, it does not mean delegation of powers of the State on the said Officer designated and appointed under the Act for implementing the provisions of the Act. State Govt. merely exercise powers conferred upon it as an appointing authority. The persons or class of persons who can be appointed is not left to State but has been well identified by the Statute itself viz., Officer of the State not below the rank of Gazetted Officer. The process of appointment of Gazetted Officer under the State itself enters selection and appointment of Officers of some substance. Hence, merely because the State Govt. has been conferred with status of appointing estate officers from amongst its Gazetted Officers, who have already undergone selection process to prove their comparative merit before appointments. Even in case of appointment as Gazetted Officer is by way of promotion from lower posts, it ensures sufficient experience of administrative functioning. Even otherwise Officers newly appointed to any specific service when so appointed first time lack experience and that is left to be acquired by actual functioning. If plea of learned counsel for the petitioners is to be accepted, it will mean acceptance in principle that conferring quasi-judicial authority or judicial authority on any newly appointed Officer will be equally arbitrary and unfair. The contention of the petitioners suffer from basic fallacy that guidelines is required for discharging the functions substantively and about the manner in which such functions are to be discharged. If a person of an Officer's class is entrusted to discharge any function contours of which substantively as well as procedurally are well defined, conferment of such responsibility by itself cannot be held to be suffering from any vice of arbitrariness and conferment of unbridled and unanalyzed power.

18. The real question is whether the appointment of any person to discharge the

functions under the Act can be said to be fairly clear and unequivocal, as to what are the functions to be discharged, what is the object to be sought and the manner in which the Officer has to act in discharge of those functions. If these things are wanting, the Act would be suffering from the vice of arbitrariness and if any particular exercise of power which is not in consonance with the provisions of the Act, it may be held to be *ultra vires* in the sense that it confers power and authority which is unguided and uncanalised.

19. In this connection, we may notice the principle succinctly stated by the SC in *Kathi Raning v. State of Saurashtra*,⁸

20. In Kathi Raning's case (supra), the provisions of Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949 was attacked as *ultra vires* on the ground that Section 11 of the said Ordinance in so far as it authorizes the State Govt. to direct offences or classes of offences or classes of cases to be tried by the special Court is arbitrary, discriminatory and violative of Article 14 of the Constitution. The majority of the Constitution Bench of 7 Judges repelled the contention. On principles, there was no dissent. B. K. Mukherjee, J. as he then was speaking for the majority observed as under :-

"In my opinion, if the legislative policy is clear and definite and as an effective method of carrying out that policy, a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation."

21. In coming to this conclusion, reliance was placed on *Buck v. Bell*⁹ wherein it was stated :

"that after all the law does at all that is needed when it does all that it can, indicates a policy and seeks to bring within the lines all similarly situated so far as its means allow."

B. K. Mukherjee, J. further observed:

"In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. The discretion that is conferred on official agencies in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy, to effectuate which the direction is given and it is in

relation to that objective that the propriety of the classification would have to be tested. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can certainly be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on any other to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied."

22. This principle is well settled now. Therefore, the question which is to be asked is not whether the appointment of A or B or C can be made to implement the provisions of the Act but the question is whether the Act provides sufficient guidelines for such appointees for discharging of functions in administering the provisions of the Act and if that is so, the action of the persons discharging such duties can be judged on the anvil of such a guidelines whether he is discharging his functions or duties in accordance with the provisions of the statute or in violation of it. If the said Officer has not acted in accordance with the provisions of the Act in furtherance to the object sought to be achieved by the said Act, his action may be annulled but his appointment as an Officer to implement the provisions of the Act cannot be indicated. However, where no such policy or guideline is discernible for an administrative authority appointed under the Act to discharge the functioning of administering the provisions of the said Act notwithstanding the appointment being valid.

23. Viewed in this light, if we examine the decision of the SC reported in A. N. Parsuraman's case (AIR 1990 SC 40) (supra) which has been relied upon by the learned counsel for the petitioner, we find that the above decision is an extension of the principle stated above. It was a case concerning the validity of the provisions of the Tamil Nadu Private Educational Institutions (Regulation) Act, 1966 (for short 'the Act of 1966'). The main challenge was directed against the provisions of Sections 2(c), 3(a), 3(b), 6, 7 read with 15, 22 and 28. The High Court struck down the provisions of Section 28 of the said Act upholding the validity of other provisions. So far as striking out of the provisions of Section 28 of the said Act by the High Court was concerned, it was not subjected to challenge by the State before the Supreme Court. However, the petitioner before the High Court came in appeal before the Supreme Court. The question was about the requirement of permission to be obtained by a Private Educational Institution from the competent authority. Section 3 of the Act of 1966 required a private educational institution to obtain the permission of the

competent authority for the purpose of running it. The Manager of such an institution has to, as required by Section 4, make an application for permission in the prescribed form accompanied by a fee. Section 6 empowered the competent authority to deal with such an application and to grant or refuse the permission. The only safeguard provided was that permission was not to be refused under Section 6 unless the applicant has been given an opportunity of making his representation. The provisions of the Act of 1966 were impugned on the ground that it does not lay down any guidelines for the exercise of the power by the delegated authority, as a result of which, the authority is in a position to act according to his whims. The Act having failed to indicate the conditions for exercise of power, the decision of the competent authority is bound to be discriminatory and arbitrary. The Court stated (para 5) :

"The point dealing with legislative delegation has been considered in numerous cases of this Court, and it is not necessary to discuss this aspect at length. It is well established that determination of legislative policy and formulation of rule of conduct are essential legislative functions which cannot be delegated. What is permissible is to leave to the delegated authority the task of implementing the object of the Act after the legislature lays down adequate guidelines for the exercise of power."

While examining the provisions of the Act of 1966 on the aforesaid principle, the Court found that the impugned provisions miserably fail to come to the required standard. The Court further found that Section 6 which empowers the competent authority to grant or refuse to grant the permission for establishing and running an institution does not give any idea as to the conditions which it has to fulfil before it can apply for permission under the Act, nor are the tests indicated for refusing permission or cancelling under Section 7 of an already granted permission. The authority concerned has been left with unrestricted and unguided discretion which rendered the provisions unfair and discriminatory. The Court also found:"that there is no indication, whatsoever about the legislative policy or the accepted rule of conduct on the vital issue about the maintenance of academic standard of the institution and the other requirements relating to the building, library, and necessary amenities for the students, as the Act is absolutely silent about the criteria to be adopted by the prescribed authority for granting or refusing permission. The rules which were made under Section 27 in 1968 and called the Tamil Nadu Private Educational Institutions (Regulations) Rules, 1968 are not called upon to lay down any norm on these issues and naturally do not make any reference to these aspects. The result is that the power

to grant or refuse permission is to be exercised according to the whims of the authority and it may differ from person to person holding the office. The danger of arbitrariness is enhanced by the unrestricted and unguided discretion vested in the State Govt. in the choice of competent authority defined in Section 2(2)(c) in the following words :

"(c) "competent authority" means any person, officer or other authority authorized by the Govt, by notification, to perform the functions of the competent authority under this Act for such area or in relation to such class of private educational institutions, as may be specified in the notification."

The only safeguard given to the applicant institution is to be found in the first proviso to Section 6 which says that the permission shall not be refused unless the applicant has been given an opportunity of making his representation but that does not by itself protect the applicant from discriminatory treatment.

24. The Court further found that the other ground on which the authority can exercise its power being contravention of any direction issued by the competent authority under this Act again suffers from the vice of arbitrariness. Section 15, the relevant section in this regard, states that the competent authority may from time to time, issue such directions regarding the management of a private educational institution as it may think fit. The section is too wide in terms without indicating the nature of such direction or the extent within which the authority should confine itself while exercising the power.

25. Apparently, the decision of SC in A. N. Parasuraman's case (AIR 1990 SC 40) (supra) cannot be applied to the provisions of the Act of 1964 without examining the scheme of the Act itself on the question whether it lays down such guidelines or not?

26. We may have the brief view of the scheme of the Act. Section 1 of the Act clearly indicates that it extends to the whole of the State of Rajasthan and shall come into force at once. Sub-Section (a) of Section 2 of the Act defines Estate Officer to mean an Officer appointed as such by the State Govt under Section 3. The term 'public premises' has been defined in sub-section (b) of Section 2 of the Act. It reads as under:

"2[b]. "public premises" means any premises belonging to, or taken on lease, or requisitioned by, or on behalf of the State Govt. and includes any premises belonging-

(i) a Municipal Board or Municipal council, established or deemed to have been established under the Rajasthan Municipalities Act, 1959 (Rajasthan Act 38 of

1959); or

(ii) an Improvement Trust, established under the Rajasthan Urban Improvement Act, 1959 (Rajasthan Act 35 of 1959); or

(iii) the Rajasthan State Industrial and Mineral Development Corporation Limited or the Rajasthan State Industrial Development and Investment Corporation Limited and constructed in an industrial area developed by any of them; or

(iv) a Panchayat established under the Rajasthan Panchayat Act, 1953 (Rajasthan Act 21 of 1953); or

(v) a Panchayat Samiti or a Zila Parishad established under the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (Rajasthan Act 37 of 1959); or

(vi) a Government Company as defined in Section 617 of the Companies Act, 1956 (Central Act 1 of 1956)' or

(vii) Devasthan Department of the Government of Rajasthan or premises managed or controlled by it; or

(viii) a Wakf as defined in the Wakfs Act, 1954 (Central Act 29 of 1954) and entered in the register of wakfs maintained under Section 26 of that Act;

(ix) a market committee established under the Rajasthan Agricultural {Produce Market Act, 1961 (Rajasthan Act 38 of 1961);

(x) a body corporate established or constituted by a Central Act or a Rajasthan Act and owned or controlled by the State Government.

27. The term 'unauthorized occupation' has been defined in Section 2(e) in the following manner:

"unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

28. From the perusal of sub-clauses (b) and (e) of Section 2 of the Act, it is clear that

it lays down the guideline firstly what premises are to be considered as public premises and secondly, when a person can be treated as an unauthorized occupant because the Act is meant only for eviction of unauthorized occupants of the public premises. This further clearly indicates that apart from rank trespasser who had occupied any public premises without any lawful authority even a person who has been in lawful possession as duly inducted tenant after termination of the tenancy, the act of such to continue to occupy the premises renders him unauthorized occupant and he is liable to be evicted. These definitions provide sufficient guidelines to indicate the subject matter on which the Estate Officer has to dwell.

29. Section 4 of the Act deals with Issue of notice to show cause against proposed order of eviction and it clearly lays down that if the Estate Officer is of opinion that any person is or persons are in unauthorized occupation of any public premises and that they should be evicted, the estate Officer shall issue in manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made. The notice shall specify the grounds on which the order of eviction is proposed to be made and shall require all persons concerned that is to say all persons who are, or may be in occupation of or claim interest in the concerned public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice which is not earlier than ten days from the date of issue thereof. The estate officer is required to cause the notice to be served by having it affixed on the outer door or some conspicuous part of the concerned public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned. It further lays down that where the estate officer knows or has reasons to believe that who is in occupation of the public premises then, without prejudice to the provisions of Sub-Section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person in such other manner as may be prescribed.

30. Section 5 deals with eviction of unauthorized occupants and it clearly provides that if after considering the cause, if any, known by any person in pursuance of a notice under Section 4 and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard, the estate Officer is satisfied that the public premises are in unauthorized occupation, the officer may, on a date to be fixed for the purpose, make an order of eviction for reasons to be recorded therein directing that the public premises shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on

the outer door or some other conspicuous part of the public premises. It further provides that if any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication under sub-S.(1), the estate Officer or any other officer duly authorized by the estate Officer in this behalf may evict that person from and take possession of, the public premises and may for that purpose, use such force as may be necessary.

31. Section 6 provides for disposal of property left on public premises by unauthorized occupants. It lays down that where an unauthorized occupant has been evicted from any public premises under Section 5, the estate Officer may, after giving fourteen days' notice to the person from whom the possession of the public premises has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or disposed of by public auction any property remaining on such premises. It further lays down that where any property is sold under sub-S.(1), the sale proceeds shall, after deducting the expenses of the sale and the amount, if any due to the State Govt. on account of arrears of rent or damages or costs, be paid to such person or persons as may appear to the estate officer to be entitled to the same provided that where the estate Officer is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the Civil Court of competent jurisdiction and the decision of the Court thereon shall be final.

32. Section 7 provides for power to recover rent or damages in respect of public premises as arrears of land revenue.

33. Under Section 8, an estate Officer shall for the purpose of holding any inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the matters concerning summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; and any other matter which may be prescribed.

34. Section 9 deals with Appeals. It lays down that an appeal shall lie from every order of the estate officer made in respect of any public premises under Section 5 or Section 7 to an appellate Officer who shall be the District Judge of the district in which the public premises are situated or such other Judicial Officer in that district of not less than ten years standing as the District Judge may designate in this behalf. Section 10 provides that every order made by an estate Officer or appellate officer

under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any powers conferred by or under this Act. While jurisdiction of civil Courts to examine the question about unauthorized occupation of public premises has been ousted, an effective remedy of appeal to a trained and experienced judicial officer has been provided. The remedy of judicial review in exercise of extra ordinary jurisdiction of High Court is further open.

35. Thus, it is clear that not only ample guidelines have been provided in the Act about the subject matter on which the Act is to operate but also the manner and method in which the estate Officer is to exercise his powers requiring him to follow the procedure in accordance with the principles of natural justice have been provided. Even the order passed by the Estate Officer is also subject to scrutiny by way of appeal before the civil Court presided over by an Officer of the rank of District Judge of the district in which the public premises are situated or such other Judicial Officer in that district of not less than ten years standing as the District Judge may designate in this behalf. Thus, ample safeguards have been provided against any arbitrary or discriminatory actions that may be taken or any error committed by an estate Officer.

36. In this connection, I may refer to a decision of the Calcutta High court in *M/s. Accounting and Secretarial Services Pvt. Ltd. v. Union of India*,¹⁰ In that case, the validity of Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was challenged on the ground that it does not lay down any qualification of estate officer and leaves the matter entirely to the unbridled discretion of the Central Govt. which wields unguided power to appoint as Estate Officer any person irrespective of whether such person has legal or judicial experience or a person presumably incapacitated to act independently. It was submitted like before us that the Estate Officer has to discharge judicial functions and to decide upon whether an order of eviction is warranted or not. Thus, the Estate Officer acts as a Court of fact and law in the matter of eviction of a tenant from the public premises and he is entrusted with the same judicial authority which the Court preforms in determining a suit for eviction under the general tenancy law. The Court repelled the above contention holding:

"This contention has no substance. Section 3 confers on the Central Govt. no such power as can be said to be unguided. The provisions of Section 3 require that the Central Govt. may appoint a person who is either a Gazetted Officer of the Central Govt. or an Officer of equivalent rank of any statutory authority. It

further provides that an Officer of a statutory authority shall only be appointed as the Estate Officer in respect of public premises controlled by that authority. Moreover, the Act gives sufficient guidelines for the discharge of the duties of the Estate Officer. The requirement of judicial or legal experience cannot be said to be the *sine qua non* for the appointment of an adjudicating authority. The scope of adjudication is quite limited in that the powers exercisable are exercisable only in relation to unauthorized occupancy of public premises. There cannot be any misapprehension for error of judgment going unremedied because the provisions of the Act confer the right of appeal from every order of the Estate Officer. Section 3, therefore, cannot be said to be an arbitrary provision conflicting with Article 14 of the Constitution. That being so, the appointment of respondent No.3 as the Estate Officer cannot be challenged on the ground that the said appointment is in abuse or in colourable exercise of authority, merely for this reason that the Estate Officer has no judicial experience or training."

37. Having considered the above decision, we are of the opinion that the aforesaid is the correct enunciation of the principle about appointment of an Administrative Officer to implement the special enactment to achieve the special goals.

38. In this connection, we may also refer to a decision of the Allahabad High Court in *Mumtaz Ali Khan v. Aligarh Muslim University*,¹¹ wherein the appointment of a Professor of chemistry of Aligarh Muslim University as an Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was upheld. In that case, it was contended that the impugned order of eviction has been passed by a person who had total lack of jurisdiction to do so inasmuch as he could not be appointed as an Estate officer under Section 3 of the Act, which provides that the Central Govt. may, by notification in the official Gazette appoint such persons being gazetted officers of Govt. or Officers of equivalent rank of the statutory authority, as it thinks fit, to be estate Officers for the purposes of this Act. The Court held:

"It is well known rule of interpretation of statutes to construe words in an Act with reference to words found in immediate connection with them. This rule of law is generally known as the "ejusdem generis" rule. In accordance with this rule of construction, the general words following particular words will not include anything of a class superior to that to which particular words belong but of things of the same category or genus. Thus, the words "or Officers of equivalent rank of Statutory Authority" used in clause (a) of Section 3 of the

Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are of the same category as the words "gazetted officers of the Govt." which precede the same and have to be read "ejusdem generis" to the said words."

The Court ultimately held that appointment of a Professor of Chemistry of Aligarh Muslim University as an Estate Officer under the provisions of the Act of 1971 was in accordance with the law and was valid.

39. A somewhat similar controversy in different shades also arose before Karnataka High Court in the *Indian Bank v. M/s. Blaze and Central (P) Ltd.*¹² wherein the Court observed as under:

"Where an Officer of the same department or statutory body is appointed as Estate Officer, the appointment would not be invalid and the principle of "No person should be judge of his own cause" would not apply."

The Court further observed:

"When Section 3 of the Act authorizes the appointment of an officer of a statutory body concerned as Estate Officer, and the Officer so appointed alone is competent to issue notice under Section 4 and pass order under Section 5 of the Act, it would be a case of statutory exception to the applicability of the rules of natural justice. In such a case, there is no scope for applying the rules of natural justice and to hold that he is disabled to issue the notice and pass the order of eviction, as rules of natural justice only supplement the law and do not supplant it."

The Court also observed:

"There is nothing unusual to confer power on an officer of the same department or authority to pass an order of eviction. For instance, the power to inquire as to whether a person is in unauthorized occupation of Govt. land and to pass an order of eviction against an unauthorized occupant is conferred on the Deputy Commissioner, an Officer of the Govt. to whom the land belongs, in the land revenue laws. To such cases, the principle of "No person should be a judge in his own cause" is hardly applicable. It is a statutory power to take action against a person who occupies a public premises without authority or having occupied the premises with authority refuses to vacate after the authority to occupy comes to an end. It cannot be said, that it is unreasonable to confer such a power on an officer of the public authority concerned. Also, under the Act, there

are in-built safeguards. Section 3 requires that a gazetted officer or officer equal in rank alone could be appointed as Estate Officer. Section 4 requires the giving of not less than 10 days to show cause against eviction. Section 5 requires the Estate Officer to consider the cause shown, if any, against the notice and empowers him to pass an order if only he is satisfied after inquiry that the person concerned was in unauthorized occupation of the public premises."

40. In this connection, it would also be relevant to notice a decision of the SC in *M. Chhaganlal v. Greater Bombay Municipality*, It was the case before the Constitution Bench of 7 Judges in which like provisions of Bombay Municipal Corporation Act, 1988 and the Bombay Government Premises (Eviction) Act, 1955 were under challenge *inter alia* on the ground that two enactments provided two different procedures : under one enactment, the authority could proceed to file civil suit and under another enactment, i.e. to say under the Act of 1955, a special speedy remedy is provided under the Public Premises (Unauthorized Occupants) Act, 1971 has been resorted to, which *inter alia* provide for appointment of an estate officer having taken recourse to summary proceedings for eviction of unauthorized occupants of the public premises. The Court upheld the validity of the provisions after referring to a large number of earlier precedents upholding special provisions made for special object providing special Tribunals for determining the issues raised under various enactments. It held that it cannot now be contended that special provisions of law applying to the Government is not based upon reasonable classification or offend Article 14 of the Constitution. The Court referred to its earlier decision in *Northern India Caterers (P) Ltd. v. State of Punjab*, AIR wherein the majority decision had accepted that there is an intelligible differentia between the two classes of occupiers namely occupiers of public property and premises and occupiers of private property and that it is in the interest of public that speedy recovery of rents and speedy eviction of unauthorized occupiers is made possible through the instrumentality of a speedier procedure. The majority in *Northern India Caterers (P) Ltd.*'s case (supra) also referred to the decisions of the SC in *State of West Bengal v. Anwar Ali Sarkar*,¹⁵ *Suraj Mall Mohta v. A. V. Vishvanatha Sastri*,¹⁶ and *Shree Meenakshi Mills Ltd. ,Madurai v. A. V. Vishvanatha Sastri*,¹⁷ and *Banarsi Das v. Cane Commr., U.P.*¹⁸ and concluded that the principle which emerged from these decisions was that discrimination would result if there are two available procedures, one more drastic or prejudicial to the party concerned than the other which can be applied at the arbitrary will of the authority. They opined that as Section 5 conferred an additional remedy over and above the remedy by way of suit leaving it to the unguided discretion of the Collector to resort to

one or the other by picking and choosing some only of those in occupation of public properties and premises for the application of the more drastic procedure under Section 5, that section laid itself open to the charge of discrimination and as being violative of Article 14 and in that view held that section void. The minority held that the impugned Act made no unjust discrimination among the occupants of Government properties *inter se* that it promoted public welfare and was a beneficial measure of legislation, that it was not unfair or oppressive and that the unauthorized occupant was not denied equal protection of the laws merely because the Govt. had the option of proceedings against him either by way of a suit or under the Act. The minority further held that an unauthorized occupant has no constitutional right to dictate that the Govt. should have no choice of proceedings, and that the argument based upon the option of the Govt. to file a suit is unreal because in practice the Govt. is not likely to institute a suit in a case where it can seek relief under the Act.

41. This dichotomy pointed out by the majority judgment in Northern India Caterers (P) Ltd.'s case (AIR 1967 SC 1581) (*supra*) led to the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 being replaced by Public Premises (Eviction of Unauthorized Occupants) Act, 1971 which was given retrospective operation from the date of the 1958 Act and barred the jurisdiction of Civil Courts to entertain a suit or proceeding in respect of eviction of any person in unauthorized occupation of public premises. It also led to the amendment of one of the Acts under consideration, the Bombay Govt. Premises (Eviction) Act introducing therein Section 8-A barring resort to the Civil Court. The Court also noticed that in Anwar Ali Sarkar's case (AIR 1952 SC 75) (*supra*), the Court opined that if there was a provision for reviewing the conclusions of the Investigation Commission when acting both as Investigators and Judges, there might not have been such substantial discrimination in the two procedures as would bring the case within Art 14 and has held in Surajmal's case (AIR 1954 SC 545) (*supra*) that if the appeal has been provided against the order passed by the authority appointed under the Act, it would not suffer from the vice of discrimination and excessive delegation. The Court further quoted with approval the principle referred to by us above from Kathi Raning's case (AIR 1952 SC 123) (*supra*).

42. Discussing the aforesaid judgment and many other decisions on different aspects of the matters, the Court summarized its conclusions thus :

"the Statute itself in the two classes of cases before us clearly lays down the purpose behind them i.e. that premises belonging to the Corporation and the

Govt. should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the Statutes, one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary Civil Court.

"Even normally one cannot imagine an Officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be prolonged one, to resort to the latter. Administrative Officers no less than the Courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative Officer would in taking proceedings for eviction of unauthorized occupants of Govt. property or municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the Officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the Statute. Discrimination may be possible but is very improbable and if there is discrimination in actual practice, this Court is not powerless. Further more, the fact that the legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorized occupants of Govt. and Corporation property and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorized occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers's case (AIR 1967 SC 1581)".

43. The Court ultimately held that the Public Premises (Eviction of Unauthorized Occupants) Act clearly provide a guideline, which an authority entrusted to implement the Act, is to adhere to. This judgment in our opinion is a complete answer to the challenge made to the validity of the provisions of Sections 2(b) (viii) and 3 of the Act of 1964 and it must also put an end to the objection about the arbitrariness in procedures to be adopted by the estate officer, on like ground no remedy by way of

filing a civil suit for challenging his order has been provided, because sufficient safeguards have been provided against any erroneous or arbitrary order made by the Estate officer. An appeal is provided to a Judicial Officer of substantial experience of not below 10 years or an Officer of the rank of District Judge of the principal Civil Court.

44. We are, therefore, unable to sustain the contentions raised by the learned counsel for the petitioners and reject the same and hold that the provisions of Sections 2(b)(vii) and (viii), 3 and 10 of the Act of 1964 are not *ultra vires* the provisions of the Constitution.

45. Lastly, it has been contended by the learned counsel for the petitioners that it is felt as per the need of the time that justice should go to the door steps of the consumers of justice and when for different departments under the State, number of Estate Officers have been appointed at various places within the State, the appointment of only one Estate Officer, which too at Jaipur, for the entire State of Rajasthan in the matters of wakf properties is a denial of speedy justice to all such persons. He has contended that more diversified and distributive appointment of the Estate Officers at various places in the State in respect of wakf properties would be more conducive than the centralized power at one place which is to the great deterrent and harassment to the persons who are subjected to the provisions of the Act by notice to quit. They have to travel to *Jaipur* in the first instance from different parts of Rajasthan. There is always difficulty in carrying evidence and placing requisite material before the Estate Officer at *Jaipur* when such material is located at the place where the property is situated and where the persons are residing. In this connection, the learned counsel has placed reliance on the following observations made by the SC in *Rajendra Singh Yadav v. State of U.P.*¹⁹

"The accepted philosophy relevant to the question today is that justice should be taken to everyone's doors. This of course, is not a statement which should be taken literally but undoubtedly, the redressal forum should be available near about so that litigation may be cheaped and the forum of ventilating grievance may not be difficult to approach. Keeping that in view, which is legitimate consideration, it would be appropriate for the State Govt. to consider, firstly, increase in the number of benches of the Tribunal and secondly, to locate them not at the same station but at various sectors or depending upon the number of institution of disputes and pendency at the level of independent Commissioner ate or by clubbing two or three of them together. This, of course, is matter

which would require examination at the administrative level and, therefore, we express no opinion regarding location of such Tribunals although we are of the definite view that there should be tribunals available in different parts of the State and all the Benches of the Tribunal should not be located at one place."

46. There appears to be some substance in the contention raised by the learned counsel for the petitioners in this regard.

47. The learned Advocate General candidly conceded that there is need and necessity of appointment of more estate officers for the wakf properties situated at different part of the State of Rajasthan. He has made an assuring statement before the Court that soon efforts shall be made to see that at least in each District, one estate Officer to administer the wakf properties within that district is appointed. However, it will take sometime, which he reasonably expects to be six months. He has also contended that appeal against the order of the estate Officer lies to the District Judge where the property is situated and, therefore, remedial measures are available at the door steps of the litigants.

48. In view of the aforesaid, we are of the opinion that no direction needs to be made in this regard. It is expected that the statement made by the Advocate General shall be honored and implemented by the State within a period of six months from today. For the present no direction can be issued for withholding further proceedings in the two cases before us which are otherwise already delayed.

49. In the result, we find no force in these writ petitions and they are hereby dismissed subject to the aforesaid statement made by the learned Advocate General.

50. There shall be no order as to costs.

Petitions dismissed.

Cases Referred.

1. (D. B. Civil Writ Petition No. 861 of 2002, decided on 29-8-2002)
2. (1985) 2 Rent LR 186
3. (1985) 1 Rent CR 218: (AIR 1985 SC 270),
4. AIR 1961 SC1731
5. (1985) 1 Rent CR 200: (AIR 1985 SC 257)
6. (1985) 2 Rent LR 186
7. AIR 1990 SC 40

8. AIR 1952 SC 123
9. (1927) 274 US 200
10. AIR 1993 Cal 102
11. 1987 All LJ 960
12. AIR 1986 Kam 258
13. AIR 1974 SC 2009
14. 1967 SC 1581
15. AIR 1952 SC 75
16. AIR 1954 SC 545
17. AIR 1955 SC 13
18. AIR 1963 SC 1417
19. (1990)2 JT (SC) 438