Supreme Court of India
Jyoti Pershad vs The Administrator For The ... on 21 April, 1961
Equivalent citations: 1961 AIR 1602, 1962 SCR (2) 125
Author: N R Ayyangar
Bench: Sinha, Bhuvneshwar P.(Cj), Das, S.K., Sarkar, A.K., Ayyangar, N. Rajagopala, Mudholkar, J.R.

PETITIONER:
JYOTI PERSHAD

Vs.

RESPONDENT:
THE ADMINISTRATOR FOR THE UNIONTERRITORY OF DELHI(AND CONNEC

DATE OF JUDGMENT:
21/04/1961

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
SARKAR, A.K.
MUDHOLKAR, J.R.

CITATION:
1961 AIR 1602 1962 SCR (2) 125
CITATOR INFO :

RF	1961 SC1731	(13)
RF	1964 SC 600	(54)
R	1965 SC1107	(79,80,87)
D	1966 SC1003	(12)
RF	1968 SC 303	(28,35)
R	1968 SC 317	(13,18)
RF	1968 SC1232	(19)
F	1974 SC1232	(21)
R	1974 SC2009	(14,15)
F	1974 SC2044	(3)
D	1977 SC 265	(7)
RF	1977 SC 789	(7)
RF	1977 SC1825	(51)
F	1978 SC 771	(5,24)
RF	1979 SC 478	(72)
C	1980 SC 350	(9)
R	1980 SC1382	(81)
F	1986 SC1205	(20)
R	1990 SC 560	(13)
D	1991 SC 101	(22,148,226)

ACT:

Slum Areas-Improvement and clearance of Validity of enactment-Constitutionality-Rent Control-Operation of Rent Control Act in areas governed by Slum Areas Act-Delhi & Ajmer Rent Control Act, 1952 (38 of 1952)-Slum Areas (Improvement and Clearance) Act, 1956 (96 of 1956), s. 19-Constitution of India, Arts. 14, 19(1)(f).

HEADNOTE:

The petitioner after a prolonged litigation and having fulfilled all the conditions of the Delhi Rent Control Act , obtained decrees of ejectment against the tenants.

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In the meantime the Slum Areas (Improvement and Clearance) Act, 956, came into force and the petitioner in accordance with s. s.9 of the said Slum Areas Act applied to the competent authority for permission to execute the decree, which permission was refused inter alia on the grounds of hardship to the tenants and the human aspect of the case. The appeals therefrom were also rejected. The petitioner moved the Supreme Court for issue of a writ of certioraris to quash the orders on the ground that (1) s. 19 of the Act was invalid and unconstitutional as violative of the petitioner's rights guaranteed by Arts. 14 and 19(1)(f) of the Constitution, in as much as s. 19 of the Slum Areas Act was a super-imposition on the rights of the petitioner who had satisfied the requirements of the Rent Control Act before obtaining his decree, which amounted to unreasonable restrictions on the right to hold property guaranteed by the Constitution, and (2) that S. 19(3) of the Slum Areas Act vested an unguided, unfettered, and uncontrolled power in an executive officer to withhold permission to execute a decree which the petitioner had obtained after satisfying the reasonable requirements of the law as enacted in the Rent Control Act, (3) The power conferred on the competent authority by s. 19(3) of the Slum Areas Act was an excessive delegation of legislative power and therefore unconstitutional.

Held, that s. 19 of the Slum Areas (Improvement and Clearance) Act, 1956, was not obnoxious to the equal protection of laws guaranteed by Art. 14 of the Constitution. There was enough guidance to the competent authority in the use of his discretion under s. 19(1) of the Act. The restrictions imposed by s. 19 of the Act could not be said to be unreasonable.

The guidance could be derived from the enactment and that it bears a reasonable and rational relationship to the object to be attained by the Act and in fact would fulfil the purpose which the law seeks to achieve, viz., the orderly elimination of slums, with interim protection for the slum dwellers until they were moved into better dwellings.

The order of the competent authority in the present case was

not open to challenge as it was in line with the policy and purpose of the Act.

So long as the Legislature indicated in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation was skeletal or that every detail of the application of law to a particular case, was not laid down in the enactment itself or the fact that a discretion was left to those entrusted with administering the law, afforded no basis either for the contention that there had been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested was uncanalised and unguided so as to amount to a carte blanche to discriminate. If the power or discretion has been conferred

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in a manner which was legal and constitutional the fact that the Parliament could possibly have made more detailed provision, could not be a ground for invalidating the law.

The freedom to 'hold property' was not absolute but was subject, under Art. 19(5), to "reasonable restrictions" being A placed upon it "in the interests of the general public". The criteria for determining the degree of restriction on the right to hold property which would be considered reasonable, were by no means fixed or static, but must obviously vary from age to age and should be related to the adjustments necessary to solve the problems which communities faced from time to time. If law failed to take account of unusual situations of pressing urgency arising in the country and of the social urges generated by the patterns of thought, evolution and of social consciousness, it would have to be written down as having failed in the very purpose of its existence. Where the legislature enacted laws, which in its wisdom, was considered necessary for the solution of human problems, the tests of "reasonableness", had to be viewed in the context of the issues which faced the legislature. In the construction of such laws and particularly in judging of their validity the courts had to approach it from the point of view of furthering the social interest which it was the purpose of the legislation to promote, for the courts were not, in these matters, functioning as it were in vacuo, but as parts of a society which was trying, by enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole.

That the provisions of the special enactment, the Slums Areas (Improvement and Clearance) Act, 1956, will in respect of the buildings in areas declared slum areas operate in addition to the Delhi & Ajmer Rent Control Act, 1952.

Ramakyishna Dalmia v. justice Tendolkar, [1959] S.C.R. 279, Harishankar Bagla v. State of Madhya Pyadesh, [1955] 1 S.C.R. 380, M/s. Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh, [1954] S.C.R. 803, State of West Bengal v.

Anwar Ali Sarkar, [1952] S.C.R. 284, Kathi Ratting Rawat v. State of Saurashtra, [1952] S.C.R. 435, Kedar Nath Bajoria v. State of West Bengal, [1954] S.C.R. 30 and Pannalal Binjraj v. Union of India, [1957] S.C.R. 233, discussed.

JUDGMENT:

ORIGINAL JURISDICTION: Petitions Nos. 67, 87 and 130 of 1959.

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

R. S. Narula and S. S. Chadha, for the petitioners. M. C. Setalvad, Attorney-General of India, B. Sen and T. M. Sen, for Respondents Nos. 1, 2 and 5 (In petition No. 83 of 1959) 1, 2 and 12 (In Petition No. 67 of 1959) and 1, 2 and 4 (In Petition No. 130 of 1959). W. S. Barlingay and A. G. Ratnaparkhi, for respondent No. Sardari Lal Bhatia, for respondents Nos. 3a, 4, 5, 6 (a, b, c,) and 7-10.

J. D. Jain and K. L. Mehta, for the Intervener in Petition No. 67 of 1959 (Phool Chand).

1961. April 21. The Judgment of the Court was delivered by AYYANGAR, J.-These three petitions have been filed invoking the jurisdiction of this Court under Art. 32 of the Constitution challenging the constitutionality of s. 19 and particularly sub-s. 3, of the Slum Areas (Improvement and Clearance) Act 1956 (Central Act 96 of 1956), on the ground that it offends the fundamental right of the petitioners guaranteed to them by Arts. 14 and 19(1)(f). To appreciate the grounds on which this contention is sought to be sustained it is necessary to set out briefly a few facts. We might however mention that though the constitutional objection, adverted to is common to all the three petitions, it is sufficient to refer to the facts of the case in Writ Petition No. 67 of 1959 which is typical of the cases before us.

The petitioner-Jyoti Pershad-is the owner of a house in Delhi in which respondents 3 to 11 were tenants. Each of these nine individuals occupied a single room in this house. As the petitioner considered the house to be old and required to be demolished and reconstructed, he submitted a plan to the Council of the Delhi Municipal Committee and applied for sanction for the reconstruction of the house. The plan was sanctioned and thereafter the petitioner filed suits against these nine tenants under s. 13(1)(g) of the Delhi and Ajmer Rent Control Act 38 of 1952 (which will hereafter be referred to as the Rent Control Act). The suits were resisted by the tenants. Two matters had to be proved under s. 13(1)(g) of the Rent Control Act by a plaintiff before he could obtain an order of eviction:(i) that there was a plan which had been sanctioned by the municipal authorities which made, provision for the tenants then in occupation of the house being accommodated in the house as reconstructed, and (ii) that the plaintiff had the necessary funds to carry out the reconstruction. The plan which had been approved by the Delhi Municipal Committee made provision for the construction of a double- storeyed building with twelve rooms which was, therefore, more than ample for the nine tenants for whom accommodation had to be provided. The plaintiff also established that he had deposited cash in the State Bank of India sufficient for reconstructing the house as sanctioned in the plan. On December 8, 1956 the Civil Court in Delhi

passed decrees in favour of the petitioner for the eviction of respondents 3 to 11. Section 15 of the Rent Control Act enacted:

> "15. (1) The Court shall, when passing any decree or order on the grounds specified in clause (f) or clause (g) of the proviso to sub-section (1) of section 13, ascertain from the tenant whether he elects to be placed in occupation of the promises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election in the decree or order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or re-building as the case may be. (2)If the tenant delivers possession on or before the date specified in the decree or order, the landlord, shall, on the completion of the work of repairs or building or re- building place the tenant in occupation of the premises or part thereof (3)If, after the tenant has delivered possession on or before the date specified in the decree or order the landlord fails to commence the work of repairs or building or re-building, within one month of the specified date or fails to complete the work in a reasonable time or having completed the work, fails to place the tenant in occupation of the premises in accordance with sub-section (2), the Court may, on the application of the tenant made within one year from the specified date, order the landlord to place the tenant in occupation of the premises or part thereof on the original terms and conditions or to pay to such tenant such compensation as may be fixed by the Court."

The tenants, however, refused to give up possessession within the three months time granted to them by the decrees to vacate the premises but went up in appeal against the orders of eviction under s. 34 of the Rent Control Act to the Senior Sub-Judge, Delhi. These appeals were finally disposed of against the tenant-appellants, some on the merits and some by reason of abatement, by the end of October, 1957. Under the rules governing the construction of houses on plans sanctioned by the Delhi Municipal Com- mittee, the sanctioned building had to be completed within a period of one year from the date of sanction. As a result of this rule the sanction obtained by the petitioner lapsed and he had, therefore, to obtain fresh sanction if in consequence of his success in the appeals before the Senior Sub-Judge he still desired to demolish and reconstruct the building.

Meanwhile, two changes came about in the law governing matters relevant to the present case: The first was that the Slum Areas (Improvement and Clearance) Act 96 of 1956, which will be hereafter referred to as the Act, was enacted by Parliament and came into force in the Delhi area. Section 19 of that Act which is impugned in these petitions runs:

> "19. (1) Notwithstanding anything contained in any other law for the time being in force, no person who has obtained any decree or order for the eviction of a tenant from any building in a slum area shall be entitled to execute such decree or order except with the previous permission in writing of the competent authority.
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> (2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and

containing such particulars as may be prescribed.

(3) On receipt of such application the competent authority, after giving an opportunity to the tenant of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing either grant' such permission or refuse to grant such permission. (4) Where the competent authority refuses to grant the permission it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant."

The other change in the law was that due to the enactment of rules and regulations providing for a coordinated development and planning of buildings in the Delhi Area the type of constructions that could be sanctioned by the Delhi Municipal Committee underwent a radical alteration as a result of which in the area now in question double-storeyed buildings were not permitted to be constructed and that if the petitioner's house had to be reconstructed it could only have three living rooms making allowance for the size of the rooms and the free space that had to be left on either side of the building in accordance with the revised municipal regulations.

It would have been noticed that the right of the tenants to insist on the landlord providing accommodation for them in the reconstructed building guaranteed to them by s. 15 of the Rent Control Act, had ceased by reason of their failure to quit and deliver vacant possession of the tenements occupied by them within 3 months fixed by the order of the Civil Court (vide s. 15) and hence they had no statutory right under the Rent Control Act to be provided with accommodation by the landlord.

Thus freed from obligation to the tenants the petitioner filed on the strength of these decrees for eviction nine applications under s. 19 of the Act before the competent authority for the eviction of the tenants from the nine rooms in the building on the ground that the building had to be reconstructed as it was in a dilapidated condition. These petitions were dismissed by the competent authority by his order dated January 13, 1958 on the ground that the sanction to reconstruct the building which the petitioner had obtained from the municipality in 1956 had expired. The order recited:

"since it may take some time for the petitioner to obtain fresh sanction for reconstruction and there is also the possibility of sanction not being given at all, it would be no use continuing with these proceedings until it is definitely known that the landlord has obtained sanction for reconstruction. These nine applications are accordingly filed with the option to the petitioner to have them revived without payment of extra fee in case he is able to obtain sanction."

Thereafter the petitioner applied to the municipal authorities for sanctioning a building plan. As stated earlier, the building plan approved by the municipality could permit only a building consisting of one floor in which there were three living rooms and sanction for the construction of a building with such accommodation was granted. With this sanctioned plan, the petitioner renewed his application under s. 19 for permission to execute the decree of the Civil Court and evict the

tenants. By order dated July 30, 1958 all these applications were dismissed. The reason assigned for the order was stated in these terms:

> "If the decree is allowed to be executed they will be thrown out and it will be impossible for them to get accommodation in the reconstructed building. They are old tenants and as stated above also very poor. The execution of the decree will involve very real hardship to them. They are all occupying only one Kothri each and paying rent at Rs. 3 per mensem, and they have no complaint to make about the condition of their Kothries. The landlord has four or five other houses which he has let out on rent. The case has a human aspect and I disallow the execution of the decree against the tenants."

The petitioner preferred appeals against this order to the Administrator of the Union Territory, Delhi to whom appeals lay under s. 20 of the Act. The appeals were dismissed, the appellate authority saying :

> "I would have allowed the appellant permission to evict the tenants, if the property itself was dilapidated and declared unfit for human habitation by a competent authority. This is not so. The land lord naturally desires to get a better return from land in the congested areas of the city by rebuilding on it to better specifications, so that he can get higher rent from it. But if this tendency is permitted to have an unrestricted play, then the result will be the eviction of a large number of poor people from slum areas. In the circumstances, the appellant should wait until either his property is declared dangerous by the Municipal Corporation, or under a Slum Clearance Scheme he is asked by the competent authority itself to demolish it or rebuild it in a particular manner."

In these circumstances the petitioner has moved this Court for the issue of a writ of certiorari to quash these orders on the ground already adverted to, viz., that s. 19 of the Act is invalid and unconstitutional as violative of the petitioner's rights guaranteed by Arts. 14 and 19(1)(f) of the Constitution. In passing we may observe that we are not concerned with the validity of the particular orders passed in the case but only with the general question as to the constitutionality of the impugned s. 19 of the Act. Before setting out the points urged by Mr. Narula learned Counsel for the petitioners-in support of his submission that s. 19 of the Act" was, in so far as it enabled the competent authority to withhold permission to those who had obtained decrees for eviction from executing their decrees, unconstitutional, it would be necessary to read the material provisions of the Rent Control Act, 1952, which imposes a restriction on the right of landlords, inter alia to evict tenants from the premises occupied by them. Chapter III of that Act imposes a control over the eviction of tenants. A tenant is defined (Vide s. 2(j)) as meaning "any person by whom or on whose account rent is payable for any premises including such sub-tenants or others who have derived title under the tenant under the provisions of any law before the commencement of the Act." Section 13(1) enacts:

> "Notwithstanding anything to the contrary con- tained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated):".

This blanket protection is, however, subject to the conditions enumerated in the proviso which reads:

> "Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied-"

Then follow ten grounds the existence of one or other of which enables a landlord to obtain a decree from a Civil Court for the recovery of possession from tenants. Among the grounds thus enumerated it is sufficient to refer to grounds (f), (g) and (1), ground (g) being the ground upon which the petitioner in the present case obtained the decrees for eviction and these run:

> " (f) that the premises have become unsafe or unfit for human habitation and are bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or
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> (g) that the premises are bona fide required by the landlord for the purpose of re-building the premises or for the replacement of the promises by any building or for the erection of other buildings, and that such building or rebuilding cannot be carried out without the premises being vacated; or (1) that the landlord requires the premises in order to carry out any building work at the instance of the Government or the Delhi Improvement Trust in pursuance of any improvement scheme or development scheme."

The right of the landlord, however, who obtains an order for eviction under either cl. (f) or (g) above set out is subject to the provisions of s. 15 whose terms have already been set out, The result, therefore, would be that in the cases covered by these two clauses the tenants would be entitled, if they conform to the terms of these provisions, to be reinstated in the newly constructed premises after the reconstruction. It might be pointed out that under s. 38 of the Rent Control Act the provisions of the Act and the Rules made thereunder are to have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

The argument of the learned Counsel was that the restriction upon the rights of landlords to the enjoyment of the property imposed by s. 13 of the Rent Control Act could not be open to any objection, legal or constitutional because the Legislature has set out with precision the grounds upon which possession could be recovered, the defenses that might be set up by the tenants and the conditions subject to which the rights either of the landlord or of the tenant could be exercised. It is the super-imposition of the provisions of s. 19 of the Act on the rights of a landlord-decreeholder who had satisfied the requirements of the Rent Control Act before obtaining his decree that was stated as amounting to an unreasonable restriction on the right to hold property guaranteed by Art.

19(1)(f).

This will be a convenient stage at which we might set out in brief outline the argument urged by learned Counsel for the petitioner. They were mainly three: (1) Section 19(3) of the Act vests an unguided, unfettered and uncontrolled power in an executive officer to withhold permission to execute a decree which a landlord has obtained after satisfying the reasonable requirements of the law as enacted in the Rent Control Act. Neither s. 19 of the Act nor any other provision of the Act indicates the grounds on which the competent authority might grant or withhold permission to execute decrees and the power conferred is, therefore, arbitrary and offends Art. 14 of the Constitution. (2) The same point was urged in a slightly different form by saying that the Power conferred on the "competent authority" by s. 19(3) of the Act was an excessive delegation of legislative power and was, therefore, unconstitutional. (3) The vesting of a power in an executive authority to override-at his sweet will and pleasure-rights to property without any guidance from the Legislature con stituted an unreasonable restraint on the petitioner's right to hold property, a right which in the case of the property of the type now in question would include a right to obtain possession from the tenant in order either to improve it by reconstruction or for the purpose of his own use. Apart from the objection regarding the vesting of an unguided power in an executive authority which is, the common ground of objection urged in regard to points (1) and (2), learned Counsel submitted that the right vested in an executive authority to prevent for an indefinite and indeterminate period of time the right to enjoy his property was for this further reason excessive and an unreasonable restraint which could not be justified under Art. 19(5) of the Constitution.

We shall proceed to consider these points in that order. The first ground alleged is that s. 19 of the Act is constitutionally invalid as violative of the equal protection of the laws conferred under Art. 14 of the Constitution, in that an unguided and arbitrary discretion is vested in the "competent authority".

The import, content and scope of Art. 14 of the Constitution has been elaborately considered and explained in numerous decisions of this Court and it is, therefore, unnecessary for us to embark on any fresh investigation of the topic, but it would be sufficient to summarise the principles, or rather the rules of guidance for the interpretation of the Article which have already been established, and then consider the application of those rules to the provisions of the enactment now impugned. It is only necessary to add that the decisions of this Court laying down the proper construction of Art. 14 rendered up to 1959 have been summarised in the form of 5 propositions by Das C. J. in Ramakrishna Dalmia v. Justice Tendolkar (1), but we are making a summary on slightly different lines more relevant to the enquiry regarding the provision with which we are concerned in the present case.

(1) [1959] S.C.R. 279, 299, 301 (1) If the statute itself or the rule made under it applies unequally to persons or things similarly situated, it would be an instance of a direct violation of the Constitutional guarantee and the provision of the statute or the rule in question would have to be struck down.

(2) The enactment or the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the legislature vests a discretion in an authority, be it the Government or an administrative official acting either as an executive officer or even in a quasi-judicial capacity by a legislation which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary powers enabling it to discriminate.

> "The legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct." [Harishankar Bagla v. The State of Madhya Pradesh (1)].
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> "No rules have been framed and no directions given on these matters to regulate or guide the discretion of the licensing officer. Practically the Order commits to the unrestrained will of a single individual the power to grant, withhold or cancel licences in any way he chooses and there is nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same".
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> [Messrs. Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh (2)].
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> (1) [1955] 1 S.C.R. 380, 388. (2) [1954] S.C.R. 803. 813.

In such circumstances the very provision of the law which enables or permits the authority to discriminate, offends the guarantee of equal protection afforded, by Art. 14. possibly the best instance of this type of case is afforded by the legislation under consideration in The State of West Bengal v. Anwar Ali Sarkar (1), the ratio underlying which was thus explained in Kathi Raning Rawat v. The State of Saurashtra (2):

> "If it depends entirely upon the pleasure of the State Government to make any classification it likes, without any guiding principle at all, it cannot certainly be a proper classification, which requires that a reasonable relation must exist between the classification and the objective that the legislation has in view. On the other hand, if the legislature indicates a definite objective and the discretion has been vested in the State Government as a means of achieving that object, the law itself cannot be held to be discriminatory, though the action of the State Government may be condemned if it offends against the equal protection clause, by making an arbitrary selection."

(3) It is manifest that the above rule would not apply to cases where the legislature lays down the policy and indicates the rule or the line of action which should serve as a guidance to the authority. Where such guidance is expressed in the statutory provision conferring the power, no question of

violation of Art. 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applied to persons or things similarly situated. Even where such is not the case, there might be a transgression by the authority of the limits laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of a violation of Art. 14, but as really being beyond its power.

(4) It is not, however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, (1) [1952] S.C.R. 284.

(2) [1952] S.C.R. 435, 461, 462.

which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself.

> "The Saurashtra case would seem to lay down the A principle that if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves tile selective application of the law to be made by the standard indicated or the underlying policy and object disclosed is not a suffi- cient ground for condemning it as arbitrary and, therefore, obnoxious to article 14." [Kedar Nath Bajoria v. The State of West Bengal (1)].
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> "So long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the deter- mination of facts to which the policy as declared by the Legislature is to apply." [Harishankar Bagla and another v. The State of Madhya Pradesh (1)].
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> Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the Court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits, Kathi Raning Rawat v. The State of Saurashtra (3) being an instance where the guidance was gathered in the manner above indicated, (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment. "The policy underlying the Order is to regulate the (1) [1934] S. C. R. 30, 46. (2) [1935] 1 S.C.R. 380, 388.
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> (3) [1052] S.C.R. 435, 461, 462.
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> transport of cotton textile in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or

> refusal of a permit is thus to be govern ed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate this policy. The conferment of such a discretion cannot be called invalid and if there is an abuse of the power there is ample power in the Courts to undo the mischief."

Harishankar Bagla v. The State of Madhya Pradesh (1). In Pannalal Binjraj v. Union of India's case (2) the purpose of the provision which was administrative convenience for enabling assessments to be made in the manner indicated by the Income-tax Act was held to afford a sufficient guidance so as to render the provision immune from attack on the ground of violation of Art. 14.

In the circumstances indicated under the fourth head, just as in the third, the law enacted would be valid being neither a case of excessive delegation or abdication of legislative authority viewed from one aspect, nor open to objection on the ground of violation of Art. 14 as authorising or permitting discriminatory treatment of persons similarly situated. The particular executive or quasi-judicial act would, however, be open to challenge as already stated on the ground not so much that it is in violation of the equal protection of the laws guaranteed by Art. 14, because ex concessis that was not permitted by the statute but on the ground of the same being ultra vires as not being sanctioned or authorized by the enactment itself. The situation in such cases would be parallel to the tests to be applied for determining the validity of rules made under statutes which enable the rule-making authority to enact subsidiary legislation "to carry out the purposes of the Act". The criteria to be applied to determine the validity of such rules could, in our opinion, be appropriately applied to determine the validity of the action under the provisions like the one dealt with under the last two heads.

(1) [1955] 1 S.C.R. 380, 388.

(2) [1957] S.C.R. 233.

In the light of what we have stated above we have now to consider the point urged by the learned Counsel for the petitioner that the Act has vested in the competent authority the power to withhold eviction in pursuance of orders or decrees of Courts with- out affording any guidance or laying down any principles for his guidance on the basis of which he could exercise his discretion. In other words, that the Act lays no fetters and has vested in him an arbitrary and unguided power to pick and choose the decree- holders to whom he would permit execution and those to whom he would refuse such relief. On the other hand, the learned Attorney-General submitted that the discretion vested in the competent authority was not unguided and that though s. 19 of the Act did not in terms lay down any rules for his guidance, the same could be gathered from the policy and purpose of the Act as set out in the preamble and in the operative provisions of the Act itself.

We consider that there is considerable force in this submission of the learned Attorney-General. The preamble describes the Act as one enacted for two purposes: (1) the improvement and clearance of slum areas in certain Union Territories, and (2) for the protection of tenants in such areas from eviction. These twin objects are sought to be carried out by Chapters II to VI of the enactment. Chapter 11 which consists of one sections. 3-provides a definition of what are "slum areas" and their

declaration as such. The tests for determining whether the area could be declared a "slum area" or not briefly are whether the buildings in the area are (a) unfit for human habitation, or (b) are by reason of dilapidation, overcrowding etc. detrimental to safety, health or morals. It is in areas so declared as "slum areas" that the rest of the enactment is to operate. The provisions, however, make it clear that in order that an area may be declared a " slum area" every building in that area need not be unfit for human habitation or that human habitation in every building in such area should be detrimental to the safety, health or morals of the dwellers. We are making this observation because of a suggestion made, that the declared purpose of protecting the tenants from eviction was inconsistent with the policy underlying the declaration of an area as a "slum area" and that thus the Act manifested two contrary or con flicting ideas or principles which would negative each other and thus leave no fixed policy to guide " the competent authority" when exercising his powers to grant or refuse eviction when an application was made to him in that behalf under s. 19 of the Act.

Chapter III is headed 'Slum Improvement' and makes provision for two types of orders: (1) to require the improvement of buildings where repairs-major or minor-would make them reasonably habitable for the slum dwellers (vide ss. 4-6), and (2) cases where mere repairs or adjustments would not suffice but what is required is the demolition of the entire building. In the latter case certainly the occupants of the building would have to be evicted and the building vacated and power is conferred for effectuating this purpose vide s. 7 (1) and 7 (3). It might be that the whole area might consist of dwellings of the type which require demolition and it is Chapter IV that makes provision for this category of cases which is headed "Slum Clearance and Re- development". In such cases the buildings in the entire area are to be ordered to be demolished, and in that event the dwellers would, of course, have to vacate, but it is presumed that alternative accommodation would necessarily have to be provided before any such order is made. The process would have to be carried out in an orderly fashion if the purpose of the Act is to be fulfilled and the policy behind it, viz., the establishment of slum dwellers in healthier and more comfortable tenements so as to improve the health and morals of the community, is to be achieved. Chapter V makes provision for the acquisition of land in order to compass the re-development of slum areas into healthy parts of the city, by providing amenities and more substantial and better accommodation for the previous inhabitants. It is after this that we have Chapter VI whose terms we have already set out. This Chapter is headed "Protection of tenants in Slum Areas from Eviction". Obviously, if the protection that is afforded is read in the context of the rest of the Act, it is clear that it is to enable the poor who have no other place to go to, and who if they were compelled, to go out, would necessarily create other slums in the a process and live perhaps in less commodious and more unhealthy surroundings than those from which they were evicted, to remain in their dwellings until provision is made for a better life for them elsewhere. Though therefore the Act fixes no time limit during which alone the restraint on eviction is to operate, it is clear from the policy and purpose of the enactment and the object which it seeks to achieve that this restriction would only be for a period which would be determined by the speed with which the authorities are able to make other provisions for affording the slum dweller-tenants better living conditions. The Act, no doubt, looks at the problem not from the point of view of the landlord, his needs, the money he has sunk in the house and the possible profit that he might make if the house were either let to other tenants or was reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the open if an order for eviction were passed. The Act itself contemplates eviction in cases where on the

ground of the house being unfit for human habitation it has to be demolished either singly under s. 7 or as one of a block of buildings under Ch. IV. So long therefore as a building can, without great detriment to health or safety, permit accommodation, the policy of the enactment would seem to suggest that the slum dweller should not be evicted unless alternative accommodation could be obtained for him. In this connection the learned Attorney-General brought to our attention the provisions of the Delhi Development Act, 1957 (LXI of 1957) which makes provision for the design of a Master Plan for the city which, if executed, is likely to greatly reduce, if not to eliminate, slums altogether. It was suggested that taken in conjunction with this enactment it would be seen that the power to restrain eviction under s. 19 of the Act is one which would not last for ever but to a limited period, though this could not naturally be defined by reference to fixed dates. We see force in this submission as well. In view of the foregoing we consider that there is enough guidance to the competent authority in the use of his discretion under s. 19(1) of the Act and we, therefore, reject the contention that s. 19 is obnoxious to the equal protection of laws guaranteed by Art. 14 of the Constitution. We need only add that it was not, and could not be, disputed that the guidance which we have hold could be derived from the enactment, and that it bears a reasonable and rational relationship to the object to be attained by the Act and, in fact, would fulfil the purpose which the law seeks to achieve, viz., the orderly elimination of slums, with interim protection for the slum dwellers until they were moved into better dwellings. We are further of the opinion that the order of the competent authority in the present case is not open to challenge either, because it would be seen that the grounds upon which he has rejected the petitioner's application for execution is in line with what we have stated to be the policy and purpose of the Act.

Before leaving this topic it is necessary to consider a submission of learned Counsel for the petitioner which is of immediate relevance to point under examination. He said that, no doubt, the decisions of this Court had pointed out that it was not reasonable to expect the legislature to lay down expressly precise criteria for the guidance of the authorities who have to administer the law because of the difficulty, if not impossibility, of contemplating every single circumstance and prescribing rules so as to apply to such varying situations, and that was the raison d'etre of vesting a large discretion in the hands of the administering authorities after indicating the general principles that ought to guide them. He however urged that in the present case there was no such insuperable difficulty, because the restriction provided for by s. 19 of the Act was superimposed on those which were enacted by s. 13 of the Rent Control Act, and Parliament when enacting the Act, could easily have indicated with reference to the several grounds on which eviction could be had under the Rent Control Act, the additional restrictions, or further conditions which would be taken into account by "the competent authority". If learned Counsel meant by this submission that it was a possible mode of legislation, there is nothing to be said against it, but if he desired us to infer therefrom that because of the failure to adopt that mode, the power conferred by s. 19 of the Slum Act contravened the guarantee under Art. 14, we cannot agree. In regard to this matter we desire to make two observations. In the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provision for them. The Legislature therefore is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe is not without its advantages. So long therefore as the Legislature indicates,

in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate. The second is that if the power or discretion has been conferred in a manner which is legal and constitutional, the fact that Parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating the law.

The next point argued by learned Counsel for the petitioner was that the power conferred on the competent authority by s. 19(3) of the Act was an excessive delegation of legislative power. As we have pointed out earlier, this submission is really another form, or rather another aspect of the objection based on the grant of an unfettered discretion or power which we have just now dealt with. It is needless to repeat, that so long as the legislature indicates its purpose and lays down the policy it is not necessary that every detail of the application of the law to particular cases should be laid down in the enactment itself. The reasons assigned for repelling the attack based on Art. 14 would suffice to reject this ground of objection as well.

The last major objection urged by learned Counsel was that the power vested in the competent authority "at its sweet- will and pleasure" to refuse permission to execute a decree for eviction violated the right to hold property under Art. 19(1)(f) of the Constitution and that the same was not saved by Art. 19(5) of the Constitution for the reason that the restriction imposed on the exercise of the right was not reasonable. If Counsel were right in his submission that the petitioner's right to obtain possession of his building rested on the "sweet-will and pleasure of the competent authority" there could be some substance in the argument. But as we had already had occasion to point out, it is not at the "sweet-will and pleasure" of the competent authority that permission to evict could be granted or refused, but on principles gather- able from the enactment, as explained earlier.

Learned Counsel further urged that the right to hold property under Art. 19(1)(f) included the right in the owner of a building to evict a tenant and enter into actual or physical occupation of the property. Counsel is, no doubt, right in this submission but the 'freedom' to 'hold property' is not absolute but that, as he himself admitted, is subject, under Art. 19(5), to treasonable restrictions" being placed upon it "in the interests of the general public". It was not suggested that slum-dwellers would not constitute "the general public" and that if a legislation was designed to grant them protection, it could not be justified as one in the interests of the "general public", because obviously the interests of such a vast number of the population in the country, their health, well-being and morals, would, apart even from themselves, necessarily impinge upon and influence, for good or evil, the health, safety, well-being and morality of the rest of the community as well. The only question that is capable of argument is whether the restriction is reasonable. A considerable part of learned Counsel's argument on the reasonableness of the restriction was devoted to showing that the vesting of an unfettered or unguided power in the competent authority to permit or not to permit eviction rendered the restriction unreasonable. This, as would be seen, is really a different form of presenting the case of the objection under Art. 14, and what we have said in dealing with the first point of the learned Counsel would answer this portion of the objection. There are, however, a few

more matters which have relevance about the objection on the score of the restriction not being reasonable within Art. 19(5) and the tests to be applied to determining its reasonableness to which we should refer. It has already been pointed out that the restrictions imposed on the right of the landlord to evict have a reasonable and rational connection with the object sought to be achieved by the Act, viz., the ultimate elimination of slums with protection to the slum-dwellers from being meanwhile thrown out on the streets. The question might still remain whether this restriction on the rights of the landlords is excessive in the sense that it invades and trenches on their rights in a manner or to an extent not really or strictly necessary to afford protection to the reasonable needs of the slum-dwellers which it is the aim and object of the legislation to subserve. The criteria for determining the degree of restriction on the right to hold property which would be considered reasonable, are by no means fixed or static, but must obviously vary from age to age and be related to the adjustments necessary to solve the problems which communities face from time to time. The tests, therefore, evolved by communities living in sheltered or placid times, or laid down in decisions applicable to them can hardly serve as a guide for the solution of the problems of post-partition India with its stresses and strains arising out of movements of populations which have had few parallels in history. If law failed to take account of unusual situations of pressing urgency arising in the country, and of the social urges generated by the patterns of thought-evolution and of social consciousness which we witness in the second half of this century, it would have to be written down as having failed in the very purpose of its existence. Where the legislature fulfils its purpose and enacts laws, which in its wisdom, is considered necessary for the solution of what after all is a very human problem the tests of "reasonableness" have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying, by, enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole. Judged in the light of the above, we consider that the restrictions imposed cannot be said to be unreasonable. As we have already pointed out, the ban imposed on evictions is temporary, though learned Counsel is right in saying that its duration is not definite. In the very nature of things the period when slums would have ceased to exist or restrictions placed upon owners of property could be completely lifted must, obviously, be indefinite and therefore the indefiniteness cannot be a ground for invalidity-a ground upon which the restriction could be held to be unreasonable. Again, there is an appeal provided from the orders of the competent authority to the Chief Administrator. If learned Counsel is right in his submission that the power of the "competent authority" is unguided and that he had an unfettered and arbitrary authority to exercise his discretion "at his sweet-will and pleasure" the existence of a provision for appeals might not impart validity to such legislation. The reason for this is that the appellate power would be subject to the same vice as the power of the original authority and the imposition of one " sweet-will and pleasure" over another of a lower authority, would not prevent discrimination or render the restriction reasonable. But if, as we have held earlier, the Act by its preamble and by its provisions does afford a guidance to the "competent authority" by pointing out the manner in which the discretion vested in him should be exercised, the provision as to an appeal assumes a different significance. In such cases, if the "competent authority" oversteps the limits of his powers or ignores the policy behind the Act and acts contrary to its declared intention, the appellate authority could be

invoked to step in and correct the error. It would, therefore, be a provision for doubly safeguarding that the policy of the Act is carried out and not ignored in each and every case that comes up before "the competent authority". The procedure laid down by the Act for the hearing by the "competent authority" and the provisions for enquiry, renders the "competent authority" a quasi-judicial functionary bound to follow fixed rules of procedure and its orders passed after such an enquiry are to be subject to appeals to the Administrator. We consider these safeguards very relevant for_judging about the reasonableness of the restriction. In considering these matters one has to take into account the fact-a fact of which judicial notice has to be taken-that there has been an unprecedented influx of population into the capital, and in such a short interval, that there has not been time for natural processes of expansion of the city to adjust itself to the increased needs. Remedies which in normal times might be considered an unreasonable restriction on the right to hold property would not bear that aspect or be so considered when viewed in a situation of emergency brought about by exceptional and unprecedented circumstances. Just as pulling down a building to prevent the spread of flames would be reasonable in the event of a fire, the reasonableness of the restrictions imposed by the impugned legislation has to be judged in the light of actual facts and not on a priori reasoning based on the dicta in decisions rendered in situations bearing not even the remotest resemblance to that which presented itself to Parliament when the legislation now impugned was enacted. Before concluding it is necessary to advert to a few points which were also urged by learned Counsel for the petitioner. First it was said that the impugned s. 19 of the Act imposed a double restriction, a restriction super-imposed on a restriction already existing by virtue of the provisions of the Rent Control Act, and that this rendered it unreasonable. If by this submission learned Counsel meant that different results as to constitutional validity flowed from whether the impugned section was part of the provisions of the Rent Control Act, or was a section in an independent enactment, the argument is clearly untenable. If, however, that was not meant, but that in the context of the restrictions already imposed by the Rent Control Act s. 19 of the Act was really unnecessary and therefore. an unreasonable restraint on the freedom of the landlord, what we have said earlier ought to suffice to repel the argument. Learned Counsel next drew our attention to s. 38 of the Rent Control Act which reads:

> "The provisions of this Act and of the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law."

If this section stood alone, the argument of learned Counsel that by reason of the width and sweep of its language, even a special legislation, such as the Act was comprehended within the non obstante provision would have required serious consideration, but that has been rendered unnecessary, because even apart from s. 19 of the Act which opens with the words: "Notwithstanding anything contained in any other law for tile time being in force", s. 39 of the Act also contains a non obstante clause on the same lines as s. 38 of the Rent Control Act. The result therefore would be that the provisions of the special enactment, as the Act is, will in respect of the buildings in areas declared slum areas operate in addition to the Rent Control Act. The argument therefore that the Act is inapplicable to buildings covered by the Rent Control Act is without substance, particularly when it is seen that it is only when a decree for eviction is obtained that s. 19 of the Act comes into play. We therefore consider that none of the points urged in support of the petition has any substance. The

petitions fail and are dismissed. In the circumstances of the case there will be no order as to costs.

Petitions dismissed.