1959

March 4.

KAVALAPPARA KOTTARATHIL KOCHUNNI MOOPIL NAYAR

v.

THE STATE OF MADRAS AND OTHERS

(and connected petition)

(S. R. DAS, C. J., N. H. BHAGWATI, B. P. SINHA, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Fundamental Rights, Enforcement of—Maintainability of petition—Powers and jurisdiction of Supreme Court—Extent—Constitution of India, Art. 32.

The petitioner in Petition No. 143 was the Moopil Nair of the Kavalappara sthanam and, as the sthanee, claimed to be the sole proprietor of the sthanam properties. The respondents Nos. 2 to 17, who were the junior members of the Kavalappara tarwad or family, resisted the claim on the ground that the properties were tarward properties and they had rights in them. There was litigation between the parties and ultimately the Privy Council held in favour of the petitioner. The petitioner transferred some of the properties to his wife and two daughters and son and they were the petitioners in the two other petitions. The parties were governed by the Marumakkathayam Law and in 1955 the Madras Legislature, purporting to remove certain misapprehensions evident in decisions of courts, passed the Madras Marumakkathayam (Removal of Doubts) Act, 1955 (Act 32 of 1955), which by s. 2 provided as follows:—

"2. Certain kinds of sthanam properties declared to be tarward properties:—Notwithstanding any decision of Court, any sthanam in respect of which—

(a) there is or had been at any time an intermingling of the properties of the sthanam and the properties of the tarwad, or

(b) the members of the tarwad have been receiving maintenance from the properties purporting to be sthanam properties as of right, or in pursuance of a custom or otherwise, or

(c) there had at any time been a vacancy caused by there being no male member of the tarwad eligible to succeed to the sthanam,

shall be deemed to be and shall be deemed always to have been a Marumakkathayam tarwad and the properties appertaining to such a sthanam shall be deemed to be and shall be deemed always to have been properties belonging to the tarwad to which the provisions of the Madras Marumakkathayam Act, 1932, (Madras Act XXII of 1932), shall apply."

Immediately after the publication of the Act, the respondents Nos. 2 to 17, published notices in the press that by reason of the passing of the Act, Kavalappara estate had become their tarwad property and that rents could be paid to the sthanee only as the Karnavan of the properties and not otherwise. The notices further stated that the donees under the two deeds of gift executed by the sthanee were not entitled to the properties conveyed to them and should not be paid any rents at all. One of the respondents filed a partition suit and others also contemplated doing the same. The petitioners sought for a writ of *mandamus* or any other writ or order directing the respondents to forbear from enforcing the impugned Act against the sthanee and the sthanam estate and declaring the Act to be unconstitutional and invalid. Preliminary objection was raised on behalf of some of the respondents as to the maintainability of the petitions and it was contended that (1) the prayer for a writ of *mandamus* was not maintainable since there was an adequate remedy in the partition suit filed by one of the respondents ; (2) that violation of right of property by private individuals was not within the purview of Art. 19(1)(f) or Art. 31(1) and the remedy was not by way of application under Art. 32 ; (3) that no application under Art. 32 could be maintained until the State had taken or threatened to take any action under the impugned law that would infringe fundamental rights ; (4) that the proceeding under Art. 32 could not be converted into or equated with a declaratory suit under s. 42 of the Specific Relief Act in and (5) that this court could not, on an application under Art. 32, embark upon an enquiry into disputed questions of fact.

Held (per Das, C. J., Bhagwati, Sinha and Subba Rao, JJ.), that all the contentions must be negatived and all the preliminary objections must fail.

The right to enforce a fundamental right conferred by the Constitution was itself a fundamental right guaranteed by Art. 32 of the Constitution and this court could not refuse to entertain a petition under that Article simply because the petitioner might have any other adequate, alternative, legal remedy.

Rashid Ahmed v. *Municipal Board, Kairana,* [1950] S.C.R. 566 and *Romesh Thappar* v. *The State of Madras,* [1950] S.C.R. 594, referred to.

In the instant cases as the grievance of the petitioners was primarily against the impugned Act passed by the Madras Legislature, which was a State as defined by Art. 12 of the Constitution and the dispute was not one between two sets of private individuals but between the petitioners on the one hand and the State and persons claiming under a law made by the State on the other, Art. 32 must apply.

P. D. Shamdasani v. *Central Bank of India Ltd.,* [1952] S.C.R. 391, distinguished and held inapplicable.

Where an enactment such as the impugned Act, unlike

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others that contemplated some further action to be taken by the State after the enactment had come into force, automatically took away or abridged a person's fundamental rights immediately it came into force, there was no reason why the aggrieved person should not immediately be entitled to seek the remedy under Art. 32 of the Constitution.

State of Bombay v. *United Motors (India) Limited*, [1953] S.C.R. 1069 and *Himmatlal Harilal Mehta* v. *The State of Madhya Pradesh*, [1954] S.C.R. 1122, referred to.

In view of the language used in s. 2 of the impugned Act and its effect, there could be no doubt that the petitioners could legitimately complain that their fundamental right to hold and dispose of the sthanam properties have been violated by the action of the Legislature.

Article 32 of the Constitution conferred wide powers on this Court and such powers were not confined to the issuing of prerogative writs alone. In appropriate cases, this court had the right in its discretion to frame its writs or orders suitable to the exigencies created by enactments. It was clear on the authorities that this Court could, where the occasion so required, make even a declaratory order with consequential relief under Art. 32 of the Constitution.

Chiranjit Lal Chowdhury v. *The Union of India*, [1950] S.C.R. 900, *Rashid Ahmed* v. *Municipal Board, Kairana*, [1950] S.C.R. 566, *T.C. Basappa* v. *T. Nagappa*, [1955] 1 S.C.R. 250 and *Ebrahim Vazir Mayat* v. *The State of Bombay*, [1954] S.C.R. 933, relied on.

Maharaj Umeg Singh v. *The State of Bombay*, [1955] 2 S.C.R. 164, considered.

This court would fail in its duty as the custodian and protector of the fundamental rights if it were to decline to entertain a petition under Art. 32 simply because it involved the determination of disputed questions of fact. Clause (2) of Art. 32 conferred on this court the power to issue directions or orders or writs of various kinds mentioned therein and in dismissing a petition, it had either to hold that any particular writ asked for was not appropriate to the occasion or that the petitioner had failed to establish a fundamental right or its breach. In either case, however, it had to decide the petition on merits.

Chiranjit Lal Chowdhuri v. *The Union of India*, [1950] S.C.R. 869, *Kathi Raning Rawat* v. *The State of Saurashtra*, [1952] S.C.R. 435 and *Ramkrishna Dalmia* v. *Shri Justice S. R. Tendolkar*, [1959] S.C.R. 279, referred to.

In appropriate cases opportunity might also be given to the parties to establish their cases by further affidavits, or by issuing a commission or even by setting the application down for trial on evidences.

Per Wanchoo, J.—If the petitions were based solely on the infringement of Art. 14, there could be no doubt that they would not be maintainable. Even though they were based on the

infringement of Art. 19(1)(f) also, their maintainability would still be in doubt in the absence of any further provision in the impugned Act for its direct enforcement by the State.

ORIGINAL JURISDICTION: Petitions No. 433 of 1955 and 40-41 of 1956.

Petitions under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

M. C. Setalvad, Attorney-General for India, M. K. Nambiyar, J. B. Dadachanji, S. N. Andley and *Rameshwar Nath*, for the petitioners.

T. M. Sen, for the State of Madras.

K. V. Suryanarayana Iyer, Advocate-General for the State of Kerala and *T. M. Sen*, for the State of Kerala.

M. R. Krishna Pillai, for respondents Nos. 2-9.

Purshottam Tricumdas and *M. R. Krishna Pillai*, for respondent No. 12 in Petitions Nos. 40 and 41 of 1956.

K. R. Krishnaswami, for respondents Nos. 11, 13-17 in Petn. No. 443 of 55.

Purshottam Tricumdas and *K. R. Krishnaswami*, for respondent No. 12 in Petn. No. 443 of 55.

A. V. Viswanatha Sastri and *M. R. Krishna Pillai*, for Intervener No. 1.

Sardar Bahadur, for Intervener No. 2.

M. R. Krishna Pillai, for Intervener No. 3.

1959. March 4. The Judgment of Das, C. J., Bhagwati, Sinha and Subba Rao, JJ., was delivered by Das, C. J. Wanchoo, J., delivered a separate Judgment.

Das C. J.

DAS, C. J.—The circumstances leading up to the presentation of the above noted three petitions under Art. 32, which have been heard together, may be shortly stated:

In pre-British times the Kavalappara Moopil Nair, who was the senior-most male member of Kavalappara Swaroopam of dynastic family, was the ruler of the Kavalappara territory situate in Walluvanad

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Taluk in the district of South Malabar. He was an independent prince or chieftain having sovereign rights over his territory and as such was the holder of the Kavalappara sthanam, that is to say, "the status and the attendant property of the senior Raja". Apart from the Kavalappara sthanam, which was a Rajasthanam, the Kavalappara Moopil Nair held five other sthanams in the same district granted to his ancestors by the superior overlord, the Raja of Palghat, as reward for military services rendered to the latter. He also held two other sthanams in Cochin, granted to his ancestors by another overlord, the Raja of Cochin, for military services. Each of these sthanams has also properties attached to it and such properties belong to the Kavalappara Moopil Nair who is the sthanee thereof. On the death in 1925 of his immediate predecessor the petitioner in Petition No. 443 of 1955 became the Moopil Nair of Kavalappara and as such the holder of the Kavalappara sthanam to which is attached the Kavalappara estate and also the holder of the various other sthanams in Malabar and Cochin held by the Kavalappara Moopil Nair. The petitioner in Petition No. 443 of 1955 will hereafter be referred to as "the sthanee petitioner". According to him all the properties attached to all the sthanams belong to him and respondents 2 to 17, who are the junior members of the Kavalappara family or tarwad, have no interest in them.

The Madras Marumakkattayam Act (Mad. XXII of 1932) passed by the Madras Legislature came into force on August 1, 1933. This Act applied to tarwads and not to sthanams and s. 42 of the Act gave to the members of a Malabar tarwad a right to enforce partition of tarward properties or to have them registered as impartible. In March 1934 respondents 10 to 17, then constituting the entire Kavalappara tarwad, applied under s. 42 of the said Act for registration of their family as an impartible tarwad. In spite of the objection raised by the sthanee petitioner, the Sub-Collector ordered the registration of the Kavalappara tarwad as impartible. The sthanee petitioner applied to the High Court of Madras for the issue of a writ to

quash the order of the Sub Collector, but the High Court declined to do so on the ground that the sthanee petitioner had no real grievance as the said order did not specify any particular property as impartible property. While this decision served the purpose of the sthanee petitioner, it completely frustrated the object of respondents 10 to 17. On April 10, 1934, therefore, respondents 10 to 17 filed O. S. No. 46 of 1934 in the court of the Subordinate Judge of Ottapalam for a declaration that all the properties under the management of the defendant (meaning the sthanee petitioner) were tarwad properties belonging equally and jointly to the plaintiffs (meaning the respondents 10 to 17 herein) and the defendant, i.e., the sthanee petitioner, and that the latter was in management thereof only as the Karnavan and manager of the tarwad. The sthanee petitioner contested the suit asserting that he was the Kavalappara Moopil Nair and as such a sthanee and that the properties belonged to him exclusively and that the plaintiffs (the respondents 10 to 17 herein) had no interest in the suit properties. By his judgment pronounced on February 26, 1938, the Subordinate Judge dismissed the O. S. 46 of 1934. The plaintiffs (the respondents 10 to 17 herein) went up in appeal to the Madras High Court, which, on April 9, 1943, allowed the appeal and reversed the decision of the Subordinate Judge and decreed the suit. That judgment will be found reported in *Kuttan Unni* v. *Kochunni* (1). The defendant, i.e., the sthanee petitioner herein carried the matter to the Privy Council and the Privy Council by its judgment, pronounced on July 29, 1947, reversed the judgment of the High Court and restored the decree of dismissal of the suit passed by the Subordinate Judge. In the meantime in 1946 respondents 10 to 17 had filed a suit (O. S. 77 of 1121) in the Cochin Court claiming similar reliefs in respect of the Cochin sthanam. After the judgment of the Privy Council was announced, respondents 10 to 17 withdrew the Cochin suit. The matter rested here for the time being.

(1) (1943) I.L.R. [1944] Mad. 515.

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On February 16, 1953, respondents 10 to 17 took the initiative again and presented a Memorial to the Madras Government asking that legislation be undertaken to reverse the Privy Council decision. The Government apparently did not think fit to take any action on that Memorial. Thereafter a suit was filed in the court of the Subordinate Judge at Ottapalam by respondents 2 to 9 who were then the minor members of the tarwad claiming Rs. 4,23,000 as arrears of maintenance and Rs. 44,000 as yearly maintenance for the future. The suit was filed in *forma pauperis*. There were some interlocutory proceedings in this suit for compelling the defendant (i.e., the sthanee petitioner) to deposit the amount of the maintenance into court which eventually came up to this Court by special leave but to which it is not necessary to refer in detail. During the pendency of that pauper suit, the sthanee petitioner, on August 3, 1955, executed two deeds of gift, one in respect of the Palghat properties in favour of his wife and two daughters who are the petitioners in Petition No. 40 of 1956 and the second in respect of the Cochin properties in favour of his son who is the petitioner in Petition No. 41 of 1956.

Meanwhile respondents 2 to 17 renewed their efforts to secure legislation for the reversal of the decree of the Privy Council and eventually on August 8, 1955, procured a private member of the Madras Legislative Assembly to introduce a Bill (L. A. Bill No. 12 of 1955) intituled "The Madras Marumakkathayam (Removal of Doubts) Bill, 1955" with only two clauses on the allegation, set forth in the statement of objects and reasons appended to the Bill, that certain decisions of courts of law had departed from the age old customary law of Marumakkathayees with regard to sthanams and sthanam properties and that those decisions were the result of a misapprehension of the customary law which governed the Marumakkathayees from ancient times and tended to disrupt the social and economic structure of several ancient Marumakkathayam families in Malabar in that Karnavans of tarwad were encouraged to claim to be sthanees and thus deny the legitimate rights of the members of tarwads

with the result that litigation had arisen or were pending. It was said to be necessary, in the interests of harmony and well being of persons following the Marumakkathayam law, that the correct position of customary law governing sthanams and sthanam properties should be clearly declared. This Bill came before the Madras Legislative Assembly on August 20, 1955, and was passed on the same day. The Bill having been placed before the Madras Legislative Council, the latter passed the same on August 24, 1955. The assent of the President to the Bill was obtained on October 15, 1955, and the Act intituled "the Madras Murumakkathayam (Removal of Doubts) Act, 1955" being Madras Act 32 of 1955 and hereinafter referred to as the impugned Act, was published in the official gazette on October 19, 1955. Section 1 of the impugned Act is concerned with the short title and its application. Section 2, which is material for our purposes, is expressed in the following terms:

"2. Certain kinds of sthanam properties declared to be tarwad properties:—Notwithstanding any decision of Court, any sthanam in respect of which—

(a) there is or had been at any time an intermingling of the properties of the sthanam and the properties of the tarwad, or

(b) the members of the tarwad have been receiving maintenance from the properties purporting to be sthanam properties as of right, or in pursuance of a custom or otherwise, or

(c) there had at any time been a vacancy caused by there being no male member of the tarwad eligible to succeed to the sthanam,

shall be deemed to be and shall be deemed always to have been a Marumakkathayam tarwad and the properties appertaining to such a sthanam shall be deemed to be and shall be deemed always to have been properties belonging to the tarwad to which the provisions of the Madras Marumakkathayam Act, 1932, (Madras Act XXII of 1933), shall apply.

Explanation—All words and expressions used in this Act shall bear the same meaning as in the Madras

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Marumakkathayam Act, 1932 (Madras Act XXII of 1933)."

Almost immediately after the publication of the impugned Act in the gazette, respondents 2 to 17 published notices in "Mathrubumi", a Malayalam daily paper with large circulation in Malabar, Cochin and Travancore, to the effect that by reason of the passing of the impugned Act, Kavalappara estate had become their tarwad properties and that rents could be paid to the sthanee petitioner only as the Karnavan of the properties and not otherwise. The notices further stated that the donees under the two deeds of gift executed by the sthanee petitioner were not entitled to the properties conveyed to them and should not be paid any rent at all. After the passing of the impugned Act one of the respondents filed another suit, also in *forma pauperis*, in the same court. It is also alleged by the petitioners that respondents 2 to 17 are contemplating the filing of yet another suit for partition, taking advantage of the provisions of the impugned Act.

It was in these circumstances detailed above that the Kavalappara Moopil Nair, i.e., the sthanee petitioner, on December 12, 1955, filed the present petition No. 443 of 1955 under Art. 32 of the Constitution. This was followed by Petition No. 40 of 1956 by his wife and two daughters and Petition No. 41 of 1956 by his son. Both the last mentioned petitions were filed on February 3, 1956. The first respondent in all the three petitions is the State of Madras and respondents 2 to 17 are the members of the sthanee petitioner's tarwad. In his petition the sthanee petitioner prays "that a writ of Mandamus or any other proper writ, order or directions be ordered to issue for the purpose of enforcing his fundamental rights, directing the respondents to forbear from enforcing any of the provisions of the Madras Act 32 of 1955 against the petitioner, his Kavalappara sthanam and Kavalappara estate, declaring the said Act to be unconstitutional and invalid". The prayers in the other two petitions are *mutatis mutandis* the same.

Shri Purshottam Tricumdas appearing for some of

the respondents has taken a preliminary objection as to the maintainability of the petitions. The argument in support of his objection has been developed and elaborated by him in several ways. In the first place, he contends that the petitions, in so far as they pray for the issue of a writ of Mandamus, are not maintainable because the petitioners have an adequate remedy in that they can agitate the questions now sought to be raised on these petitions and get relief in the pauper suit filed by one of the respondents after the passing of the impugned Act. This argument overlooks the fact that the present petitions are under Art. 32 of the Constitution which is itself a guaranteed right. In *Rashid Ahmed* v. *Municipal Board, Kairana* (1) this Court repelled the submission of the Advocate-General of Uttar Pradesh to the effect that, as the petitioner had an adequate legal remedy by way of appeal, this Court should not grant any writ in the nature of the prerogative writ of Mandamus or Certiorari and observed :

"There can be no question that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, but the powers given to this Court under Art. 32 are much wider and are not confined to issuing prerogative writs only."

Further, even if the existence of other adequate legal remedy may be taken into consideration by the High Court in deciding whether it should issue any of the prerogative writs on an application under Art. 226 of the Constitution, as to which we say nothing now—this Court cannot, on a similar ground, decline to entertain a petition under Art. 32, for the right to move this Court by appropriate proceedings for the enforcement of the rights conferred by Part III of the Constitution is itself a guaranteed right. It has accordingly been held by this Court in *Romesh Thappar* v. *The State of Madras* (2) that under the Constitution this Court is constituted the protector and guarantor of fundamental rights and it cannot, consistently with the responsibility so laid upon it,

(1) [1950] S.C.R. 566. (2) [1950] S.C.R. 594.

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refuse to entertain applications seeking the protection of this Court against infringement of such rights, although such applications are made to this Court in the first instance without resort to a High Court having concurrent jurisdiction in the matter. The mere existence of an adequate alternative legal remedy cannot *per se* be a good and sufficient ground for throwing out a petition under Art. 32, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is *prima facie* established on the petition.

The second line of argument advanced by learned counsel is that the violation of the right to property by private individuals is not within the purview of Art. 19(1)(f) or Art. 31(1) and that a person whose right to property is infringed by a private individual must, therefore, seek his remedy under the ordinary law and not by way of an application under Art. 32. In support of this part of his argument, learned counsel relies on the decision of this Court in *P. D. Shamdasani* v. *Central Bank of India Ltd.* (1). In that case the respondent Bank had, in exercise of its right of lien under its articles of association, sold certain shares belonging to the petitioner and then the latter started a series of proceedings in the High Court challenging the right of the Bank to do so. After a long lapse of time, after all those proceedings had been dismissed, the petitioner instituted a suit against the Bank challenging the validity of the sale of his shares by the Bank. The plaint was rejected by the court under O. 7, r. 11(d) of the Code of Civil Procedure as barred by limitation. Thereupon the petitioner filed an application under Art. 32 of the Constitution praying that all the adverse orders made in the previous proceedings be quashed and the High Court be directed to have "the above suit set down to be heard as undefended and pronounce judgment against the respondent or to make such orders as it thinks fit in relation to the said suit". It will be noticed that the petitioner had no grievance against the State as defined in Art. 12 of the Constitution and his petition

(1) [1952] S.C.R. 391.

was not founded on the allegation that his fundamental right under Art. 19(1)(f) or Art. 31(1) had been infringed by any action of the State as so defined or by anybody deriving authority from the State. The present position is, however, entirely different, for the gravamen of the complaint of the sthanee petitioner and the other petitioners, who claim title from him, is directly against the impugned Act passed by the Madras Legislature, which is within the expression "State" as defined in Art. 12. Therefore in the cases now before us the petitions are primarily against the action of the State and respondents 2 to 17 have been impleaded because they are interested in denying the petitioner's rights created in their favour by the impugned Act. Indeed by means of suits and public notices, those respondents have in fact been asserting the rights conferred upon them by the impugned Act. In these circumstances, the petitioners' grievance is certainly against the action of the State which, by virtue of the definition of that term given in Art. 12 of the Constitution, includes the Madras Legislature and it cannot certainly be said that the subject matters of the present petitions comprise disputes between two sets of private individuals unconnected with any State action. Clearly disputes are between the petitioners on the one hand and the State and persons claiming under the State or under a law made by the State on the other hand. The common case of the petitioners and the respondents, therefore, is that the impugned Act does affect the right of the petitioners to hold and enjoy the properties as sthanam properties; but, while the petitioners contend that the law is void, the respondents maintain the opposite view. In our opinion these petitions under Art. 32 are not governed by our decision in *P. D. Shamdasani's case* (1) and we see no reason why, in the circumstances, the petitioners should be debarred from availing themselves of their constitutional right to invoke the jurisdiction of this Court for obtaining redress against infringement of their fundamental rights.

(1) [1952] S.C.R. 391.

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The third argument in support of the preliminary point is that an application under Art. 32 cannot be maintained until the State has taken or threatens to take any action under the impugned law which action, if permitted to be taken, will infringe the petitioners' fundamental rights. It is true that the enactments abolishing estates contemplated some action to be taken by the State, after the enactments came into force, by way of issuing notifications, so as to vest the estates in the State and thereby to deprive the proprietors of their fundamental right to hold and enjoy their estates. Therefore, under those enactments some overt act had to be done by the State before the proprietors were actually deprived of their right, title and interest in their estates. In cases arising under those enactments the proprietors could invoke the jurisdiction of this Court under Art. 32 when the State did or threatened to do the overt act. But quite conceivably an enactment may immediately on its coming into force take away or abridge the fundamental rights of a person by its very terms and without any further overt act being done. The impugned Act is said to be an instance of such enactment. In such a case the infringement of the fundamental right is complete *eo instanti* the passing of the enactment and, therefore, there can be no reason why the person so prejudicially affected by the law should not be entitled immediately to avail himself of the constitutional remedy under Art. 32. To say that a person, whose fundamental right has been infringed by the mere operation of an enactment, is not entitled to invoke the jurisdiction of this Court under Art. 32, for the enforcement of his right, will be to deny him the benefit of a salutary constitutional remedy which is itself his fundamental right. The decisions of this Court do not compel us to do so. In the *State of Bombay* v. *United Motors (India) Limited* (1) the petitioners applied to the High Court on November 3, 1952, under Art. 226 of the Constitution challenging the validity of the Bombay Sales Tax Act, 1952, which came into force on November 1, 1952. No notice had

(1) [1953] S.C.R. 1069.

been issued, no assessment proceeding had been started and no demand had been made on the petitioners for the payment of any tax under the impugned Act. It should be noted that in that petition one of the grounds of attack was that the Act required the dealers, on pain of penalty, to apply for registration in some cases and to obtain a license in some other cases as a condition for the carrying on of their business, which requirement, without anything more, was said to have infringed the fundamental rights of the petitioners under Art. 19(1)(g) of the Constitution and no objection could, therefore, be taken to the maintainability of the application. Reference may also be made to the decision of this Court in *Himmatlal Harilal Mehta* v. *The State of Madhya Pradesh* (1). In that case, after cotton was declared, on April 11, 1949, as liable to sales tax under the Central Provinces and Berar Sales Tax Act, 1947, the appellant commenced paying the tax in respect of the purchases made by him and continued to pay it till December 31, 1950. Having been advised that the transactions done by him in Madhya Pradesh were not " sales " within that State and that consequently he could not be made liable to pay sales tax in that State, the appellant declined to pay the tax in respect of the purchases made during the quarter ending March 31, 1951. Apprehending that he might be subjected to payment of tax without the authority of law, the appellant presented an application to the High Court of Judicature at Nagpur under Art. 226 praying for an appropriate writ or writs for securing to him protection from the impugned Act and its enforcement by the State. The High Court declined to issue a writ and dismissed the petition on the ground that a mandamus could be issued only to compel an authority to do or to abstain from doing some act and that it was seldom anticipatory and was certainly never issued where the action of the authority was dependent on some action of the appellant and that in that case the appellant had not even made his return and no demand for the tax could be made from him.

(1) [1954] S.C.R. 1122.

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Being aggrieved by that decision of the High Court, the petitioner in that case came up to this Court on appeal and this Court held that a threat by the State to realise the tax from the assessee without the authority of law by using the coercive machinery of the impugned Act was a sufficient infringement of his fundamental right which gave him a right to seek relief under Art. 226 of the Constitution. It will be noticed that the Act impugned in that case had by its terms made it incumbent on all dealers to submit returns, etc., and thereby imposed restrictions on their fundamental right to carry on their businesses under Art. 19(1)(g). The present case, however, stands on a much stronger footing. The sthanee petitioner is the Kavalappara Moopil Nair and as such holds certain sthanams and the petitioners in Petitions Nos. 40 and 41 of 1956 derive their titles from him. According to the petitioners, the sthanee petitioner was absolutely entitled to all the properties attached to all the sthanams and respondents 2 to 17 had no right, title or interest in any of the sthanam properties. Immediately after the passing of the impugned Act, the Madras Marumakkathayam Act, 1932, became applicable to the petitioners' sthanams and the petitioners' properties became subject to the obligations and liabilities imposed by the last mentioned Act. On the passing of the impugned Act, the sthanee petitioner immediately became relegated from the status of a sthanee to the status of a Karnavan and manager and the sthanam properties have become the tarwad properties and respondents 2 to 17 have automatically become entitled to a share in those properties along with the petitioners. The right, title or interest claimed by petitioners in or to their sthanam properties is, by the operation of the statute itself and without anything further being done, automatically taken away or abridged and the impugned Act has the effect of automatically vesting in respondents 2 to 17 an interest in those properties as members of the tarwad. Indeed respondents 2 to 17 are asserting their rights and have issued public notices on the basis thereof and have also instituted a suit on the strength of the rights

created in them by the impugned Act. Nothing further remains to be done to infringe the petitioners' right to the properties as sthanam properties. It is true that the sthanee petitioner or the other petitioners deriving title from him are still in possession of the sthanam properties, but in the eye of law they no longer possess the right of the sthanee and they cannot, as the sthanee or persons deriving title from the sthanee, lawfully claim any rent from the tenants. In view of the language employed in s. 2 quoted above and its effect the petitioners can legitimately complain that their fundamental right to hold and dispose of the sthanam properties has been injured by the action of the Legislature which is "State" as defined in Art. 12 of the Constitution. In the premises, the petitioners are *prima facie* entitled to seek their fundamental remedy under Art. 32.

The next argument in support of the objection as to the maintainability of these petitions is thus formulated: The impugned Act is merely a piece of a declaratory legislation and does not contemplate or require any action to be taken by the State or any other person and, therefore, none of the well-known prerogative writs can afford an adequate or appropriate remedy to a person whose fundamental right has been infringed by the mere passing of the Act. If such a person challenges the validity of such an enactment, he must file a regular suit in a court of competent jurisdiction for getting a declaration that the law is void and, therefore, cannot and does not effect his right. In such a suit he can also seek consequential reliefs by way of injunction or the like, but he cannot avail himself of the remedy under Art. 32. In short, the argument is that the proceeding under Art. 32 cannot be converted into or equated with a declaratory suit under s. 42 of the Specific Relief Act. Reference is made, in support of the aforesaid contention, to the following passage in the judgment of Mukherjea, J., as he then was, in the case of *Chiranjit Lal Chowdhuri* v. *The Union of India* (1):—

"As regards the other point, it would appear from

(1) [1950] S.C.R. 869, 900.

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the language of article 32 of the Constitution that the sole object of the article is the enforcement of fundamental rights guaranteed by the Constitution. A proceeding under this article cannot really have any affinity to what is known as a declaratory suit".

But further down on the same page his Lordship said:—

"Any way, article 32 of the Constitution gives us very wide discretion in the matter of framing our writs to suit the exigencies of particular cases, and the application of the petitioner cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for".

It should be noted that though in that case the petitioner prayed, inter alia, for a declaration that the Act complained of was void under Art. 13 of the Constitution it was not thrown out on that ground. The above statement of the law made by Mukherjea, J., is in accord with the decision of this Court in the earlier case of *Rashid Ahmed* v. *Municipal Board, Kairana* (1). The passage from our judgment in that case, which has already been quoted above, also acknowledges that the powers given to this Court by Art. 32 are much wider and are not confined to the issuing of prerogative writs only. The matter does not rest there. In *T. C. Basappa* v. *T. Nagappa* (2) Mukherjea, J., again expressed the same view:—(Page 256).

"The language used in articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of *habeas corpus, mandamus, quo warranto, prohibition* and *certiorari* as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions of our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges".

(1) [1950] S.C.R. 566. (2) [1955] 1 S.C.R. 250, 256.

In *Ebrahim Vazir Mayat* v. *The State of Bombay* (1) the order made by the majority of this Court was framed as follows :—

" As a result of the foregoing discussion we declare section 7 to be void under Article 31(1) in so far as it conflicts which the fundamental right of a citizen of India under article 19(1) (e) of the Constitution and set it aside. The order will, however, operate only upon proof of the fact that the appellants are citizens of India. The case will, therefore, go back to the High Court for a finding upon this question. It will be open to the High Court to determine this question itself or refer it to the court of District Judge for a finding ". That was a case of an appeal coming from a High Court and there was no difficulty in remanding the case for a finding on an issue, but the fact to note is that this Court did make a declaration that s. 7 of the Act was void. We are not unmindful of the fact that in the case of *Maharaj Umeg Singh* v. *The State of Bombay* (2) which came up before this Court on an application under Art. 32, the petitioner had been relegated to filing a regular suit in a proper court having jurisdiction in the matter. But on a consideration of the authorities it appears to be well-established that this Court's powers under Art. 32 are wide enough to make even a declaratory order where that is the proper relief to be given to the aggrieved party. The present case appears to us precisely to be an appropriate case, if the impugned Act has taken away or abridged the petitioners' right under Art. 19(1) (f) by its own terms and without anything more being done and such infraction cannot be justified. If, therefore, the contentions of the petitioners be well-founded, as to which we say nothing at present, a declaration as to the invalidity of the impugned Act together with the consequential relief by way of injunction restraining the respondents and in particular respondents 2 to 17 from asserting any rights under the enactment so declared void will be the only appropriate reliefs which the petitioners will be entitled to get. Under Art. 32 we must, in appropriate cases, exercise our discretion and

(1) [1954] S.C.R. 933, 941. (2) [1955] 2 S.C.R. 164.

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frame our writ or order to suit the exigencies of this case brought about by the alleged nature of the enactment we are considering. In a suit for a declaration of their titles on the impugned Act being declared void, respondents 2 to 17 will certainly be necessary parties, as persons interested to deny the petitioners' title. We see no reason why, in an application under Art. 32 where declaration and injunction are proper reliefs, respondents 2 to 17 cannot be made parties. In our opinion, therefore, there is no substance in the argument advanced by learned counsel on this point.

The last point urged in support of the plea as to the non-maintainability of these applications is that this Court cannot, on an application under Art. 32, embark upon an enquiry into disputed question of fact. The argument is developed in this way. In the present case the petitioners allege, inter alia, that the impugned Act has deprived them of their fundamental right to the equal protection of the law and equality before the law guaranteed by Art. 14 of the Constitution. Their complaint is that they have been discriminated against in that they and their sthanam properties have been singled out for hostile treatment by the Act. The petitioners contend that there is no other sthanam which comes within the purview of this enactment and that they and the sthanams held by them are the only target against which this enactment is directed. The respondents, on the other hand, contend that the language of s. 2 is wide and general and the Act applies to all sthanams to which one or more of the conditions specified in s. 2 may be applicable and that this Court cannot, on an application under Art. 32, look at any extraneous evidence but must determine the issue on the terms of the enactment alone and that in any event this Court cannot go into disputed questions of fact as to whether there are or are not other sthanees or sthanams similarly situate as the petitioners are. In support of his contention Shri Purshottam Tricumdas refers us to some decisions where some of the High Courts have declined to entertain applications under Art. 226 of the Constitution involving disputed

questions of fact and relegated the petitioners to regular suits in courts of competent jurisdiction. We are not called upon, on this occasion, to enter into a discussion or express any opinion as to the jurisdiction and power of the High Courts to entertain and to deal with applications under Art. 226 of the Constitution where disputed questions of fact have to be decided and we prefer to confine our observations to the immediate problem now before us, namely, the limits of the jurisdiction and power of this Court when acting under Art. 32 of the Constitution. Shri Purshottam Tricumdas concedes that the petitioners have the fundamental right to approach this Court for relief against infringement of their fundamental right. What he says is that the petitioners have exercised that fundamental right and that this fundamental right goes no further. In other words he maintains that nobody has the fundamental right that this Court must entertain his petition or decide the same when disputed questions of fact arise in the case. We do not think that that is a correct approach to the question. Clause (2) of Art. 32 confers power on this Court to issue directions or orders or writs of various kinds referred to therein. This Court may say that any particular writ asked for is or is not appropriate or it may say that the petitioner has not established any fundamental right or any breach thereof and accordingly dismiss the petition. In both cases this Court decides the petition on merits. But we do not countenance the proposition that, on an application under Art. 32, this Court may decline to entertain the same on the simple ground that it involves the determination of disputed questions of fact or on any other ground. If we were to accede to the aforesaid contention of learned counsel, we would be failing in our duty as the custodian and protector of the fundamental rights. We are not unmindful of the fact that the view that this Court is bound to entertain a petition under Art. 32 and to decide the same on merits may encourage litigants to file many petitions under Art. 32 instead of proceeding by way of a suit. But that consideration cannot, by itself, be a cogent reason

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for denying the fundamental right of a person to approach this Court for the enforcement of his fundamental right which may, *prima facie*, appear to have been infringed. Further, questions of fact can and very often are dealt with on affidavits. In *Chiranjitlal Chowdhuri's case* (1) this Court did not reject the petition *in limine* on the ground that it required the determination of disputed questions of fact as to there being other companies equally guilty of mismangement. It went into the facts on the affidavits and held, inter alia, that the petitioner had not discharged the onus that lay on him to establish his charge of denial of equal protection of the laws. That decision was clearly one on merits and is entirely different from a refusal to entertain the petition at all. In *Kathi Raning Rawat* v. *The State of Saurashtra* (2) the application was adjourned in order to give the respondent in that case an opportunity to adduce evidence before this Court in the form of an affidavit. An affidavit was filed by the respondent setting out facts and figures relating to an increasing number of incidents of looting, robbery, dacoity, nose cutting and murder by marauding gangs of dacoits in certain areas of the State in support of the claim of the respondent State that "the security of the State and public peace were jeopardised and that it became impossible to deal with the offences that were committed in different places in separate courts of law expeditiously". This Court found no difficulty in dealing with that application on evidence adduced by affidavit and in upholding the validity of the Act then under challenge. That was also a decision on merits although there were disputed questions of fact regarding the circumstances in which the impugned Act came to be passed. There were disputed questions of fact also in the case of *Ramkrishna Dalmia* v. *Shri Justice S. R. Tendolkar* (3). The respondent State relied on the affidavit of the Principal Secretary to the Finance Ministry setting out in detail the circumstances which lead to the issue of the impugned notification and the matters

(1) [1950] S.C.R. 869, 900. (2) [1952] S.C.R. 435.
(3) [1959] S.C.R. 279.

recited therein and the several reports referred to in the said affidavit. A similar objection was taken by learned counsel for the petitioners in that case as has now been taken. It was urged that reference could not be made to any extraneous evidence and that the basis of classification must appear on the face of the notification itself and that this Court should not go into disputed questions of fact. This Court overruled that objection and held that there could be no objection to the matters brought to the notice of the Court by the affidavit of the Principal Secretary being taken into consideration in order to ascertain whether there was any valid basis for treating the petitioners and their companies as a class by themselves. As we have already said, it is possible very often to decide questions of fact on affidavits. If the petition and the affidavits in support thereof are not convincing and the court is not satisfied that the petitioner has established his fundamental right or any breach thereof, the Court may dismiss the petition on the ground that the petitioner has not discharged the onus that lay on him. The court may, in some appropriate cases, be inclined to give an opportunity to the parties to establish their respective cases by filing further affidavits or by issuing a commission or even by setting the application down for trial on evidence, as has often been done on the original sides of the High Courts of Bombay and Calcutta, or by adopting some other appropriate procedure. Such occasions will be rare indeed and such rare cases should not, in our opinion, be regarded as a cogent reason for refusing to entertain the petition under Art. 32 on the ground that it involves disputed questions of fact.

For reasons given above we are of opinion that none of the points urged by learned counsel for the respondents in support of the objection to the maintainability of these applications can be sustained. These applications will, therefore, have to be heard on merits and we order accordingly. The respondents represented by Shri Purshottam Tricumdas must pay one set of costs of the hearing of this preliminary objection before us to the petitioners.

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WANCHOO, J.—I have read the judgment just delivered by my Lord the Chief Justice, with which my other brethren concur, with great care. With the utmost respect for my brethren for whom I have the highest regard, I must state that if these applications were based only on the infringement of Art. 14 of the Constitution, I would have no hesitation in dismissing them as not maintainable. I need not elaborate my reasons in this case and shall content myself by observing that where the law, as in this case, is general in terms and there is no question of its direct enforcement by the State in the form, for example, of grant of licences, issue of notices, submission of returns, and so on, actually resulting in wholesale abuse of its provisions, this Court will not permit an applicant under Art. 32 to lead evidence to show that the law was meant to hit him alone. However, the applicants also rely on the infringement of the fundamental right guaranteed under Art. 19(1)(f). As to that, I have doubts whether an application under Art. 32 challenging a general law of this kind, which affects one or other of the fundamental rights guaranteed under Art. 19, can be maintained, in the absence of any further provision therein for direct enforcement of its provisions by the State in the form already indicated above, by a person who merely apprehends that he might in certain eventualities be affected by it. However, on the present occasion, I do not propose to press my doubts to the point of dissent and therefore concur with the proposed order.

Preliminary objection overruled.