

Municipal Committee, Amritsar & Anr vs State Of Punjab & Ors on 30 January, 1969

**Equivalent citations: 1969 AIR 1100, 1969 SCR (3) 447, AIR 1969 SUPREME
COURT 1100**

Author: J.C. Shah

Bench: J.C. Shah, V. Ramaswami, A.N. Grover

PETITIONER:
MUNICIPAL COMMITTEE, AMRITSAR & ANR.

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT:
30/01/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1969 AIR 1100 1969 SCR (3) 447
1969 SCC (1) 475
CITATOR INFO :
RF 1970 SC 564 (70,179)
R 1970 SC2182 (12)
E 1971 SC 481 (46)
RF 1973 SC 588 (27)
RF 1973 SC 974 (12)
RF 1973 SC1461 (435,1709)
E 1991 SC 101 (70,278)

ACT:
Punjab Cattle Fairs (Regulation) Act (6 of 1968) as amended
by Amending Act 18 of 1968, ss. 2(bb), 4, 15 and 23-Original
Act without definition in s. 2(bb) of cattle fair, if vague-
Whether Act can be struck down on the ground of vagueness
and effect of striking down-If Act ceases to have existence
in law-Decision before amendment if res judicata between
parties after amendment-Act creating monopoly in State if

violates Art. 19(1) (b) , (d), (f) and (g) of the Constitution-Scope of s. 4-S. 15 if violative of Art. 19(1)(f)-Municipal Committee if citizen-If can complain of violation of Art. 19-Direction regarding property of Municipal Committee amounting to requisition-If violative of Art. 32-Directions regarding amenities-If authorised by Act.

HEADNOTE:

In the State of Punjab local authorities and individual owners of land were holding cattle fairs. The Punjab Cattle Fairs (Regulation) Act, 1967, was passed by the State Legislature in exercise of powers under entry 28 of List II of VII Schedule to the Constitution, declaring a monopoly in the State to hold cattle fairs and prohibiting all local authorities and individuals from holding cattle fairs at 'any place in the State'. There was no definition of the expression 'cattle fair' in the Act. The validity of the Act was challenged on the ground that the provisions of the Act were 'vague and ambiguous', and the High Court, in *Mohinder Singh Sawhney v. State of Punjab*, A.I.R. 1968 Punj. 391, accepted the contention. The State Legislature thereupon, by Amendment Act 18 of 1968 introduced s. 2(bb) defining the expression 'cattle fair' to mean 'a gathering of more than 25 persons for the purpose of general sale or purchase of cattle'. Fair Officers were appointed under s. 4(1) of the Act, and under s. 4(2) they declared certain areas as fair areas. Some of the areas so declared belonged to a Municipal Committee in the State. The Municipal Committee, a lessee from the Municipal Committee and some residents in the State, challenged the Act in this Court on the following grounds

- (1) Since the Act was struck down in *Mohinder Singh Sawhney's* case, the Act ceased to have any existence in law and could not therefore be amended;
- (2) The order of the High Court in that case operated as *res judicata* between the parties and could not be enforced without a re-enactment of the Act;
- (3) The Act violated Arts. 19(1)(b), (d), (f) and (g); and
- (4) Section 15 (if the Act, which authorises the State to call upon a Panchayat Samiti or a Municipal Committee within whose jurisdiction the fair is held to deposit a prescribed amount in the Cattle Fair Fund to cover the initial expenses of the fair and compels the local authority to abide by the directions, was invalid.

The Municipal Committee also challenged the demand by the Fair Officer, asking the Municipal Committee to supply water, electricity and to make sanitary arrangements and to make the staff articles and offices of the Municipal Committee available to the Fair Officer.

448

HELD: (i) The Act as originally enacted was not vague. ,

When the Legislature did not furnish a definition of 'cattle fair' it must be deemed to have used the expression in its ordinary signification, as meaning a periodical concourse of buyers and sellers in a place, generally for sale and purchase of cattle, at times or on occasions ordained by custom. [454 C-E]

But even if it was vague it could not have been struck down on that ground. The High Court in Mohinder Singh Sawhney's case struck down the Act on the ground of vagueness on the assumption that the validity of the Act was liable to be adjudged by the test of 'due process of law'. But this Court, in A. K. Gopalan v. State of Madras, [1950] S.C.R. 88, held that the doctrine of due process has no place in our Constitution. Superior Courts in India may declare a law invalid, if the Legislature has no power to enact the law or if the law violates any of the fundamental rights guaranteed in Part III of the Constitution or is inconsistent with any constitutional provision, but not on the ground that it is vague. Therefore as a result of the judgment of the High Court the Act did not cease to have existence in law. [453 C-D, G; 454 A-B]

Kehar Singh v. The State of Punjab, (1969) 71 P.L.R. 24, approved.

(2) The decision in Mohinder Singh Sawhney's case does not operate as res judicata even in favour of the petitioners in that case. Its effect was only that the Act was in law non-existent so long as there was no definition of the expression 'cattle fair' in the Act. But that defect has been remedied by the Amending Act. [454 B-C]

(3) (a) The Act does not impose unreasonable restrictions upon the fundamental rights guaranteed under Art. 19(1)(b) and (d). It prohibits an individual or local authority from arranging a gathering of more than 25 persons for the purpose specified in the definition. The restriction was only for the purpose of making the monopoly effective, and must be regarded as a reasonable restriction within the meaning of cls. 19(3) and (5) upon the freedom of assembly and of free movement. [456 C-E]

(b) The Act is restricted in its scope and the freedoms guaranteed by Art. 19(1) (f) and (g) are also not infringed.

(i) A law which is 'basically and essentially necessary' for creating a State monopoly and thereby deprives the citizens of the right to carry on the same business is not, by virtue of Art. 19(6), open to challenge on the ground that it infringes the fundamental right guaranteed by Art. 19(1) (g). In the present case, the primary object of the Act is to give a monopoly to the State to hold cattle fairs and as a necessary concomitant of that monopoly, holding of cattle fairs by local authorities and individuals is prohibited. The law will not also be exposed to attack on the ground that the right to carry on business is property, for, the validity of restrictions on the right to carry on occupation, trade or business, or to practice any profession

must be adjudged only in the light of Art. 19(6). Moreover, the presumption of reasonableness of a statute creating a monopoly in the State applies not only in respect of the right under Art. 19(1)(g) but also under Art. 19(1)(f). [456 E-G; 457 A-C]

Akadasi Padhan v. State of Orissa, [1963] Supp. 2 S.C.R. 691, followed.

State of Bihar v. Rameshwar Pratap Narain; [1962] 2 S.C.R. 382 and M. V. P. Ramunni Kurup v. Panchayat Board, Badagara, A.I.R. 1954 Mad. 754, referred to.

449

(ii) The prohibition imposed upon all persons and authorities is in respect of only cattle fairs and not in respect of cattle markets, that is, places where the business of see or purchase is regularly conducted by private parties and not as a fair. The Act does not prohibit anyone from carrying on the business of cattle market on his own land. [455 E-F; 461 E]

When the business is in the nature of a market for sale of sheep and goats brought by intending sellers 'for slaughter, such a place cannot be called a fair. A person carrying on his business in a cattle market on his own land need not take out a licence under s. 9 of the Act even though he was collecting brokerage and was carrying on the business of a broker, because, it is only a person carrying on his business within a fair area, lawfully declared, that is required to obtain the licence. [460 F-H]

(iii) Though the words used in s. 4 are wide and are capable of the interpretation that the State could hold a cattle fair at any place, it is implicit in ss. 3 and 4 that the monopoly acquired by the State to hold and manage cattle fairs is confined to property belonging to the State and does not extend to the property of local authorities or private owners. [456 A-C]

A Municipal Committee is not a 'citizen' within the meaning of Art. 19 and therefore, is not entitled to claim protection of any of the fundamental 'rights under Art. 19. But a direction to make municipal property available for holding a cattle fair by the 'State is a threat to requisition municipal property without authority of law and is not a mere direction to regulate the fair held on behalf of the Municipal Committee. Such a taking possession of property without payment of compensation as required by Art. 31(2) must be deemed unauthorised and s. 23, giving the provisions of the Act a paramount operation notwithstanding anything inconsistent in any other law, will not supersede the constitutional guarantee. [458 E-G]

(4) Under s. 17(d), out of the Cattle Fair Fund, the amount recovered from a local authority may be reimbursed but the provision in s. 15, authorising the State to call upon a local authority to pay a sum of money towards the Cattle Fair Fund is an unreasonable deprivation of property and violates the right under Art. 19(1) (f) and hence is

invalid. [457 C-E]

Also the demand made by the Fair Officer for assistance of the staff, articles and offices of the Municipality for holding a fair, and the demand for supply of water and electricity and making suitable sanitary arrangements are not warranted by any provision of the Act, and must be declared invalid. [459 A-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 295, 362, 365, 443 and 444 of 1968.

Petitions under Art. 32 of the Constitution of India for the enforcement of the fundamental rights.

H. R. Gokhale and Naunit Lal, for the petitioners (in W. P. No. 295 of 1968).

H. R. Gokhale, Jagjit Singh Chawla, S. K. Mehta and K. L. Mehta, for the petitioner (in W.P. No. 362 of 1968). R. K. P. Shankar Dass Bishambar Lal and H. K. Puri, for the petitioners (in W.P. No. 365 of 1968).

Jagjit Singh Chawla, S. K. Mehta and K. L. Mehta, for the petitioners (in W.P. Nos. 443 and 444 of 1968). Niren De, Attorney-General, V. C. Mahajan and R. N. Sach- they, for the respondents (in W.P. Nos. 295 and 362 of 1968).

V. C. Mahajan and R. N. Sachthey, for the respondents (in W.P. No. 365 of 1968).

R. N. Sachthey, for the respondents (in W.P. Nos. 443 and 444 of 1968).

The Judgment of the Court was delivered by Shah, J. Cattle fairs are held for the last many decades in different parts of the territory of the State of Punjab, by local authorities and individual owners of land. The person or authority holding. the cattle fair provides facilities to cattle owners for board and lodging and for stabling their cattle generally in consideration of charges including a percentage on the price realised by sale or purchase of cattle.

The Governor of Punjab with a view to control and regulate cattle fairs promulgated Ordinance No. 14 of 1967 on November 4, 1967, declaring a monopoly in the State of Punjab to hold cattle fairs and prohibiting all local authorities and individuals from holding cattle fairs "at any place in the State". This Ordinance was replaced by the Punjab Cattle Fairs (Regulation) Act 6 of 1968. By s. 3 of the Act it is provided :

"(1) The right to hold a cattle fair at any place in the State of, Punjab and to control, manage, and regulate such fair shall vest exclusively in the State Government and shall be exercisable by it, in accordance with the provisions of this Act and the rules made thereunder, through such persons or authorities as it may deem fit.

(2) Notwithstanding anything contained in any other law for the time being in force and save as provided by sub-section (1), it shall be unlawful for any person or local authority to hold, control, manage or regulate a cattle fair at any place in the State of Punjab."

The expression "Cattle" is defined by S. 2(b) as including a buffalo, camel, cow, donkey, elephant, goat, horse mule, sheep and their young-ones and such other animals as the State Government may by notification specify. By S. 4(1) authority is vested in the State Government to appoint Fair Officers for holding, controlling, managing and regulating cattle fairs in a district. By sub-s. (2) the Fair Officer is made responsible for making arrangements in respect of all matters connected with the holding of a cattle fair and its proper control, management and regulation and has also the power of- (i) defining the fair area; (ii) reservation of sites or places for latrines, urinals, baths, shops, exhibitions, shows, demonstrations, foot-baths for animals, water supply for drinking purposes, shelters, green and dry fodder, entertainment and similar other purposes necessary in connection with the cattle fair; (iii) allotment of sites temporarily for commercial or other purposes in connection with the cattle fair, authorisation of raising of structures on such sites, and fixation of rents for such sites in the prescribed manner; (iv) arrangements for watch and ward, lighting, medical first aid, veterinary aid, sanitation, tentage and other facilities as may be necessary in connection with the cattle fair; and (v) construction of temporary offices for the purpose of collecting taxes and fees imposed and levied in connection with the cattle fair. The expression "fair area"

is defined in s. 2 (d) as meaning "such area within a district as may be specified by a fair officer for the purpose of holding a cattle fair". By s. 5 power is conferred upon the State Government to impose in a fair area during the continuance of a cattle fair, tolls on vehicles entering such area for business purposes and octroi duty on goods brought for sale within such, area. Jurisdiction of the local authorities to levy taxes and fees in any fair area in connection with the fair is excluded by s. 6. By s. 8 it is provided that no person shall sell cattle at a cattle fair unless he has obtained a registration certificate in respect of cattle to be sold. Section 9 provides for licensing of brokers. By s. 15 the State Government is authorised to direct the Panchayat Samiti or Municipal Committee, in whose jurisdiction the fair is to be held, to deposit in the Cattle Fair Fund the prescribed amount, not exceeding one thousand rupees, to cover the initial expenses of the fair and the local authority so directed is enjoined to comply with the direction. Section 16 provides for the setting up of a Cattle Fair Fund in which all fees, rent or other sums of money (not being tolls and taxes) received or realized under the provisions of the Act or the rules made thereunder, and all donations or grants made to the Fund by the State Government, a local authority or any other person are to be credited. By s. 18 penalties are prescribed for contravention of the provisions of sub-s. (2) of s. 3. Power is conferred by s. 21 to make regulations to provide against the outbreak or spread of fire and for certain other matters. By s. 22 the State Government is authorised to make rules for carrying out the Purposes of the Act. The Act, however, as originally enacted contained no definition of the expression "cattle fair".

Validity of the Punjab Cattle Fairs (Regulation) Act, 1967 was challenged in a group of petitions moved before the High Court of Punjab by persons interested in holding cattle fairs: Mohinder Singh Sawhney v. State of Punjab and Others⁽¹⁾ Before the High Court one of the contentions raised by the (1) A.I.R. [1968] Punjab 391.

petitioners was that the provisions of the Act were "Vague and ambiguous", and on that account the Act. was ultra vires. The Court accepted that contention. The Court observed that there was a distinction between a "cattle market" and a "cattle fair" and since no definition of "cattle fair" was supplied by the Act it was left to the executive authorities to determine what a "cattle fair" was and on that account "the infirmity went to the root of the matter, and the Act was liable to be struck down in its entirety on the ground of vagueness, even if some of its provisions were unexceptionable in themselves". The State Legislature then enacted the Punjab Cattle Fairs (Regulation) Amendment Act 18 of 1968 which, introduced by s. 2(bb) a definition of the expression "cattle fair" as meaning "a gathering of more than twenty-five persons for the purpose of general sale or purchase of cattle". Fair Officers were appointed by the State Government and they issued notifications. declaring certain areas as "fair areas".

A number of petitions were again moved in the High Court of Punjab for an order declaring invalid the Act as amended. The High Court of Punjab dismissed the petitions, upholding the validity of the Act: Kehar Singh v. The State of Punjab & Another⁽¹⁾. The Court in that case held that the definition of "cattle fair" was not intended to bring within its compass sales by private individuals outside fair areas:

it was intended only to apply where in general, people assemble at some place for the purpose of buying and selling cattle and the number of persons exceeds twenty-five, and that Act 6. of 1968 as amended by Act 18 of 1968 "does not contravene the provisions of Arts. 19(1)(f) & (g) of the Constitution".

Certain persons interested in conducting cattle fairs have filed writ petitions in this Court. Arguments which are common in all the petitions may first be considered. We are unable to accept the argument that since the High Court of Punjab by their judgment in Mohinder Singh Sawhney's case (2) struck down the Act, Act 6 of 1968 had ceased to have any existence in law, 'and that, in any event, assuming that the judgment of the Punjab High Court in Mohinder Singh Sawhney's. case (2) did not make the Act non-existent, as between the parties in whose favour the order was passed in the earlier writ petitions, the order operated as res judicata, and on that account the Act could not be enforced without re-enactment. The High Court of Punjab in Mohinder Singh Sawhney's case⁽²⁾ (1) (1969) 71 P.L.R. 24.

(2) A.I.R. [1968] Punjab 391.

"..... in our opinion the petitions must succeed on the ground that the legislation is vague, uncertain and ambiguous.", and also (at p. 394) that-

".....as the infirmity of vagueness goes to the root of the matter, legislative enactment has to be struck down as a whole even if some of its provisions are un-exceptionable in themselves."

But the rule that an Act of a competent legislature may be "struck down" by the Courts on the ground of vagueness is alien to our Constitutional system. The Legislature of the State of Punjab, was competent to enact legislation in respect of "fairs" vide entry 28 of List 11 of the Seventh Schedule to the Constitution. A law may be declared invalid by the superior Courts in India if the legislature has no power to enact the law or that-the law violates any of the fundamental rights guaranteed in Part III of the Constitution or is inconsistent with any constitutional provision, but not on the ground that it is vague. It is true that in *Claude C. Connally v. General Construction Company*(1) it was held by the Supreme Court of the United States of America that "A statute which either forbids or requires the doing of an act in terms so, vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

But the rule enunciated by the American Courts has no application under our Constitutional set up. The rule is regarded as an essential of the "due process clauses"

incorporated in the American Constitution by the 5th & the 14th Amendments. The Courts in India have no authority to declare a statute invalid on the ground that it violates the "due process of law". Under our Constitution, the test of due process of law cannot be applied to statutes enacted by the Parliament or the State legislatures. This Court has definitely ruled that the doctrine of "due process of law"

has no place in our Constitutional system: *A. K. Gopalan v. The State of Madras*(2). Kania, C.J., observed (at p. 120).

"There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. . . . it is only in express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation that one (1) 70 L. Edn. 322.

(2) [1950] S.C.R. 88-

can find a safe and solid ground for the authority of Courts of Justice to declare void any legislative enactment."

The order made by the High Court in *Mohinder Singh Sawhney's* case(1) striking down the Act was passed on the assumption that the validity of the Act was liable to be adjudged by the test of "due process of law". The Court was plainly in error in so assuming. We are also unable to hold that the previous decision operates as *res judicata* even in favour of the petitioners in whose petitions an

order was made by the High Court in the first group ,of petitions. The effect of that decision was only that the Act was in law, non- existent, so long as there was no definition of the expression "cattle fair" in the Act. That defect has been remedied by the Punjab Act 18 of 1968.

We may hasten to observe, that we are unable to agree that the Act as originally enacted was unenforceable even on the' ground of vagueness. It is true that the expression "cattle fair" was not defined in the Act. The Legislature, when it did not furnish the definition of the expression "cattle fair" must be deemed to have used the expression in its ordinary signification, as meaning, a periodical concourse of buyers and sellers in a place generally for sale and purchase of cattle at times or on occasions ,ordained by custom.

We agree with the High Court that by enacting the Act the State was not attempting to prevent all transactions for sale and purchase of cattle. The State took upon itself by the Act a monopoly of conducting fairs, but it did not thereby seek to monopolise all transactions of sale and purchase in cattle. This is now made clear the definition of "cattle fair" in s. 2(bb).

A law which vests in the State a monopoly to carry on a certain trade or business to the extent that it has direct relation to the creation of the monopoly, is not open to challenge on the ground of violation of the freedom guaranteed by Art. 19(1) (g). As pointed out by this Court in *Akadasi Padhan V. State of Orissa* (2) (at p. 707) "A law relating to' a State Monopoly Cannot, in the context [of Art. 19 (1) (g)] include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. . .

expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State monopoly, the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the (1) A.I.R. [1968] Punjab 391 (2) [1963] Supp. 2 S.C.R. 691.

State monopoly. It is only those essential and basic provisions which are protected by the latter part of Art. 19(6). If there are other provisions made by the Act which are subsidiary, incidental or helpful to the operation of the monopoly, they do not fall under the said part and their validity must be judged under. the first part of Art. 19(6). In other words, the effect of the amendment made in Art. 19(6) is to protect the law relating to the creation of monopoly and that means that it is only the provisions of the law which are integrally and essentially connected with the creation of the monopoly that are protected. The rest of the provisions which may be incidental do not fall under the latter part of Art. 19(6) and would inevitably have to satisfy the test of the first part of Art. 19(6)."

The provisions of the Act which seek to monopolise for the State the, right to carry on cattle fairs are protected against the challenge that they put an unreasonable restriction upon persons carrying on the occupation of holding cattle fairs. What is implicit in the grant of a monopoly to the State is expressly enacted in s. 3(2) that no other person or authority may conduct a cattle fair at any place in the State of Punjab. But the restriction operates only in respect of cattle fairs and not other trades or occupations relating to dealings in cattle. The Act is restricted in its scope: the prohibition

imposed upon all persons and authorities restraining them from holding, controlling managing and regulating cattle fairs at any place in the State of Punjab extend only to cattle fairs strictly so-called, and not to cattle markets. The monopoly declared by the Act does not invest the State with the monopoly to conduct cattle markets, i.e., places where the business of sale or purchase is regularly conducted by private parties and not as a fair. Any attempt made by the Officers of the State claiming to exercise authority under the Act to prohibit cattle markets is without authority of law.

The Act also does not invest the State with authority to declare private property of an individual or of a local authority, a fair area. Section 4(2). enables the Fair Officer to define a fair area, to reserve sites or places for certain facilities, to make temporary allotment for commercial and other purposes and to arrange for watch and ward and for construction of temporary offices. The Cattle Fair Officer is not thereby authorised to hold fairs on lands not belonging to the State. In defining a "fair area"

and in making reservation, allotment, construction and arrangements of the nature mentioned in cls. (i) to (v) of sub-s. (2) of s. 4 the Cattle Fair Officer cannot trespass upon private property. It is implicit in the provisions of the Act that the State will hold cattle fairs on its own lands and not on private lands.

The words used in s. 4 are wide and may be capable of the interpretation that the right to hold, control, manage and regulate a cattle fair at any place in the State of Punjab under S. 3 (1) authorises the State to hold, control, manage and regulate fairs in all places including private lands. But it would be reasonable to interpret the Act, so as not to authorise violation of the fundamental rights guaranteed by Arts. 19 and 31 of the Constitution. It is implicit in the provisions of ss. 3 & 4 of the Act that the monopoly acquired by the State to hold and manage cattle fairs may be held on property belonging to the State and does not extend to the property of local authorities or private owners.

The contention that the provisions of the Act, and especially the definition of "cattle fair" in s. 2(bb), impose unreasonable restrictions upon the fundamental rights guaranteed under Art. 19(1) (b) & (d) has, in our judgment, no substance. The definition of cattle fair in s. (bb) does not infringe the right of citizens under Art. 19(1)(b) to assemble peaceably and without arms, and the right under Art. 19 (1) (d) to move freely throughout the territory of India. By the definition clause concurrence of twenty five persons is not prohibited: the Act does not place restrictions upon the freedom of assembly or of free movement either under cl. (b) or cl. (d) of Art. 19(1). The Act only prohibits an individual or local authority from arranging a gathering of more than twenty-five persons for the purpose specified in the definition of "cattle fair".

The restriction for the purpose of making the monopoly effective must be regarded as reasonable within the meaning of cls. (3) & (5) of Art. 19.

By imposing restrictions upon the right to hold a fair, the citizens are not deprived of their property, and the freedom guaranteed by 'Art. 19(1)(f) is not infringed. The primary object of the Act is to give a monopoly to the State to hold cattle fairs. As a necessary concomitant of that monopoly, holding of cattle fairs by local authorities and individuals is prohibited. The prohibition flows directly from the assumption of monopoly by the State and falls within the terms of Art. 19 (6) of the Constitution. It is a provision of the law creating monopoly "basically and essentially necessary" for creating the State monopoly to prevent other persons from conducting the same business. Our attention was invited to the decision of this Court in *State of Bihar v. Rameshwar Pratap Narain Singh and Others*(1) and to a decision of the Madras High Court in *Mandivil Vania Pudukudi Ramunni Kurup and Others v. Panchayat Board, Badagara and Others*(2) in support of the plea that a right to hold a fair is property. But those cases have no bearing on the question arising in these petitions. A law which creates a monopoly to (1) [1962] 2 S.C.R. 382.

(2) A.I.R. [1954] Mad. 754.

carry on a business in the State and thereby deprives the citizens of, the right to carry on that business by virtue of Art. 19(6) is not open to challenge on the ground that it infringes the Fundamental right guaranteed by Art. 19(1) (g) : The law will not also be exposed to attack on the ground that the right to carry on business is property, for the validity of restrictions on the right to carry on occupation, trade or business, or to practise any profession must be adjudged only in the light of Art. 19(6). In any event the presumption of reasonableness of a statute creating a monopoly in the State may come to aid not only in respect of the claim to enforce the right under Art. 19(1)(g) but under Art. 19(1)(f) as well.

Section 15 which authorises the State to call upon a Panchayat Samiti of a Municipal Committee, within whose jurisdiction the fair is to be held to deposit in the Cattle Fair Fund the prescribed amount, not exceeding one thousand rupees to cover the initial expenses of the fair and compelling the local authority to abide by the directions, is invalid. It is clearly a provision for deprivation of property. Reasonableness of such a provision was not set up either in the affidavit or in the arguments before us. It is true that under s. 17 (d) out of the Cattle Fair Fund the amount which has been recovered from a local authority may be reimbursed, but the provision authorising the State to call upon a local authority to pay a sum of money towards the Cattle Fair Fund is, in our judgment, unreasonable and must be declared invalid. The learned Attorney-General appearing on behalf of the State of Punjab did not seek to support the provision.

To sum up, the power which the State Government may exercise to declare a fair area and to make provision for reservation of sites, allotment of sites temporarily for commercial or other purposes, and to arrange for watch and ward and to construct temporary offices may be exercised only on lands belonging to the State. No such power may be exercised in respect of lands owned by local authorities or individuals. The monopoly which is acquired by the State by s. 3 is a monopoly to hold, control, manage and regulate a fair and not a cattle-market business. An attempt to prevent persons from conducting the business of cattle markets and from holding, controlling, managing and regulating cattle markets is unauthorised, for by s. 3 private individuals, local authorities and associations incorporated or not are prohibited only from holding cattle fairs and not cattle markets.

In the light of these principles we proceed to examine the claims made in the five petitions.

The Fair Officers have not made any declaration of fair areas which include the lands of the petitioners in Writ Petitions Nos.

362, 443 & 444 of 1968. In respect of the lands of the petitioners in Writ Petitions Nos. 295 and 365 of 1968 a notification defining a fair area has been made.

This petition is filed by the Municipal Committee, Amritsar. By letter dated August 26, 1968, the Deputy Commissioner, Amritsar, informed the Municipal Committee that a cattle fair was intended to be held as scheduled on the "Cattle Fair Ground (Mal Mandi)", under the management of the District Fair Officer, and the Municipal Committee was required to arrange to supply water and electricity, to make suitable sanitary arrangements, to deposit the income from Baisakhi Cattle Fair in Government Treasury in Cattle Fair Fund and to deliver the record in that behalf to the Fair Officer. The Section Officer, District Amritsar, also served an order, purported to be made under s. 4 (2) (i) read with s. 2 (d) of the Punjab Cattle Fairs (Regulation) Act, 1967, specifying the fair area, for the purpose of controlling, managing, regulating and holding the Cattle Fair from October 16, 1968 to October 27, 1968, at Ram Talui Ki Mandi described as "2 Kilometres from the main building situated in Cattle Fair Ground at Ramtabi' (Mal Mandi) Amritsar".

A Municipal Committee is not, according to the decisions of this Court, a "citizen" within the meaning of Art. 19. The Municipal Committee is, therefore, not entitled to claim protection of any of the fundamental rights under Art. 19. But the State is incompetent to declare land belonging to the Municipal Committee as falling within the fair area, and to take possession of that land in exercise of the power conferred by the Act, without providing for payment of compensation guaranteed by Art. 31(2). The Municipal Committee is by order of the Fair Officer deprived of its property for the duration of the fair. The Act does not authorise the holding of cattle fairs on the land of local authorities, individuals or associations. A direction to make Municipal property available for holding a cattle fair by the State is a threat to requisition municipal property without authority of law and without payment of compensation, and must be deemed unauthorised. Section 23 of the Act which gives the provisions of the Act a paramount operation, notwithstanding anything inconsistent therewith contained in any other law for the time being in force will not supersede a constitutional guarantee. It was argued on behalf of the State that by the order only directions to control, manage and regulate the fair held on behalf of the Municipal Committee were intended to be given. But that is not the effect of the order passed by the Deputy Commissioner. The Deputy Commissioner informed the Municipal Committee that possession of its land should be handed over so that the State may, be able to hold the fair under the provisions of the Punjab Cattle Fairs (Regulation) Act, 1967. Section 3(1) is intended only to provide for a monopoly in the State to hold cattle fairs. and to control, manage and regulate such fairs. The demand made by the Fair Officer asking the Municipal Committee to supply water, electricity and to make sanitary arrangements and make the staff, articles and offices of the Municipal Committee available to the Fair Officer is not warranted by any provision of the Act. The notification issued by the Fair Officer defining the fair area inclusive of the land of Mat Mandi is, therefore, unauthorised. The demand made by the Fair Officer for assistance of the "staff, articles and offices of the Municipality" for holding the fair and the demand for supply

of 'water and electricity and making suitable sanitary arrangements is also uncalled for and unauthorised.. The directions must, therefore, be declared invalid.

The petitioner is Sardara Singh. He claims that he is in lawful possession of a piece of land situated in village Hussainpur, Tahsil and District Rupar (Punjab), and that for the last ten years he holds a cattle market on that piece of land from the first to the fourth of every month. He also asserted that he has been holding cattle markets on the lands, in his lawful possession at Kurali, Anandpur Saheb, Marunda (District Rupar) within the State of Punjab. According to the petitioner, for the purpose of holding cattle markets on the lands in his occupation at Hussainpur, the petitioner had constructed a well for providing water to the cattle, with sheds, and mangers. He further claimed that he provides chaff cutters, tents, charpais and all other amenities which are essential for the cattle and the merchants. It appears from the averments made by the petitioner that he is holding cattle fairs. No declaration was made defining any fair area which included the lands of the petitioner. The State, for reasons already set out, is not entitled to hold a cattle fair on the land in the occupation of the petitioner without providing for compensation as guaranteed under Art. 31(2). But on that account the petitioner is not entitled to hold a cattle fair even on his own lands.

The petitioner is Jagtar Singh. He claims that he has obtained for the period April 1, 1968 to March 31, 1969, from the Municipal Committee, Amritsar, a piece of land on lease called the Ahata near the "Butcher Khana" known as "Adda BakarMandi". The land is used for an enclosure for sheep and goats brought for sale. The petitioner states that he has constructed near the Butcher-Khana ten kothas around a vacant piece of land for enclosure of goats and sheep brought by prospective sellers and has also constructed some rooms where he provides board and lodging to the merchants who come to Adda Bakar Mandi in connection with their business. He has set out in his petition the manner in which the business is carried on and the charges made by him. It may be sufficient to mention that the petitioner claims that he conducts a cattle market and not a cattle fair.

The Fair Officer issued a declaration under s. 4(2)(i) read with s. 2(d) of the Punjab Cattle Fairs (Regulation) Act, 1967, specifying "2 Kilometres from the main building situated in the Cattle Fair Ground at Bakar Mandi outside Lahori Gate" as a fair area for the purpose of controlling, managing, regulating and holding the Cattle Fair, Amritsar, at Bakar Mandi outside Lahori Gate. The Fair Officer also addressed a letter to the petitioner dated October 25, 1968, informing him that the Punjab Government had exclusively undertaken the work of holding, managing, controlling and supervising the Cattle Fairs under s. 3 of the Punjab Cattle Fairs (Regulation) Act, 1967, and that the petitioner who was carrying on the business of holding a cattle fair should stop running the Bakar Mandi. The Fair Officer informed the petitioner that the ground of the Bakar Mandi had already been specified as fair area by him and on that account the petitioner was prohibited to work as commission agent, unless he got a broker's licence under the Act. The land in respect of which the declaration has been made as fair area is the land of the Municipal Committee, of which under a licence or a lease the petitioner is in possession. For reasons which we have already set out, the Government of Punjab is not competent to declare the land of the Bakar Mandi a fair area. The notification declaring the Bakar Mandi as fair area is, therefore, invalid. By s. 3 of the Act the cattle fairs can be held in the State of Punjab only by the State and by no other person. But prima facie the business carried on by the petitioner is in the nature of a market for sale of sheep and goats brought

by intending sellers for slaughter. Such a place cannot be called a fair.

It was urged on behalf of the State that since the petitioner was collecting brokerage and carrying on the business of a broker, he was bound to take-out a licence under s. 9 of the Act. But a person carrying on his business within the fair area lawfully declared is required to obtain a licence, but not in respect of his business in a cattle market.

The petition filed by Jagtar Singh must, therefore, be allowed and the order declaring the petitioner's land as fair area and the intimation calling upon him to stop his business of cattle market is unauthorised.

Writ Petition Nos. 443 & 444 of 1968 The petitioner in these petitions are Narain Singh and another. They claim that they are in „legal possession" of different pieces of land taken on lease within the State of Punjab at Khanna, Doraha (District Ludhiana), sunam (District Sangrur) and also in other Districts where they have been holding cattle markets for the last many years. They claimed that they provide the Prospective sellers and purchasers facilities like cots for resting, drinking water, sheds,, mangers, chaff-cutters, tents, light, chowkidars, dry fodder and all other essential amenities. They further claimed that the intending vendors come to their lands with cattle and sell the, cattle, bargains being struck. through brokers in the market arranged by the Petitioners on those pieces of land.

It is not clear from the averments made, in the petitions whether the so-called market is of the nature of a fair. the Petitioners are prohibited from holding or conducting a cattle fair, since the enactment of Punjab Act 6 of 1968. The lands belonging to the petitioners have not been included in a cattle fair area under the notification issued by the Fair Officer. Without deciding the question whether the business carried on by the petitioners is in the nature of a fair or a market, we declare that the petitioners are not entitled to carry on the business of a cattle fair and the, relief claimed by them in Paragraph-21(b) cannot be granted. We deem it necessary to add that the petitioners are not prohibited from carrying on the business of cattle market on their own lands.

There will be no order as to costs in these petitions. V.P.S. sup CI/69-11