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be 12 years from the date when the decree or order became enforceable. . .".

The words "where there has been an appeal" on which emphasis was laid by their Lordships of the Privy Council are no longer of any importance and the matter which has to be answered in this reference has become more or less of academic importance. Clause (2) of Article 182 of the old Act provided that if there was an appeal, limitation for execution ran from the date of the final decree or order of the appellate Court or the withdrawal of the appeal. The present article does not contain any similar provision but simply provides that time will run from the date when the decree or order becomes enforceable. So, under the present article, the question, in case of an appeal, will be when the decree or order "becomes enforceable". Our conclusion is that the directions given in the order of 12th of August, 1959 make it a final order in the circumstances and limitation should start to run from that date.

This revision petition is accordingly allowed. The case would now go back to the executing Court for proceeding with the application of the decree-holder on merits. We make no order as to costs of this petition.

Dua, J.

INDER DEV DUA, J.—I agree.

Narula, J.

R. S. NARULA, J.— I also agree.

B. R. T.

FULL BENCH

Before D. Falshaw, C.J., Daya Krishan Mahajan and R. S. Narula, JJ.

KHAN CHAND,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 26 of 1965

1966

March 24th.

East Punjab Moveable Property (Requisitioning) Act (XV of 1947)—Whether unconstitutional being violative of Art. 14 of the Constitution.

Held, that the East Punjab Moveable Property (Requisitioning) Act, 1947, became void on January 26, 1950, by operation of Article 13(1) of the Constitution as the main and basic sections of the Act are inconsistent with the provisions of Article 14 of the Constitution and the said main sections of the Act are not serverable from the remaining provisions of the Statute in question which remaining sections are merely of ancillary character and cannot stand without the unconstitutional sections.

Held, that section 2 of the East Punjab Moveable Property (Requisitioning) Act, 1947, is unconstitutional as being violative of the

rule of law on account of its involving excessive delegation of unfettered and unguided powers to the executive to interfere with the property rights of the citizens in an arbitrary manner. The Act does not lay down any principle or policy for guiding in any manner the exercise of wide discretion conferred by it on the executive authorities. All that the District Magistrate has to say to deprive a citizen of his moveable property in purported exercise of the District Magistrate's powers under section 2 of the Act is that it is necessary and expedient so to do. The Act does not require the authority to apply his mind to the nature of the purpose for which it is necessary or expedient to requisition a particular thing. Even if the authority applies his mind to that proposition, there is nothing in the Act which can guide him to a decision as to the propriety or legality of taking the intended action. The Act does not even require the authority to state the purpose for which it has become "necessary or expedient to requisition" a particular thing. Even the usual safeguard of power of requisitioning being exercised only for a public purpose is significantly missing from the impugned section. There is no indication either in the preamble of the Act or in any other part thereof about the circumstances in which power under the Act can be exercised. The Act does not even state that its provisions have to be invoked only in an emergency. As the Act stands, it is capable of being utilized for carrying out even the day to day functions of the Government or even at the whim of a particular District Magistrate for any purpose whatsoever only if the District Magistrate thinks that in his opinion it is necessary or expedient to do so. No provision is made in the Act for any opportunity to the owner of a moveable article to show cause against its proposed requisitioning even in a case where there may be no extraordinary emergency for immediately taking over of the article. No time is allowed by the Act to the owner to hand over the article to the authorities in varying circumstances of the said requirement. Power under the Act is capable of being delegated to any of the officers of the State irrespective of his rank or position. The power conferred by section 2 appears to be too wide and vague to be conferred upon anybody. No provision is made for any appeal or revision against an order of the requisitioning authority. Nor is there any provision in the Act to provide for any suitable machinery for determination of compensation payable under section 4 of the Act. The Act does not even lay down the guiding principles for determining the compensation. Section 4, merely states that the owner of requisitioned moveable property shall be paid such compensation "as the State Government may determine". The section does not say that it would be just compensation or that in determining the same the State authorities shall take into consideration or shall have regard to the actual loss suffered by the owner on account of his having been deprived of the particular property or any other criterion watsoever. Section 6(a) of the Act merely authorises the State Government to obtain information requird by it

from any source. There is no provision in the Act to show that such information for determining the quantum of compensation has to be obtained in the presence of the owner. Nor does any provision in the Act give to the owner of the requisitioned property any right to prefer a claim or to adduce evidence in support of it. According to section 4 of the Act, the owner of requisitioned moveable property has to be content with whatsoever the State Government thinks fit to pay him as compensation. The act of District Magistrate to take over the entire gold or ornaments available with residents in his District and to give them compensation in the shape of gold bonds may literally be within the scope of the Act. Still this may never have been intended by the State Legislature. Not only is no machinery provided for determining the compensation and no *criteria* laid down for its fixation, but what is worse is that there is no provision for any appeal or revision against the order determining the compensation. So long as any order passed by the State Government is within the scope of the Act, it cannot be called in question in the ordinary Civil Courts on account of the bar created by sub-section (2) of section 10. There may be nothing wrong with a prohibition of this type in a Statute which provides sufficient safeguards and sets up at least some quasi-judicial tribunals to determine the claims of citizens arising under the particular Act. But the making of a provision of this type in this Act adds to the rigour and unreasonableness of its provisions. No time is provided by the Act either for determining the compensation payable under it or for actually paying the amount due. The Act does not even provide for payment of any interest on the amount of compensation payable thereunder from the date on which compensation becomes due till the date of its actual payment. There is nothing in the Act prohibiting the State Government from paying Rs 10 to the owner of one moveable property as compensation and from paying Rs 100 to the owner of another similar property at its whim. The Government is not required by the Act to give reasons in support of its orders determining the compensation. The order is not justiciable in a Court of law. The District Magistrate may leave the property of a friend and take over that of some one whom he does not like. The District Magistrate may be able to do without requisitioning a property, but may be tempted to resort to the provisions of the Act merely to spite a citizen or to harm him. In none of those cases, the affected citizen has any remedy available to him under the Act.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 5th February, 1965, to a Division Bench owing to the importance of the question of law involved in the case. The Division Bench, consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula, by order dated 28th April, 1965, after considering the important question of law involved in the case, referred the case to

Full Bench for decision. The case was finally decided by the Full Bench consisting of the Hon'ble the Chief Justice Mr. D. Falshaw, the Hon'ble Mr. Justice D. K. Mahajan, and the Hon'ble Mr. Justice R. S. Narula, on the 24th March, 1966.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of Certiorari, mandamus, *or any other appropriate writ, order or direction be issued quashing the order of Respondent No. 2, dated 18th December, 1964.*

U. D. GAUR, ADVOCATE, for the Petitioner.

M. R. SHARMA AND R. L. SHARMA, ADVOCATES, for the Respondents.

ORDER OF FULL BENCH

Narula, J.

NARULA, J.—In these four writ petitions (Nos. 26 of 1965, 627 of 1965, 628 of 1965 and 629 of 1965) the constitutionality of the East Punjab Moveable Property (Requisitioning) Act, XV of 1947, hereinafter called the Act, and particularly the *vires* of sections 2 and 4 thereof is impugned.

It is stated that in September or October, 1964 the District Magistrate, Rohtak, requisitioned three trucks Registered Nos. PNR 2740, PNR 3122 and PNR 3262 under section 2 of the Act for carrying material for construction of a road in the Rohtak District. According to the petitioners, the above said three diesel trucks which were Six Wheelers could not be plied through the sandy areas and this resulted in the break-down of all the three trucks which were stranded at the spot for a long time. By an order dated September 6, 1964, a similar Six Wheeler diesel truck No. PNR 3122 belonging to Sagar Chand (petitioner in C.W. 629 of 1965) was also requisitioned. On September 10, 1964, two Sub-Divisional Officers of Construction Sub-Division, P.W.D. (B.&R.) Chhuchakwas (Rohtak) addressed a communication to the Executive Engineer, Provincial Division, Rohtak (copy annexure "A") wherein it was stated that the Sub-Divisional Officer had after making all efforts reached the conclusion that the trucks which had been requisitioned by the Deputy Commissioner, Rohtak, i.e., "full Body Mercury Trucks of Diesel" could not be plied in the sandy area after loading material in the body of the trucks. A

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request was made in that letter to approach the Deputy Commissioner, Rohtak, for requisitioning half body petrol trucks and tractors as the Sub-Divisional Officers were told that vehicles of that type alone could be serviceable in the sandy area.

On December 18, 1964, three separate orders under section 2 of the Act were passed requisitioning truck No PNR 1539 (subject-matter of C.W. No. 627 of 1965) truck No. PNR 2222 (belonging to the petitioner in C.W. No. 628 of 1965) and truck No. PNR 1607 belonging to Khan Chand petitioner in C.W. No. 26 of 1965. The petitions relating to trucks Nos. PNR 2222, PNR 3122 and PNR 1539 were originally filed under Article 227 of the Constitution only and were, therefore, registered as Civil Revisions Nos. 90, 114 and 115 respectively. Civil Revision No. 90 of 1965 *Messrs. Gurdial Sant Lal* v. *State of Punjab* was admitted by Harbans Singh, J. on 25th January, 1965, Civil Revision No. 114 of 1965 *Messrs. Ram Chander Jagdish Chander* v. *The State of Punjab and* Civil Revision No. 115 of 1965 *Sagar Chand* v. *State of Punjab* were admitted by Dua, J. on 5th February, 1965. In pursuance of separate applications for amendment of those petitions, the proceedings were allowed to be converted into writ petitions under Article 226 of the Constitution and have ever since been treated as such. Khan Chand filed his petition under Article 226 of the Constitution on January 2, 1965, and the same was admitted by the Motion Bench (S. B. Capoor and I. D. Dua, JJ.) on January 4, 1965.

In all these writ petitions, there is a common prayer for quashing the relevant requisitioning orders of the trucks of the respective petitioners on the ground that section 2 of the Act under which the vehicles purport to have been requisitioned is unconstitutional as being violative of Articles 14, 19 and 31 of the Constitution. By various orders of different dates the operation of the impugned orders had been stayed. In these cases separate written statements have been filed by the District Magistrate, Rohtak, wherein it is averred that the drivers of vehicles had tried to get the trucks stuck in sand with a view to get them released but that otherwise the trucks could give useful service in the sandy area. It is further added in the written statement that the report of the Sub-Divisional Officers was only casual and merely suggested that if petrol driven trucks and tractors could be

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available, they would be more useful. On the question of legality of the order of District Magistrate, it has been said that he had taken into consideration all the circumstances before requisitioning the trucks in dispute and it was done in the public interest and under compelling circumstances because petrol driven trucks and tractors were not readily available.

On the basis of various applications made in these cases from time to time, several amendments have been made in the writ petitions the apparent purpose of which is to take some additional grounds to support the arguments questioning the constitutional validity of the relevant provisions of the Act.

All these writ petitions came up before Dua, J. on 5th February, 1965. In view of the importance of the points raised at the hearing of the writ petitions, the learned Judge directed them to be heard by a larger Bench. In pursuance of the said order of reference, all these cases came up before a Division Bench consisting of Dua, J. and myself on 28th April, 1965. After hearing learned counsel for the petitioner, we came to the conclusion that the main question raised in the case was of considerable constitutional importance and it was, therefore, desirable that it should be authoritively decided by a still larger Bench. This Full Bench was, thereupon, constituted by my Lord the Chief Justice in pursuance of the above said orders of the Division Bench dated 28th of April, 1965. That is how these cases have come up for hearing before us.

Arguments have been addressed before us by Mr. U. D. Gaur, learned counsel for the petitioner in C.W. No. 26 of 1965. His main submission is that section 2 of the Act is violative of the rule of law guaranteed under Article 14 of the Constitution as it confers arbitrary and unrestricted powers on the executive authorities without providing any guiding principle for the exercise thereof. Moreover, it is pointed out, that even if the prescribed authority under the Act takes some action arbitrarily or with some improper motive, no check over such action is provided and the Act does not contain any machinery for obtaining redress against an improper order. In order to appreciate the arguments of the learned counsel it is necessary to notice the history, scheme and provisions of the Act.

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In exercise of powers conferred by section 88 of the Government of India Act, 1935, the Governor of East Punjab promulgated Ordinance No. 5 of 1947 to provide for the requisitioning and acquisition of movable property. The ordinance was notified in the East Punjab Government Gazette (Extraordinary) dated September 17, 1947. The Ordinance provided that the legislature of the State not being in session, the Governor was satisfied that circumstances existed which rendered it necessary for the Governor to take immediate action to promulgate Ordinance Taking judicial notice of the historical events, it appears that the necessity and emergency for the promulgation of the said Ordinance arose on account of the unprecedented events which followed the partition of the country after the 15th August, 1947. When the State Legislative Assembly came into session the Minister for Home and Revenue moved the East Punjab Movable Property (Requisitioning) Bill, 1947 on November 7, 1947. The statement of objects and reasons in the Bill were described as follows :—

> "The Ordinance No. V of 1947 was promulgated on the 15th September, 1947 to provide for the requisitioning and acquisition of movable property.
>
> Such an Ordinance promulgated under section 88 of the Government of India Act, 1935, ceases to operate at the expiration of six weeks from the re-assembly of the Legislature under clause (a) of sub-section (2) of the said section. It is however, necessary to give permanent effect to the provisions of the Ordinance. The present bill seeks to do so".

While introducing the Bill the Minister in charge made the following statement in the Assembly :—

> "As set out in the Statement of Objects and Reasons there is already an Ordinance which enables certain authorities to requisition movable property for certain purposes. The intention of this Bill is to give statutory recognition to that ordinance. It is essential that for the maintenance of supplies and a number of other important purposes this power should be with the Government. Experience has shown that on certain occasions movable property has to be requisitioned in order to make it available for

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certain uses. I am sure this Bill will meet with the approval of this honourable House."

The Bill was passed by the State Legislature on the same date and the Act received the assent of the Governor General of India on the 12th of December, 1947 and was first published in the East Punjab Government Gazette (Extraordinary) on December 13, 1947. Section 11 of the Act repealed the earlier Ordinance. Section 2 of the Act is the principal provision in the Statute, the *vires* of which have been attacked before us in these cases. The said section, as subsequently adapted by the Adaptation of Laws Order, 1950, reads as follows :—

"(1) The State Government, if it considers it necessary or expedient so to do, may by order in writing requisition any movable property and may make such further orders as may be necessary or expedient in connection with the requisitioning :

Provided that no property used for the purpose of religious worship and no aircraft or anything forming part of an aircraft or connected with the operation, repair or maintenance of aircraft, shall be requisitioned.

(2) Where the State Government makes any order under sub-section (1), it may use or deal with the property in such manner as may appear to it to be expedient."

Section 3 empowers the State Government to acquire any movable property which might have been requisitioned in the first instance. All that the State Government has to do for exercising the said power is to serve a notice stating that the appropriate authority has decided to acquire the movable property in question. If it is not possible to serve notice personally on the owner, it may be served by publication in the Official Gazette. Sub-section (2) of section 3 provides that on service of said notice the property in question shall vest in the State Government free from all encumbrances and the period of requisition shall end. Section 4 of the Act is in respect of

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payment of compensation with which we are directly concerned and the same is, therefore, reproduced verbatim :—

> "The owner of any movable property requisitioned or acquired under this Act shall be paid such compensation as the State Government may determine."

Section 5 provides for release of the requisitioned property, and for return of its possession.

Section 6(a) of the Act authorizes the State Government to require any person to furnish to the authority under the Act such information in his possession relating to the property in question as may be specified either with a view to requisitioning or acquiring the property under section 3 or for the purpose of determining the amount of compensation payable under section 4. Clause (b) of section 6 is not relevant for deciding these cases. Section 7 authorizes the State Government to use such force as may be necessary for securing compliance with any order made by it under the Act. Section 8 allows the State Government to delegate by a notified order any power conferred or any duty imposed on the State Government by the Act to such an officer as may be specified in the notification. It is under this provision that the power of the State Government under section 2 of the Act has been delegated to the District Magistrate of every District. Section 9 provides for conviction of and imposition of sentence of imprisonment and fine or both against any person who obstructs the State authorities in the discharge of its functions under the Act or fails to furnish any information required under section 6(a) or contravenes any direction under section 6(b) of the Act. Section 10 bars the jurisdiction of any Court to entertain any suit, prosecution or other legal proceeding against any person for anything which is in good faith done by him in pursuance of the Act, or of any order made thereunder. Sub-section (2) of section 10 provides that no suit or other legal proceeding shall lie against the State Government for any damage caused or likely to be caused by anything done or intended to be done in good faith in pursuance of the Act or any order made thereunder. The taking of any proceedings in any Court for calling in question any order made under the Act is also prohibited.

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The learned counsel for the petitioner has relied upon the pronouncement of their Lordships of the Supreme Court in *Shri Ram Krishna Dalmia* v. *Justice Tendolkar* (1), wherein S. R. Das as C.J., enumerated the various kinds of Statutes which may come up for consideration before a Court on a question of their validity under Article 14 of the Constitution. It is contended on behalf of the petitioners that section 2 of the Act falls within category No. 3 out of five classes of cases enlisted by S. R. Das, C.J., *in Ram Krishna Dalmia's case.* The said class of statutes is described in that judgment in the following words :—

> "A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal*

(1) A.I.R. 1958 S.C. 538.

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v. *Anwar Ali Sarkar* (supra). *Dwarka Prasad* v. *State of Uttar Pradesh* (2) and *Dhirendra Kumar Mandal* v. *Superintendent and Remembrancer of Legal Affairs* (3),"

Mr. Gaur has contended that the Act has not laid down any principle or policy for the guidance of the exercise of the discretion of the District Magistrates (the delegates of the State Government) in the matter of exercise of powers under section 2 of the Act. This, it is, argued, provides for the delegation of arbitrary and uncontrolled power by the Legislature to the State Government so as to enable it to discriminate between persons or things similarly situate and, therefore, the discrimination inheres in the statute itself. Counsel has then referred us to the judgment of the Supreme Court in *Moti Ram Deka* v. *General Manager, North East Frontier Railway* (4), wherein it was laid down that rule 148(3) and rule 149(3) of the Railway Establishment Code which provide for the termination of the services of a permanent railway employee on being given a notice for the specified period, do not lay down any principle or policy for guiding the exercise of discretion by the authority who would terminate the services either in the matter of selection or classification. In those circumstances the Supreme Court held that arbitrary and uncontrolled power had been left by the said rules in the authority to select at its will any persons against whom action would be taken inasmuch as the said rules enable the authority concerned to discriminate between two railway servants to both of whom the rules equally applied by taking action in one case and not taking it in the other and in the absence of any guiding principle to govern the exercise of such discretion by the railway authority, the above said rules were struck down as contravening the requirements of Article 14 of the Constitution.

Our attention has next been invited to the judgments of their Lordships of the Supreme Court in *Ram Dayal and others* v. *The State of Punjab* (5), wherein it was held that section 14(e) of the Punjab Municipal Act in so far as it confers power on the State Government to require a seat

(2) 1954 S.C.R. 803=A.I.R. 1954 S.C. 224.
(3) 1955—1 S.C.R. 224=A.I.R. 1954 S.C. 424.
(4) A.I.R. 1964 S.C. 600.
(5) 1965 P.L.R. 835 (S.C.).

of a member of a Committee to be vacated for any reason which it may deem to affect public interest is violative of Article 14, and, therefore, unconstitutional. The relevant passage in the judgment of the Supreme Court in the case of *Ram Dayal and others* runs as follows:—

> "It would be clear from a perusal of the above provision that powers conferred by section 14 can be exercised by the State Government (i) for any reason which it may deem fit to affect the public interest or (ii) at the request of the majority of the electors. We are not concerned in this case with the second circumstances and, therefore, it is necessary to consider whether that part of section 14 which enables the State Government to take action at the request of a majority of electors is valid or not. Similarly we are not concerned in these appeals with the powers exercisable by the State Government under clauses (a) and (b). All that arises for consideration before us is whether the conferral of power upon the State Government to require that the seat of any specified member of Committee shall be vacated "for any reason which it may deem to affect the public interest" is valid. The expression "public interest" is of wide import and what would be a matter which is in the public interest would necessarily depend upon the time and place and circumstances with reference to which the consideration of the question arises. But it is not a vague or indefinite ground, though the Act does not define what matters would be regarded as being in the public interest. It would seem that all grounds set out in section 16, which confers upon the State Government the power to remove any member of a Committee and sets out a number of grounds upon which this could be done, would be in the public interest. Section 14, however, apart from the fact that the power it confers upon the State Government is not limited to matters set out under section 16, confers upon the Government the power to determine not merely what is in the public interest but

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also what "for any reason which it may deem to affect the public interest". This would suggest that the power so conferred would extend to matters which may not be in the public interest. For, that would be the effect of introducing the fiction created by the words "for any reason which it may deem". There is no guidance in the Act for determining what matters, though not in public interest, may yet be capable of being deemed to be in the public interest by the State Government. In the circumstances it must be held that the power conferred upon the State Government being unguided is unconstitutional. For this reason I hold that section 14 in so far as it confers power on the State Government to require a seat of a member of a committee to be vacated for any reason which it may deem to affect public interest as violative of Article 14 of the Constitution and, therefore, unconstitutional."

Mr. M. R. Sharma the learned counsel for the State submitted that the Act is valid and does not infringe Article 14 in any manner. He argued that in the nature of things it is impossible to specify either the circumstances in which the power conferred by the drastic provisions of section 2 of the Act may be exercised or even to provide by any section of the Act any guiding principles for the exercise of that power. According to Mr. Sharma, the entire thing has to be left to the sound discretion of the authority to whom power under the Act may be delegated in order to make the relevant provisions in the Act really effective. It is for that purpose, according to the State counsel, that the provisions have been deliberately left as vague as they are. Mr. Sharma adds that the moment the Legislature specifies the circumstances in which requisitioning under the Act may be resorted to or the purpose for which the power under the Act may be exercised, the scope of the Act and its operation would be restricted to those circumstances and the specified purpose which would be contrary to the intention of the Legislature. He relied on the judgment of the Supreme Court in *Sri Ram-Ram Narain Medhi* v. *The State of Bombay* (6), for the proposition that it is not necessary for the State Legislature to

(6) A.I.R. 1959 S.C. 459.

make detailed provisions after having set out broad policy for requisitioning contained in section 2 of the Act. In *Sri Ram-Ram Narain Medhi's case* the Supreme Court was considering validity of section 7 of the Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956). The said section is in the following terms:—

> "Power of Government to vary ceiling area and economic holding : Notwithstanding anything contained in sections 5 and 6, it shall be lawful for the State Government, if it is satisfied that it is expedient so to do in the public interest to vary, by notification in the Official Gazette, the acreage of the ceiling area or economic holding, or the basis of determination of such ceiling area or economic holding, under sub-section (2) of section 5, regard being had to—
>
> (a) the situation of the land;
>
> (b) its productive capacity;
>
> (c) the fact that the land is located in the backward area; and
>
> (d) any other factors which may be prescribed.".

What came up for attack before the Supreme Court in the above said Bombay case was the expression "it shall be lawful for the State Government if it is satisfied that it is expedient so to do in the public interest to vary" as contained in the above quoted section. The detailed definitions of "ceiling area" and "economic holding" are already contained in sections 5 and 6 of the Bombay Act. It was in this context, that the Supreme Court held that the broad principles and policy of the Legislature having been laid down in the Statute, and the criteria having been fixed according to which the State Government has to be satisfied that it is expedient to vary the "ceiling area" and "economic holding" the mere matter of working out the details (having regard to those criteria which are specifically mentioned therein) which have been delegated to the State Government does not amount to excessive delegation of legislative power. In that context the

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Supreme Court added that the abuse of the power given by a law sometimes does occur but the validity of the law itself cannot be contested merely because of such an apprehension. In those circumstances, their Lordships of the Supreme Court held that section 7 of the Act cannot be impugned on the ground of excessive delegation of legislative power. There is nothing common with the Bombay case and the Statute impugned before us. Once the criteria and guiding principles are laid down in a Statute, the detailed working has to be left to the executive authorities. Possibility of misuse of statutory power can never be excluded. The order or executive action involving such misuse can always be struck down in appropriate legal proceedings. But it is an entirely different thing if the Act of the type which we have before us does not lay down even the policy intended by the Legislature for invoking its drastic provisions. The above-mentioned Supreme Court judgment in Bombay case is, therefore, of no avail to the respondents in the cases before us.

After careful consideration of the arguments addressed to us by both sides, I am clearly of the opinion that section 2 of the Act is unconstitutional as being violative of the rule of law on account of its involving excessive delegation of unfettered and unguided powers to the executive to interfere with the property rights of the citizens in an arbitrary manner. The Act does not lay down any principle or policy for guiding in any manner the exercise of wide discretion conferred by it on the executive authorities. All that the District Magistrate has to say to deprive a citizen of his moveable property in purported exercise of the District Magistrate's powers under section 2 of the Act is that it is necessary and expedient so to do. The Act does not require the authority to apply his mind to the nature of the purpose for which it is necessary or expedient to requisition a particular thing. Even if the authority applies his mind to that proposition there is nothing in the Act which can guide him to a decision as to the propriety or legality of taking the intended action. The Act does not even require the authority to state the purpose for which it has become "necessary or expedient to requisition" a particular thing. Even the usual safeguard of power of requisitioning being exercised only for a public purpose is significantly missing

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from the impugned section. There is no indication either in the preamble of the Act or in any other part thereof about the circumstances in which power under the Act can be exercised. The Act does not even state that its provisions have to be invoked only in an emergency. As the Act stands, it is capable of being utilized for carrying out even the day to day functions of the Government or any purpose whatsoever only if the District Magistrate thinks that in his opinion it is necessary or expedient to do so. No provision is made in the Act for any opportunity to the owner of a moveable article to show cause against its proposed requisitioning even in a case where there may be no extraordinary emergency for immediately taking over of the article. No time is allowed by the Act to the owner to hand over the article to the authorities in varying circumstances of the said requirement. Power under the Act is capable of being delegated to any of the officers of the State irrespective of his rank or position. The power conferred by section 2 appears to be too wide and vague to be conferred upon anybody. No provision is made for any appeal or revision against an order of the requisitioning authority. Nor is there any provision in the Act to provide for any suitable machinery for determination of compensation payable under section 4 of the Act. The Act does not even lay down the guiding principles for determining the compensation. Section 4 merely states that the owner of requisitioned moveable property shall be paid such compensation "as the State Government may determine". The section does not say that it would be just compensation or that in determining the same the State authorities shall take into consideration or shall have regard to the actual loss suffered by the owner on account of his having been deprived of the particular property or any other criterion whatsoever. Section 6(a) of the Act merely authorises the State Government to obtain information required by it from any source. There is no provision in the Act to show that such information for determining the quantum of compensation has to be obtained in the presence of the owner. Nor does any provision in the Act give to the owner of the requisitioned property any right to prefer a claim or to adduce evidence in support of it. According to section 4 of the Act, the owner of requisitioned moveable property has to be content with whatsoever the State Government thinks fit to pay him as compensation.

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The act of District Magistrate to take over the entire gold or ornaments available with residents in his District and to give them compensation in the shape of gold bonds may literally be within the scope of the Act. Still this may never have been intended by the State Legislature. Not only is no machinery provided for determining the compensation and no criteria laid down for its fixation, but what is worse is that there is no provision for any appeal or revision against the order determining the compensation. So long as any order passed by the State Government is within the scope of the Act, it cannot be called in question in the ordinary Civil Courts on account of the bar created by sub-section (2) of section 10. There may be nothing wrong with a prohibition of this type in a Statute which provides sufficient safeguards and sets up at least some quasi-judicial tribunals to determine the claims of citizens arising under the particular Act. But the making of a provision of this type in this Act adds to the rigour and unreasonableness of its provisions. No time limit is provided by the Act either for determining the compensation payable under it or for actually paying the amount due. The Act does not even provide for payment of any interest on the amount of compensation payable thereunder from the date on which compensation becomes due till the date of its actual payment. There is nothing in the Act prohibiting the State Government from paying Rs. 10 to the owner of one moveable property as compensation and from paying Rs. 100 to the owner of another similar property at its whim. The Government is not required by the Act to give reasons in support of its orders determining the compensation. As stated above, the order is not justiciable in a Court of law. The District Magistrate may leave the property of a friend and take over that of some one whom he does not like. The District Magistrate may be able to do without requisitioning a property, but may be tempted to resort to the provisions of the Act merely to spite a citizen or to harm him. In none of those cases, the affected citizen has any remedy available to him under the Act. The petitioners in the instant cases have specifically stated in their writ petitions that the cost of maintaining their respective trucks was about Rs. 50 per day per truck but they had been informed that they would be paid only about Rs. 40 per day as compensation. In reply to that allegation, all that has been

stated by the District Magistrate is that "just compensation will be given to the owner etc., of the truck taking into consideration all the circumstances in this behalf". In reply to the allegation of the petitioners to the effect that Rs. 80 per day is being paid by the Delhi Administration for trucks taken over by that Government, it has been stated in para 10 of the written statement that "Delhi Administration Rules have no application in the Punjab State". No commitment has been made even in the written statement as to any criteria on the basis of which compensation is to be determined. A long time has elapsed since these vehicles were requisitioned. The learned counsel for the State has not been able to tell us if the authorities have determined the compensation payable to the petitioners for the period during which they were deprived of their respective vehicles in purported exercise of the power under the Act even till today.

Mr. M. R. Sharma, the learned counsel for the respondent, referred us to the following passage from page 408 of Cooley on Constitutional Law, Fourth Edition—

> "In the Fifth Amendment to the Constitution, the fact is recognized that in some cases the necessities of the Government must override the rights of private ownership, and compel the surrender of specific private property to the public use. To prevent oppression in such cases, it is provided that private property shall not be taken for public use without just compensation. This is a declaration of the underlying principle of the law of eminent domain. Similar provisions in State constitutions are obligatory on State authorities, and, while the Fifth Amendment does not bind the States, the Fourteenth Amendment, in providing that no State shall deprive any person of property without due process of law, in fact prohibits the States from taking private property for public use without making compensation, and makes it necessary that the States, in the exercise of this

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> power, use processes that are adapted to secure substantial justice."

There can be no quarrel with such basic juristic concepts. But our Legislatures are subordinate to the Constitution. Any law made by a Legislature in this country which is either beyond its legislative competence or comes into conflict with any provisions of the Constitution or infringes any of the fundamental rights contained in Chapter III thereof has to be struck down in appropriate proceedings. Even in the above passage, Cooley has clearly emphasised the necessity of prescribing two conditions for exercise of the rights flowing from the law of eminent domain. To prevent oppression in such cases, says Cooley, private property is not to be taken over by the State except "for public use" and on payment of "just compensation". The Statute which we are considering does not provide for any of the above said two safeguards to prevent oppression. In view of the Fourteenth Amendment to the American Constitution, it has been constantly held even in that country, as observed by Cooley in his above quoted passage, that in exercise of such power the States use only such processes that are adapted to secure substantial justice and that the due process clause prohibits the States from taking private property "for public use" without making "just compensation". The passage from Cooley to which Mr. Sharma has referred does not in any way impinge on the doctrine of rule of law contained in Article 14 of the Constitution and does not go contrary to the pronouncement of their Lordships of the Supreme Court. Even in some learned author's commentary or observations were to go contrary to any provisions of the Constitution or any part of the law laid down by the Supreme Court of India, we would be bound by the latter and will have to disregard the observations of any learned author to the contrary.

Still another passage from Cooley on page 413 of the same volume has been referred to by Mr. Sharma. The passage runs as below—

> "The State may not only determine upon the necessity of some appropriation for its needs, but it may also decide for itself whether it is

> needful to take any particular estate or parcel of property for the purpose. It is not of right that the property owner shall be heard upon this question, since, if it were, the public purpose might be defeated by an adjudication against the necessity. This is so improbable, however, that it is not uncommon to provide by law that the necessity shall be passed upon by a jury or by commissioners. When a corporation is permitted to make an appropriation, it may also be empowered to judge of the necessity, where other provision is not made by the Constitution. On the question of damages and of just compensation and of the regularity of the proceedings, a notice and an opportunity to be heard is required."

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There is no doubt that the factum of necessity to requisition must in the nature of things rest with the competent State authorities. All that is necessary, according to our Constitution, is that the Act must provide for guiding principles and must indicate, as far as possible, the circumstances for the exercise of such power so as to avoid wholesale discrimination being allowed by the Statute itself. An appropriate Act may provide for immediate taking over possession of the requisitioned property without advance notice to the owner in emergent cases. It is significant that whereas even in the passage from Cooley it is emphasised that on the question of determination of "just compensation" and of the regularity of the proceedings, a notice and an opportunity to be heard is required, no such machinery is contained in the Act.

On a consideration of all the above-mentioned circumstances, I feel that the provisions of section 2 of the impugned Act fall squarely in class (iii) of the categories mentioned by S. R. Das, C.J. *in Ram Krishna Dalmia's case*. Section 2 of the Act is, therefore, liable to be stuck down as violative of Article 14 of the Constitution.

Section 2 is not severable from rest of the Act. Section 3 of the Act relating to the acquisition of moveable property cannot come into operation without section 2 being first invoked. All other provisions in the Act are merely

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ancillary to the powers of requisitioning and acquisitioning property contained in section 2 and 3 of the Act. The Act confers on the Government arbitrary and uncontrolled power to discriminate both between things and persons. This discrimination is writ large on the fact of the Act and is inherent in the Act. So I would hold the entire Act to be unconstitutional and void.

The second contention of Mr. Gaur is that section 2 of the Act infringes Article 31(2) of the Constitution because the Act does not state that property can be requisitioned under it only "for a public purpose" and the Act neither fixes the amount of compensation nor specifies the principles on which and the manner in which the compensation is to be determined and given. This attack on the provisions of sections 2 and 3 of the Act would be valid if Article 31(2) of the Constitution could be applicable to the case. Clause (6) of Article 31 does not apply to this case as this Act was passed more than 18 months before the commencement of the Constitution. That being so, the Act is completely covered by clause (5) of Article 31 which provides that nothing in Article 31(2) shall affect the provisions of any existing law other than a law to which clause (6) of Article 31 applies. The Act is "existing law" within the meanings of Article 366(10) of the Constitution, which defines "existing law" to mean any law made by a competent Legislature having power to make such a law before the commencement of the Constitution. I would, therefore, hold that Article 31(2) of the Constitution has no application to this case as its operation against the Act is excluded by clause (5) of that Article.

It is next contended by Mr. Gaur that even if Article 31(2) of the Constitution does not apply to this case by itself, it should still be made applicable as the Act is not an "existing law" within the meanings of Article 366 (10) of the Constitution. The argument is that the Act was passed in 1947 and was violative of section 299(2) of the Government of India Act, 1935, and was, therefore, still-born and a nullity and should, therefore, be deemed never to have been on the statute book. Not being a law at all, it cannot be called an "existing law". This was the argument of the learned counsel. In support of this submission, Mr. Gaur has placed reliance on the judgment of

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the Bombay High Court in *Assistant Collector Thana Prant Thana* v. *Jamnadas Gokuldas Patel and others* (7) and the judgment of Orissa High Court in *State of Orissa* v. *Satyabadi Panda and others* (8). It was held in those cases that a pre-Constitution Act is an existing law within the meaning of Article 366(10) of the Constitution only if prior to the commencement of the Constitution it was a valid law and that if the pre-Constitution law was passed after 1935 and before 1950 in contravention of section 299(2) of the Government of India Act, 1935, it could not be classed as an "existing law" for purposes of Article 31(5) of the Constitution. Though the basis of the argument of Mr. Gaur in this respect is unexceptional, it has no application to the Statute which we are considering. In my opinion, section 2 of the Act did not contravene sub-section (2) of section 299 of the Government of India Act, 1935. The said provision was in the following terms—

> "Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owing, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation or specifices the principles on which and the manner in which, it is to be determined."

It would be noticed that the above provision applies only to land, or to any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, etc. The learned counsel for the petitioners states that the property acquired in these cases will fall within the expression "commercial undertaking" as contained in sub-section (2) of section 299 of the 1935 Act. I am constrained to disagree with him. Even according to the tenor of the writ petitions before us, the petitioners have merely described themselves as owners of their respective trucks. It is not even alleged that the commercial undertaking or business of any of

(7) A.I.R. 1960 Bom. 35.
(8) A.I.R 1961 Orissa 196.

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them has been requisitioned. There is nothing to show that the District Magistrate has requisitioned any commercial undertaking. It is only the moveable property consisting of respective trucks of different persons which have been taken over. A truck is not 'commercial undertaking' by itself. Section 299(2) of the Government of India Act, 1935, does not, therefore, apply to these cases and it is needless to speculate on a situation which has not arisen and which is not the subject-matter of a complaint before us. This is so in spite of the assumption that "acquisition" in section 299(2) of the 1935 Act includes "requisition". There is, therefore, no force in this argument of Mr. Gaur.

The next argument of the counsel for the petitioners is really another facet of his preceding contention. He has argued that section 2 is bad because it does not say that the power to requisition is restricted for "public purposes". He relies on the ratio of the judgment of a Division Bench of this Court (Weston, C.J., and Falshaw, J.), in *Shyam Krishen* v. *The State of Punjab and others* (9). In that case the *vires* of Punjab Requisitioning of Immovable Property (Temporary Powers) Act (XVII of 1947) had been questioned. Falshaw, J. (as my Lord the Chief Justice then was) observed in the course of his judgment in that case as follows—

> "It seems to me, however, that even in case of Punjab Acts the words 'necessary or expedient' are not the same as for a public purpose, and are capable of wider application, and it is also to be borne in mind that in actual practice almost all orders passed under section 3 are passed by the Deputy Commissioners under the powers delegated to them under section 8, and it is unfortunately not difficult to conceive of individual Deputy Commissioners considering as necessary or expedient purposes which are far from being public purposes."

The ratio of the judgment of this Court *in Shyam Krishen's case* is that provisions for requisitioning or acquisitioning can be made in a pre-Constitution Act only

(9) A.I.R. 1952 Punj. 70.

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for a "public purpose" in respect of immovable property or such other property as may be covered by section 299(2) of the 1935 Act. On the other hand, Mr. Sharma has invited our attention to the pronouncement of the Supreme Court in *State of Bombay* v. *Bhanji Munji and another* (10), wherein it has been held that it is unnecessary to state in express terms in the statute itself the precise purpose for which property is being taken, provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for purposes of the State or for purposes of the public and that the intention was to benefit the community at large. In that case, the Act did not use the expression "public purpose" but it was found that a race of proprietors of houses in Bombay in the shape of rapacious landlords who thrived on the misery of those who could find no decent roof over their heads sprang into being and that even the efficiency of the administration was threatened because Government servants could not find proper accommodation and milder efforts to cope with evil proved ineffective. In those circumstances it was held that it was necessary for Government to take more drastic steps and in doing so they acted for the public weal. The Supreme Court held that there was consequently a clear public purpose and an undoubted public benefit patent on the face of the Act.

In the Act, there is no indication either in the preamble or in any other part thereof that the relevant provisions of the Act could be invoked only for a public purpose. It may not have been necessary to do so as no law required it to be so specified, section 299(2) of the 1935 Act being inapplicable. That being so, it is needless to dilate on this point any further. We have referred to the desirability of the words "for a public purpose" or the expression "in an emergency" being inserted after the words "necessary or expedient so to do" in section 2(1) of the Act merely as illustrations of the guiding principles or relevant criteria which could be laid down in the section to satisfy the rule of law.

The last argument addressed to us on behalf of the petitioners was that section 2 of the Act imposes unreasonable restriction on the fundamental rights of the petitioners guranteed to them under Article 19(1) (f) of the

(10) A.I.R. 1955 S.C. 41.

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Constitution and that the section is not saved by clause (5) of that Article as the restriction is neither reasonable nor in the public interest. In view of the fact that the impunged executive action cannot admittedly be attacked as being violative of Article 19 of the Constitution because of the National Emergency which has been proclaimed in the country under Article 352 of the Constitution since October, 1962, we did not allow the counsel to develop this argument any further as it would have been purely academic in the circumstances of these cases. In not allowing him to press this submission any further, we were also influenced by the view we had decided to take of the first contention of Mr. Gaur, relating to the impugned Act and orders being violative of Article 14 of the Constitution. It appears to me that the Act provides a glaring instance of complete abdication of legislative functions to the executive.

No other argument was advanced before us in this case.

For the foregoing reasons, it is held that the East Punjab Moveable Property (Requisitioning) Act XV of 1947 became void on January 26, 1950, by operation of Article 13 (1) of the Constitution as the main and basic sections of the Act are inconsistent with the provisions of Article 14 of the Constitution as interpreted by their Lordships of the Supreme Court in *Ram Krishna Dalmia's case* and the said main sections of the Act are not severable from the remaining provisions of the Statute in question which remaining sections are merely of ancillary character and cannot stand without the unconstitutional sections.

All these writ petitions are, therefore, allowed with costs and the impugned Act as well as the orders requisitioning the transport vehicles of the respective petitioners are declared void and hereby struck down.

D. FALSHAW, C.J.—I agree.

D. K. MAHAJAN, J.—So do I.

B. R. T.