LILAVATI BAI

v.

THE STATE OF BOMBAY

1957

March 5.

(S. R. DAS C. J., VENKATARAMA AYYAR, B. P. SINHA, S. K. DAS and GAJENDRAGADKAR JJ.)

Premises, Requisition of—Constitutional validity of enactment—Order of Government on declaration of vacancy—Enforceability—Findings, if liable to be reopened—Power of Court—Tenancy, when can be deemed to have been terminated—Ejusdem generis, *applicability of—Death of a party before the passing of the Order—Effect—Bombay Land Requisition Act (XXXIII of* 1948), *as amended by Amendment Act II of* 1950 *and Second Amendment Act XXXIX of* 1950, *ss.* 5, 6, 6 *Explanation (a)—Constitution of India, Arts.* 19(1) (*f*), 31, 32, 226.

By these two petitions, the petitioner challenged the constitutional validity of the Bombay Land Requisition Act, 1948, as amended by the two amending Acts of 1950, and the enforceability of an order of requisition made by the Governor of Bombay under s. 6 (4)(a) of the Act. The petitioner as the widow of the tenant claimed to be in possession, while the case made on behalf of the Government was that the tenant had before his death vacated the premises and handed over possession to a lodger. A copy of the order of requisition was affixed to the premises and the petitioner moved the High Court for a writ of mandamus, but the petition was dismissed. The Act was passed by the State Legislature on April 11, 1948, and by the first amending Act its life was extended for two years and by the second the words "the purpose of the State or any other public purpose" were substituted for the words "any purpose" occurring in s. 5 of the Act with retrospective effect from the date of the Constitution. The Act came up for consideration in a previous decision of this Court and arguments were confined to grounds other than those specifically covered by that decision. It was contended on behalf of the petitioner that the Act was in conflict with Art. 31 (2) and became invalid at the commencement of the Constitution and the amending Acts, for which the assent of the President had admittedly not been obtained, were ineffective under Art. 31(3) of the Constitution. It was further contended that ss. 5 and 6 of the Act which made the relevant findings of the Government conclusive had the effect of impairing the powers of the Court, that it was nevertheless open to the Court to judge whether the facts found constituted vacany in law and, lastly that the order in question was ineffective as the tenant was dead on the date it was made.

Held, that the contentions raised on behalf of the petitioner must be negatived.

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The constitutional validity of the Act was no longer open to question under Arts. 19(1)(f) and 31 (2) of the Constitution in view of the decision of this Court in *State of Bombay* v. *Bhanji Munji* (1955) 1 S.C.R. 777.

The Act, which did not obviously come within the mischief of cl. (6) of Art. 31, fell within the saving clause, cl. 5(a), of the Article and was an existing law within the meaning of the Constitution and, therefore, valid at the commencement of the Constitution, although it did not contain the expression "for a public purpose" as required by cl. (2) of the Article.

Clause (3) of the Article, which in terms applied to laws made after the commencement of the Constitution, had no application to the amending Acts which were in no way concerned with the main substantive provisions of the Act already passed, and the want of the President's assent in no way affected their validity.

As the Act was valid at the commencement of the Constitution and continued to be so thereafter, not being in any way inconsistent with the provisions of Part III of the Constitution so as to attract the operation of Art. 13, the Amending Acts were equally valid in law.

Held further, that although in a proper case the High Court or this Court in the exercise of their special jurisdictions under the Constitution had power to determine how far the provisions of the Act had or had not been complied with, the finding of the State Government under s. 5 of the Act that the tenant had not actually resided in the premises for a continuous period of six months immediately preceding the date of the order, and that under s. 6, the premises had become vacant at about the time indicated in the order, are conclusive and not collateral so as to be liable to be re-opened and could not, therefore, be questioned either in this Court under Art. 32 or in the High Court under Art. 226 of the Constitution.

Rai Brij Raj Krishna v. *S. K. Shaw* (1951) S.C.R. 145 applied.

Hubli Electricity Co. Ltd. v. *Province of Bombay*, (1948) L.R. 76 I.A. 57, held inapplicable.

Mohsinali Mohomed Ali v. *The State of Bombay*, (1951) 53 Bom. L.R. 94: A.I.R. 1951 Bom. 303, referred to.

The words "or otherwise" occurring in explanation (a) to s. 6 of the Act could not be construed as *ejusdem generis* with the words immediately preceding them and must be held to cover all possible cases of vacancy due to any reason whatsoever.

Skinner & Co. v. *Shaw & Co.*, (1893) 1 Ch. D. 413, referred to.

An order of requisition passed under s. 6(4)(a) of the Act was not of the nature of an order passed in a judicial proceeding and the death of one of the parties could not make it wholly in effective, the only consequence being that his name as one of

the parties to be served under s. 13 of the Act must be removed from the order.

ORIGINAL JURISDICTION : Petition No. 119 of 1955 with Petition for Sepcial Leave to Appeal No. 140 of 1955.

Petition under Article 32 of the Constitution for the enforcement of fundamental rights and petition under Article 136 of the Constitution for special leave to appeal from the judgment and order dated March 29, 1955, of the Bombay High Court in appeal No. 63 of 1954.

Hardayal Hardy and R. Jethmalani, for the petitioner.

C. K. Daphtary, Solicitor-General of India , Porus A. Metha and R. H. Dhebar, for the respondent.

1957. March 5. The Judgement of the Court was delivered by

SINHA J.—By this petition under Art. 32 of the Constitution and Petition No. 140 of 1955 for special leave to appeal from the judgment of the Bombay High Court dated March 29, 1955, in Appeal No. 63 of 1954 confirming that of a single Judge of that Court dated April 21, 1954, the petitioner challenges the constitutionality of the Bombay Land Requisition Act (Act XXXIII), 1948, hereinafter referred to as "The Act" and the enforceability of the order dated January, 27, 1954, made by the Governor of Bombay in pursuance of s. 6(4)(a) of the Act. *Sinha J.*

The petitioner is the widow of one Dharamdas Chellaram, who was a tenant of the premises in question. The said Dharamdas Chellaram died in November 1953, leaving him surviving his widow and a daughter. The petitioner alleged that she had been occupying the premises in question as a member of her husband's family since 1938 and that the tenant aforesaid had at no material date ceased to occupy the premises. She also alleged that one Narottam Das Dharamsey Patel was a mere lodger who was occupying a portion of the premises by leave and licence of her husand. The said Narottamdas had no interest

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in the premises in question and had, as a matter of fact, vacated the portion in his occupation some time in the year 1953. On behalf of the State of Bombay, the respondent, it has been stated on affidavit by the Accommodation Officer that it is not a fact that the petitioner resided in the premises in question and that the facts were that the said Dharamdas, the tenant, had vacated the premises in October 1952 and had handed over possession of the premises to the said Narottamdas Dharamsey Patel. Hence it is alleged that it was not a fact that at the time of her husband's death in November 1953 the petitioner was residing in the premises in question. These facts had been stated before the High Court also on an affidavit made in opposition to the petitioner's case in the High Court. The petitioner's grievance is that toward the end of January 1954 she found pasted on the outer door of the premises an order dated January 27, 1954 said to have been made by the Governor of Bombay and which is said to be the occasion for her moving the High Court of Bombay for a writ of *mandamus* against the State of Bombay to refrain from giving effect to the aforesaid Order. The Order impugned is in these terms :—

"No. RA (1) M-13067
Office of the Controller of Accommodation,
Jehangir Building, Mahatma Gandhi Road,
Bombay, January, 27, 1954.

Order

Whereas, on inquiry it is found that the premises specified below had become vacant in the month of October 1952 ;

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (4) of section 6 of the Bombay Land Requisition Act, 1948 (Bombay Act XXXIII of 1948) the Government of Bombay is pleased to requisition the said premises for a public purpo e namely, for housing a Bombay State Government servant.

Premises

Flat No. 3 on the 1st floor of the Building known as Hem Prabha situated at 68, Marine Drive, Bombay.

By order and in the name of
Governor of Bombay."

This Order was meant to be served on (1) Shri Hirabhai H. Patel, admittedly the landlord of the premises, (2) Shri Narottam Dharamsey Patel aforesaid, and (3) Shri Dharamdas Chellaram, who, as already indicated, was dead at the date the Order was made.

The petitioner challenged the validity of the Order of requisition set out above. Her petition was heard by Tendolkar J. who by his judgment dated April 21, 1954, dismissed the same. The petitioner moved this Court for an appropriate writ, direction or order under Art. 32 of the Constitution, challenging the *vires* of the Act, as also the legal efficacy of the Order impugned. She also filed a petition praying for special leave to appeal from the judgment aforesaid of the Bombay High Court. Both the matters have been heard together and will be governed by this judgment.

Before dealing with the contentions raised on behalf of the petitioner, it is convenient first to set out, in so far as it is necessary, the legislative history of the law impugned and its certain salient features which are relevant for purposes of this case. This Act was passed by the Provincial Legislature of Bombay on April 11, 1948, on being empowered by the Governor-General in exercise of powers conferred on him by s. 104 of the Government of India Act, 1935. Initially it was to remain in force until March, 31, 1950. But by the amending Act, Bombay Land Requisition(Amendment) Act, 1950 (Bombay Act No. II of 1950) published on March 28, 1950, its life was extended up to the end of March 1952. By the amending Act, ss. 8-A, 8-B and 9-A were added making substantial changes which need not be set out here, as they do not enter into the controversy. The life of the Act was subsequently extended further, up to the end of December 1958. By the Bombay Land Requisition (Second Amendment) Act, 1950 (Act XXXIX of 1950), the Act was further amended so as to substitute the words "the purpose of the State or any other public purpose" for the words "any purpose" in s. 5 of the Act. This was obviously done to satisfy the requirements of Art. 31 of the

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Constitution. Consequential changes were also made in ss. 6 and 7 of the Act. By s. 6 of the amending Act it was provided that "The amendments made by this Act shall be deemed to have been and always to have been made with effect from the 26th January 1950,.....". Thus the amendment was given retrospective operation. The provisions of ss. 5, 6 and 13 after the amendments aforesaid (omitting the portions not necessary for our purpose) are in these terms :—

"5. (1) If in the opinion of the State Government it is necessary or expedient so to do, the State Government may by order in writing requisition any land *for purpose of the State or any other public purpose :*

Provided that no building or part thereof wherein the owner, the landlord or the tenant, as the case may be, has actually resided for a continuous period of six months immediately preceding the date of the order shall be requisitioned under this section.

(2) Where any building or part thereof is to be requisitioned under sub-section (1), the State Government shall make such enquiry as it deems fit and make a declaration in the order or requisition that the owner, the landlord or the tenant, as the case may be, has not actually resided therein for a continuous period of six months immediately preceding the date of the order and such declaration shall be *conclusive evidence* that the owner, landlord or tenant has not so resided.

6. (1) If any premises situate in an area specified by the State Government by notification in the Official Gazette, are vacant on the date of such notification and wherever any such premises are vacant or become vacant after such date by reason of the landlord, the tenant or the sub-tenant, as the case may be, ceasing to occupy the premises or by reason of the release of the premises from requisition or by reason of the premises being newly erected or reconstructed or for any other reason the landlord of such premises shall give intimation thereof in the prescribed form to an officer authorised in this behalf by the State Government.

.....

(4) Whether or not an intimation under sub-section (1) is given and notwithstanding anything contained in section 5, the State Government may by order in writing —

(a) requisition the premises for the purpose of the State or any other public purpose and may use or deal with the premises for any such purpose in such manner as may appear to it to be expedient, or

.....

Provided that where an order is to be made under clause (a) requisitioning the premises in respect of which no intimation is given by the landlord, the State Government shall make such inquiry as it deems fit and make a declaration in the order that the premises were vacant or had become vacant, on or after the date referred to in sub-section (1) and such declaration shall be *conclusive evidence* that the premises were or had so become vacant :

.....

Explanation—For the purposes of this section,—

(a) premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises or otherwise, notwithstanding any instrument or occupation by any other person prior to the date when such landlord, tenant or sub-tenant so ceases to be in occupation;

....

13. (1) Every order made under ss. 5, 6, 7, 8-A or 8-B or sub-section (7) of section 9 or section 12 shall—

(a) if it is an order of a general nature or affecting a class of persons, be published in the manner prescribed by rules made in this behalf ;

(b) if it is an order affecting an individual, corporation, or firm, be served in the manner provided for the service of a summons in Rule 2 of Order XXIX or Rule 3 of Order XXX, as the case may be, in the First Schedule of the Code of Civil Procedure, 1908 ;

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(c) if it is an order affecting an individual person other than a corporation or firm, be served on the person—

(i) personally, by delivering or tendering to him the order, or

(ii) by post, or

(iii) where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or worked for gain.

(2) Where a question arises whether a person was duly informed of an order made in pursuance of sections 5, 6, 7, 8-A or 8-B or, sub-section (7) of section 9 or section 12 compliance with the requirements of sub-section (1) shall be *conclusive proof* that he was so informed ; but failure to comply with the said requirements shall not preclude proof by other means that he was so informed, or affect the validity of the order.

..... .". (Underlining ours).

At the outset it is necessary to state that the main grounds of attack against the constitutionality of the Act based on such fundamental rights as are recognised by Arts. 19(1)(f) and 31(2) of the Constitution must be overruled in view of the decision of the Constitution Bench of this Court in *State of Bombay* v. *Bhanji Munji* (1). In that case this Court upheld the validity of the Act with reference to the provisions of the articles aforesaid of the Constitution. But the learned counsel for the petitioner contended that he attacked the *vires* of the Act on grounds other than those which had been specifically dealt with by this Court in the decision just referred to. We now proceed to deal with those fresh grounds on their merits. It was contended that the Act became invalid on January 26, 1950 inasmuch as it was in conflict with Art. 31(2) of the Constitution. The Act was, therefore, as good as dead by the time Act II of 1950 extending the life of the Act was enacted as aforesaid. The Act being void, its extension by Act II of 1950 was equally void.

(1) [1955] 1 S. C. R. 777.

Similarly, it was further argued that the amendments effected by the amending Act II of 1950 and Act XXXIX of 1950 required the assent of the President and that as admittedly no such assent had been given, they had no effect as provided in Art. 31(3) of the Constitution. This chain of submissions is founded on the admitted non-compliance with the requirements of Art. 31(3). It has not been contended that the Act when passed on April 11, 1948, was not good law. It is also clear that the Act is not covered by the provisions of cl. (6) of Art. 31. The Act is thus covered by the saving clause, cl. 5(a), being an existing law other than a law to which the provisions of cl. (6) apply. The Act, therefore, would be valid even if the provisions of cl. (2) of Art. 31 are not in terms fully satisfied, in so far as the Act did not before its amendment by Act XXXIX of 1950 contain the expression "for a public purpose". As already pointed out, this Court in the case of *The State of Bombay* v. *Bhanji Munji* (1) has laid it down that the Act was not invalid even after the commencement of the Constitution simply because it is not provided in express terms that the acquisition or requisition had to be for a public purpose, provided that from the whole tenor and intendment of the Act it could be gathered that the requisition was for a public purpose, and for the benefit of the community at large. The amending Act only made explicit what had been left to be gathered from the whole tenor of the Act, as pointed out by this Court in the case cited above. The argument that the amending Acts, II of 1950 and XXXIX of 1950, required the assent of the President under cl. (3) of Art. 31 has, therefore, no force. Act II of 1950, in so far as it affects the present controversy, only extended the life of the Act by two years and Act XXXIX of 1950 only made explicit what was not so in the Act as originally passed, and are not such laws as come within the purview of cl. (3) of Art. 31 inasmuch as those Acts are merely an extension or explanatory of the substantive Act which is an existing law within the meaning of the Constitution. Clause (3)

(1) [1955] 1 S. C. R. 777.

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of Art. 31 in terms applies to a law made by the legislature of a State, after the commencement of the Constitution ; whereas the Act had been passed in its substantive form in April 1948. Hence, there is no difficulty in holding that the Act which was good law before the commencement of the Constitution did not become void under Art. 13 of the Constitution, because there was nothing in the Act which was inconsistent with the provisions of Part III of the Constitution. If the Act was good law after the commencement of the Constitution, it follows that the amendments aforesaid made in 1950, were equally good law, even though the assent of the President had not been obtained.

Secondly, the decision of this Court in *The State of Bombay* v. *Bhanji Munji* (1) (supra) itself has ruled to the contrary with reference to the provisions of Art. 31 (2) . We cannot, therefore, go back upon our decision in the case aforesaid. On these considerations the petition under Art. 32 of the Constitution must fail on the ground that no fundamental rights of the petitioner as would entitle her to seek redress from this Court, have been contravened.

It remains to consider the other arguments advanced on behalf of the petitioner which have a bearing on the petition for special leave to appeal from the judgement of the Bombay High Court. It has been contended that ss. 5 and 6 of the Act quoted above and underlined by us have made certain matters conclusive, so that the High Court or even this Court could not go behind the order of the State Government holding that the tenant had not resided in the premises for a continuous period of six months immediately preceding the date of the order (s. 5), or that the premises had become vacant in the month of October 1952, as stated in the Order impugned in this case. It is contended that the legislature had, by making those provisions rendering those matters conclusively proved, impaired the powers of the High Court under Art. 226 and of this Court under Art. 32 of the Constitution. Another branch of the argument is that the declaration of vacancy is dependent upon a collateral fact which has

(1) [1955] 1 S. C. R. 777.

to be found by the Government on such enquiry as it may deem fit and proper and its conclusion on such a collateral fact could not be placed by the Act beyond scrutiny by the High Court or by this Court. In this connection it was also argued that on the question of vacancy the finding of the State Government may be conclusive on the "factual aspect" but not on the "legal aspect" of the matter. In other words, it was contended that it was still open to the courts to find whether the facts found constituted in law "vacancy" as defined in the Act. In this connection strong reliance was placed on the following observations of the Judicial Committee of the Privy Council in the case of *Hubli Electricity Co Ltd.* v. *Province of Bombay* (1) at pages 65 and 66 :—

"The question what obligations are imposed on licensees by or under the Act is a question of law. Their Lordships do not read the section as making the government the arbiter on the construction of the Act or as to the obligations it imposes. Doubtless the government must, in expressing an opinion for the purpose of the section, also entertain a view as to the question of law. But its view on law is not decisive. If in arriving at a conclusion it appeared that the government had given effect to a wrong apprehension of the obligations imposed on the licensee by or under the Act the result would be that the Government had not expressed such an opinion as is referred to in the section."

There are several answers to this contention. In the first place, it is well settled that observations made with reference to the construction of one statute cannot be applied with reference to the provisions of another statute which is not in *pari materia* with the statute which forms the subject matter of the previous decision. The Judicial Committee was dealing with the provisions of s. 4 (1) of the Indian Electricity Act, 1910, which did not contain the words "conclusive evidence" or any words to that effect. That decision of the Judicial Committee, if it can at all be applied to the Act now before us, is against the petitioner in so far as

(1) [1948] L. R. 76 I. A. 57.

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it has construed the words "opinion of the Provincial Government". Those words or words of similar import appear in the beginning of s. 5. In the words of the Judicial Committee, those words signify the subjective opinion of the Government and not an opinion subject to objective tests. The observations quoted above only show that on a proper construction of the provisions of the statute then before the Judicial Committee, the opinion of the Government, if it was made non-justiciable, was confined to the question of whether there had been a wilful and unreasonably prolonged default, but did not cover the question of the opinion of Government relating to the obligations imposed by the statute on the licensee, by or under the Act. Hence those observations are absolutely of no assistance to the petitioner on the question of the full implication of the rule making certain matters "conclusive evidence" under the provisions of ss. 5 and 6 of the Act. This question appears to have been canvassed in a number of cases in the High Court of Bombay. In the case of *Jagatchandra* v. *Bombay Province* (1) Tendolkar J. had ruled that the declaration made by the Government shall be conclusive evidence with regard to all facts involved in the determination of vacancy but that it was not conclusive with regard to the inferences to be drawn from or the legal consequences of such facts. The correctness of that proposition was questioned in another case before another learned Judge of that Court, Shah J., who referred it to be determined by a larger Bench. Chagla C. J. and Gajendragadkar J. (now one of us) examined that question in some detail and overruled the decision of Tendolkar J. (Vide *Mohsinali Mohomed Ali* v. *The State of Bombay*(2)). The Bombay High Court in the last mentioned case held that on a declaration being made by the State Government that there was a vacancy, it was conclusive both as to the facts and the constituent elements of "vacancy", as understood under the Act. The High Court relied in this connection on the observations of the Judicial

(1) A.I.R. 1950 Bom. 144.
(2) [1951] 53 Bom.L.R. 94; A.I.R. 1951 Bom. 303.

Committee of the Privy Council in *Moosa Goolam Ariff* v. *Ebrahim Goolam Ariff*(1) and of Lord Cairns in *Peel's case*(2), and of Lord Parker of Waddington in *Bowan* v. *Secular Society Ltd.*(3).

In this connection the learned counsel for the petitioner also pressed in aid of his agrument the well known distinction between the jurisdiction of a court or authority to decide a certain fact as one of the issues in the controversy and certain collateral facts on which the jurisdiction to determine the controversy could arise. It was argued that the finding on the question of vacancy by the State Government was a "jurisdictional fact" in the sense that unless it was found that there was a vacancy, the jurisdiction of the State Government to make the declaration and to requisition the premises could not arise. This aspect of the matter has been considered by this Court in the case of *Rai Brij Raj Krishna* v. *S. K. Shaw & Brothers* (4). That case concerned the construction of the provi-sions sion.. of the Bihar Buildings (Lease, Rent and Eviction) Control Act (Bihar Act III) of 1947. This Court held that the Controller had been vested with the jurisdiction to determine all questions including the question whether or not there was non-payment of rent and on finding that there was default in the payment of rent, with the jurisdiction to order eviction of the tenant. The finding of the question of default was not a jurisdictional finding in the sense in which learned counsel for the petitioner asks us to hold with reference to the finding of the State Government in this case that there has been a vacancy. In the reported case this Court held further that even if the Controller had wrongly decided the question of default in the payment of rent, his effective order on the question of eviction could not be challenged in a court of law. Mr. Justice Fazl Ali delivering the judgment of the court made reference to the well known observations of Lord Esher, M.R. in the case of *Queen* v. *Commissioners for Special Purposes of the Income tax*(5) and to

(1) [1912] L.R. 39 I.A. 237
(2) [1867] L.R. 2 Ch. App. 674.
(3) [1917] A.C 406.
(4) [1951] S.C.R. 145.
(5) [1888] 21 Q.B.D. 313, 319.

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the observations of the Privy Council in the case of the *Colonial Bank of Australasia* v. *Willan*(1). After referring to those observations and to the provisions of the statute then before the Court, this Court held that the Act empowered the Controller alone to decide whether or not there was non-payment of rent and that decision was essential to his order for eviction of the tenant under s. 11. That decision of the Controller, the Court further held, could not be challenged in a court of law. The decision of this Court just referred to is an apt illustration of the rule which applies with equal force to the provisions of the Act now before us. The Act has made a specific provision to the effect that the determination on the questions referred to in ss. 5 and 6 of the Act by the State Government shall be conclusive evidence of the declaration so made. But that does not mean that the jurisdiction of the High Court under Art. 226 or of this Court under Art. 32 or on appeal has been impaired. In a proper case the High Court or this Court in the exercise of its special jurisdiction under the Constitution has the power to determine how far the provisions of the statute have or have not been complied with. But the special powers aforesaid of this Court or of the High Court cannot extend to reopening a finding by the State Government under s. 5 of the Act that the tenant has not actually resided in the premises for a continuous period of six months immediately preceding the date of the order or under s. 6 that the premises had become vacant at about the time indicated in the order impugned. Those are not collateral matters which could on proper evidence be reopened by the courts of law. The legislature in its wisdom has made those declarations conclusive and it is not for this Court to question that wisdom.

As an offshoot of the agrument that we have just been examining it was contended on behalf of the petitioner that Explanation (a) to s. 6 quoted above contemplates a vacancy when a tenant (omitting other words not necessary) "Ceases to be in occupation upon

(1) [1874] 5 P.C. 417-443

termination of his tenancy, eviction, or assignment or transfer in any other manner of his interest in the premises or otherwise". The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words "or otherwise" must be construed as *ejusdem generis* with the words immediately preceding them ; and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. In the first place, as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the second place, the rule of *ejusdem generis* sought to be pressed in aid of the petitioner can possibly have no application. The legislature has been cautious and thorough-going enough to bar all avenues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the legislature, when it used the words "or otherwise", apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words *ejusdem generis* with the preceding clauses of the explanation, the legislature used those words in an all inclusive sense. No decided case of any court, holding that the words "or otherwise" have ever been used in the sense contended for on behalf of the petitioner, has been brought to our notice.

On the other hand, by way of illustration of decisions to the contrary may be cited the case of *Skinner & Co.* v. *Shew & Co.* (1). In that case the Court of Appeal

[1] [1893] 1 Ch. D. 413.

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had to consider the words of s. 32 of the Patents, Designs & Trade Marks Act, 1883 (46 & 47 Vict. c.57), to the following effect :—

"Where any person claiming to be the patentee of any invention, by circulars, advertisements or otherwise threatens any other person with any legal proceedings.....".

Their Lordships repelled the contention that the words "or otherwise" occurring in that section had to be read *ejusdem generis* with "circulars", and "advertisements". They observed that by so doing they will be cutting down the intendment of the provisions of the statute when clearly the words "or otherwise" had been used with a contrary intention. The rule of *ejusdem generis* is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. In our opinion, in the context of the object and mischief of the enactment there is no room for the application of the rule of *ejusdem generis*. Hence it follows that the vacancy as declared by the order impugned in this case, even though it may not be covered by the specific words used, is certainly covered by the legal import of the words "or otherwise".

The only other contention which remains to be dealt with is that the order impugned in this case is not enforceable because it was directed against the petitioner's husband, who was dead at the date of the order, besides the other two persons indicated in it who were not concerned with the premises. In our opinion, there is no substance in this contention either. An order like the one passed under s. 6(4)(a) of the Act

is not in the nature of an order in judicial proceedings between the Government on the one hand and other parties named. If the proceedings were intended by the Act in the sense of judicial or quasi-judicial proceedings between named parties, it may have been legitimately argued that an order passed against a dead man is a complete nullity. But the order proceeds on the basis that the tenant had ceased to be in occupation of the premises in October 1952, apparently by reason of the fact that he had handed over possession of the premises to the so called "lodger" or "paying guest". Admittedly the petitioner's husband died after October 1952. The occupation by the said Narottamdas Dharamsey Patel was in the nature of an unauthorised occupation. The fact that the petitioner's husband was dead on the date of the order impugned has only this effect that in so far as it mentions his name as one of the persons to be served under s. 13 of the Act should be erased from the order. But even so, it does not affect the enforceability of the same. S. 13 lays down the different modes of service of an order passed under the Act according as the order is of a general nature or affecting a class of persons or an individual, corporation or firm. We are here concerned with the case of an individual and the section lays down that it can be served either personally by delivering or tendering the order to him or by post or where he cannot be found, by affixing a copy of the order to some conspicuous part of the premises in which he is known to have last resided. As the petitioner's husband had died before the date of the order impugned, it could affect only the so called "lodger" who had been, on the findings, left in occupation of the premises after October 1952. He has not made any complaint about non-service. The only other person who could be affected by the order, if at all, is the petitioner herself. She has admitted that she came to know of the order in question at about the time it had been made, because she found a copy of the order affixed at the outer door of the premises. Thus admittedly, the petitioner had timely notice of

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the order impugned. Hence in the instant case there is no need to apply the rule of conclusive proof as laid down in sub-s.(2) of s. 13. In any event, as the concluding words of the section have provided, any irregularity or failure to comply with the requirements of the section cannot "affect the validity of the order".

As all the grounds urged in support of the petitions fail, they are dismissed with costs, one set.

Petitions dismissed.

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March 7.

SOHANLAL

v.

THE UNION OF INDIA

(BHAGWATI, JAGANNADHADAS, JAFER IMAM, GOVINDA MENON and J. L. KAPUR JJ.)

Writ of mandamus—*Disputed questions of fact and law—Dispute regarding title—Whether remedy by way of writ appropriate —When writ can issue to private individual—State illegally evicting person from house—Another person taking possession* bona fide *without knowledge of illegal eviction—Whether writ can issue against such person—Constitution of India, Art.* 226.

J, a displaced person, was found *prima facie* entitled to allotment of a house and the Accommodation Officer moved his family into the house on May 10, 1952, but no letter of allotment was issued to him. Later, when certain facts became known which in the opinion of the Union of India disentitled J to the allotment, he was informed that the house could not be allotted to him. J was evicted from the house on September 27, 1952, without being given 15 days notice as required by s. 3 of the Public Premises Eviction Act (XXVII of 1950). The house was then allotted to S and he was given possession on October 3, 1952. J filed a petition under Art. 226 of the Constitution in the High Court. The High Court ordered the Union of India and also S to restore possession of the house to J. S appealed.

Held, that the High Court erred in issuing the writ of *mandamus*.

There was a serious dispute on questions of fact between the parties and also whether J had acquired any title to the property in dispute. Proceedings by way of a writ were not appropriate in a case where the decision of the Court would amount to a decree declaring a party's title and ordering restoration of possession. The proper remedy in such a case is by way of a title suit in a Civil Court. The alternative remedy of obtaining relief by a