CIVIL MISCELLANEOUS

Before D. K. Mahajan and R. S. Narula, JJ.

KIRPAL SINGH,—*Petitioner*

versus

THE CENTRAL GOVERNMENT AND OTHERS,—*Respondents*

Civil Writ No. 1317 of 1963

December 23, 1966

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—*S.* 20-*B—Whether* ultra vires *Articles* 14 *and* 19(1)(*f*) *of the Constitution of India* (1950)— *Excessive delegation of legislative power—What amounts to—S.* 20-*B*(1)—*"Occupation"—Meaning of—Whether includes occupation by a trespasser.*

Held, that section 20-B of the Displaced Persons (Compensation and Rehabilitation) Act is unconstitutional, being *ultra vires* Articles 14 and 19(1)(f) of the Constitution, inasmuch as it suffers from excessive delegation of unfettered, unguided and uncontrolled arbitrary discretion to the Central Government, which provision is capable of abuse by discrimination amongst persons similary situate. The restriction imposed on the right of citizens to hold and dispose of their immovable property, guaranteed to them under sub-clause (f) of clause (1) of Article 19 of the Constitution, is violative of that clause and is not saved by clause (5) of that Article, as the same far exceeds the limits of reasonableness, though it may yet be in the interest of the general public to impose such a restriction.

Held, that any law which vests an unguided, unfettered and uncontrolled power in an executive authority, to decide a quasi-judicial matter, differently for different persons who are situated alike, and between the merits of whose cases, there is no valid distinction at all, amounts to excessive delegation of legislative power and violates the rule of law. If the order which can be passed by the executive authority, in pursuance of the powers vested in it by such a piece of legislation, interferes with any of the property rights referred to in Article 19(1) of the Constitution, the law is deemed to have placed a restriction on such rights. In such an eventuality, unless the infringement of sub-clause (f) of clause (1) of Article 19, falls within the scope of clause (5) of that Article, the impugned piece of legislation must be struck down.

Held, that "occupation" in section 20-B(1) of the Act means lawful occupation, in pursuance of an allotment or a lease granted to a displaced person, either

by the Custodian of Evacuee Property (in case of evacuee property) or by the Managing Officer (in case of a property in the compensation pool), as the case may be, and does not include mere physical occupation of the property such as by a trespasser.

Case referred by the Hon'ble Mr. Justice R. S. Narula on 22nd November, 1965, for decision by a Division Bench owing to an important question of law being involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice R. S. Narula, on 23rd December, 1966.

Petition under Articles 226 and 227 of the Constitution of India. praying that a writ of certiorari, mandamus *or any other appropriate writ, direction or order be issued quashing the impugned orders of the respondents Nos.* 1 *to* 3 *with the direction that the possession of the land in question be restored to the petitioner.*

H. S. Wasu, Senior Advocate with B. S. Wasu and Mr. L. S. Wasu, Advocates, for the Petitioner.

Chetan Dass Dewan, Deputy Advocate-General (H.P.), for the Respondents.

Order of Division Bench

Narula, J.—The circumstances in which the validity and constitutionality of section 20-B of the Displaced Persons (Compensation and Rehabilitation) Act 44 of 1954 (hereinafter referred to as the Act) as amended by the Displaced Persons (Compensation and Rehabilitation) Amendment Act 2 of 1960, has been questioned before us, have been enumerated in substantial detail in my order of reference, dated November 22, 1965, which may be read as part of this judgment. To recapitulate very briefly, the petitioner is aggrieved by an order of the Central Government, dated March 4, 1963 (passed without affording any opportunity to the petitioner of being heard), declining to restore to the petitioner, the land belonging to him consequent on his redeeming the same, in pursuance of a valid and binding order of the appellate officer under the Evacuee Interest (Separation) Act (64 of 1951), on the ground that the land had originally been allotted to Wadhawa Singh, respondent No. 5, a displaced person, by the Custodian, and had subsequently been transferred to him under the Act and directing payment of cash compensation to the petitioner, on the ground that no alternative land is available in the village of the petitioner. The petitioner had admittedly filed written objections against the application of the Custodian under section 20-B to give compensation to the petitioner instead of implementing the order of the appellate authority under

the Separation Act, by way of restoration of the original holding to him. It is also not disputed that the impugned order of the Central Government shows that those objections were not considered at all and that the petitioner was not allowed any opportunity even otherwise, of being heard in support of them.

No return to the rule issued in this case, had been filed by any of the respondents, and respondents Nos. 1 to 4 had not even appeared before me in Single Bench to contest this petition. Respondent No. 5 (Wadhawa Singh) had contested the petition in Single Bench, but has not appeared before us in the Division Bench. In the course of my order of reference, I had directed respondent No. 1 (the Central Government) to produce the original order said to have been passed by it under section 20-B of the Act, on the application of the Custodian (as no copy of the order had been given to the petitioner in spite of his written requests and none had been produced by respondent No. 5); and had also directed notice of this case being issued to the Attorney General for India under Order 27 rule 1 of the Code of Civil Procedure. Copy of the order of the Central Government, dated March 4, 1963, has been placed on the record, in pursuance of the said direction as annexure 'C' to the written statement of respondent No. 4 (the Custodian Evacuee Property, Punjab, Jullundur), dated August 11, 1966.

The stand taken by the Custodian in his written statement on the merits of the legal controversy is that action under Section 20-B is administrative, that the said section makes no provision for any hearing or opportunity being allowed to the person affected and that, therefore, the impugned order is within jurisdiction and was passed in accordance with law. It has been specifically pleaded in the return that rules of natural justice cannot be invoked in the above-said circumstances.

One (Paragraph 3) of the objects, which led the Parliament to introduce section 20-B in the principal Act by section 6 of the amending Act 2 of 1960, has been described in the statement of objects and reasons published in the *Gazette of India, Extraordinary,* Part II, section 1, in connection with the introduction of the Bill (which on being passed became the amending Act), dated December 15, 1959, in the following words:—

> "Instances have come to notice where some properties were wrongly declared to be evacuee property and they were also acquired. In such cases, the Custodian-General is

> empowered under section 27 of the Administration of Evacuee Property Act, 1950 to restore such property to the non-evacuee owner. Similarly, a competent officer has also power under the Evacuee Interest Separation Act, 1951, to declare a share in a property to be non-evacuee after the whole of it has been declared to be evacuee property and has been acquired. It is not sometimes possible to restore the original property to the non-evacuee owner because of its transfer to a displaced person. To overcome this difficulty, it is proposed to insert a new section 20-B on the lines of section 20-A".

The first contention of Mr. Harnam Singh Wasu, the learned counsel for the petitioner, was that the impugned provision is unconstitutional as it aims at depriving the petitioner of his proprietary interest in the land in dispute, in pursuance of an illegal action of having conferred proprietary rights in the land on respondent No. 5, under section 20 of the Act, which action is claimed to have been void *ab initio*. This argument appears to be misconceived. It is the common case of all the parties that the land in dispute had been mortgaged with Rahim Bux, that Rahim Bux had become an evacuee, and that, therefore, the mortgagee rights in the property on the basis of mortgage with possession vested in the Custodian of Evacuee Property. Rights of a mortgagee in the case of a mortgage with possession, are equivalent to rights of ownership in the mortgaged property subject only to the right of the original mortgagor to redeem the property within the time allowed by law for that purpose, on payment of the amount due to the mortgagee. There appears to be, therefore, no doubt that the Custodian of evacuee property could allot the land in question to respondent No. 5, and that the Custodian or his allottee was entitled to retain possession of the land till it could be lawfully redeemed by the petitioner. The allotment of the land in question to respondent No. 5, was, therefore, not only not void *ab anitio*, but was valid and duly authorised by law. At the same time, the proposition that proprietary rights in the land in question, could not be conferred by the Managing Officer under section 20 of the Act on respondent No. 5, does not also appear to me to admit of any doubt, as it is not disputed that the property in question, was composite property within the meaning ascribed to that expression in the Evacuee Interest Separation Act, and that such property (composite property) could not be acquired and was in fact not acquired by the Central Government, under section 12 of the Act, and never became part of the compensation pool. Nothing material, however, turns on this aspect

of the case. This results in the conferment of permanent rights or proprietary rights in the land in question on respondent No. 5, under section 20 of the Act, to be void and non-existent in the eye of law. That does not, by itself, mean that the petitioner continues to be the owner of the property. If his rights have been lawfully and validly extinguished by operation of sub-section (2) of section 20-B of the Act, he is not concerned with the validity or otherwise of the conferment of proprietary interest in the land in question on respondent No. 5. Nor can the petitioner successfully contend that the impugned provision is unconstitutional, merely because it seeks to deprive the petitioner of his interest in the property in dispute. So far as this general attack is concerned, the legality of the provision can certainly be defended and justified on the same ground on which the provisions of sections 4 and 6 of the Land Acquisition Act (1 of 1894) can be justified. The provision contained in section 20-B of the Act, was within the legislative competence of the Parliament. It seeks in a way to acquire the proprietary interest of landowners, who have otherwise been held to be entitled to restoration of the same, either by the Custodian-General under section 27 of the Administration of Evacuee Property Act (31 of 1950), or by the appellate officer under the Separation Act. The provision for payment of compensation equivalent in value to the property, to the restoration of which, a person is entitled, either in the form of alternative land or in cash, has been made in the section. Section 20-B, does not, therefore, appear to be *ultra vires* Article 31(1) or (2) of the Constitution, even if those provisions are applicable to it. The general attack of Mr. Wasu against this provision, therefore, fails.

The second ground on which the vires of section 20-B have been impugned by the learned counsel for the petitioner, is that it allows persons who are found by the competent quasi-judicial tribunals to be entitled to restoration of their land to be classified into (i) those to whom the land shall be restored; (ii) those to whom their land shall not be restored, but to whom alternative land will be given from the compensation pool as compensation; and (iii) those to whom cash compensation would be given in lieu of the land originally belonging to them, without the Legislature having indicated any guiding principles or criteria for this differentiation either in the section itself or in any other part of the Act or in any rule framed thereunder or even in any other contemporaneous legislation.

Mr. Wasu argued that the conferment of this arbitrary and unfettered power (to discriminate between persons exactly similarly situated) on the Central Government by merely stating that it is

expedient or practicable to adopt one course or the other, in the case of different persons, in the same class, is unconstitutional. Counsel has invoked in this behalf, the guarantee of fundamental rights contained in Articles 14 and 19 (1)(f) of the Constitution, both of which rights, substantially overlap in their aspect with which we are concerned in this case. Any law which vests an unguided, unfettered and uncontrolled power in an executive authority, to decide a quasi-judicial matter, differently for different persons who are situated alike, and between the merits of whose cases, there is no valid distinction at all, amounts to excessive delegation of legislative power and violates the rule of law. If the order which can be passed by the executive authority, in pursuance of the powers vested in it by such a piece of legislation, interferes with any of the property rights referred to in Article 19(1) of the Constitution, the law is deemed to have placed a restriction on such rights. In such an eventuality, unless the infringement of sub-clause (f) of clause (1) of Article 19, falls within the scope of clause (5) of that Article, the impugned piece of legislation, must be struck down. In this sense, there is some overlapping between the guarantees contained in Articles 14 and 19 of the Constitution. Mr. C. D. Dewan, the learned Deputy Advocate General, fairly and frankly conceded that no provision of law furnished any guiding principle for the exercise of the discretion vested in the Central Government to grant one form or other of the relief under section 20-B of the Act, except that the section has directed the Central Government to adopt such of the three courses open to it, as may appear to the Government to be expedient or practicable. It is noteworthy that the normal right of a citizen is to hold his property and to dispose it of as he may wish, without any interference from the State. Laws can be enacted to violate the said fundamental right within the circumscribed limits allowed by the Constitution. There is no doubt that sub-section (1) of section 20-B, enjoins on the Government to decline restoration of the whole or any part of the property, which has been adjudged by the competent Tribunals to be liable to be restored to a citizen only if the Central Government is of the opinion that it is either "not expedient" or "not practicable" to restore the same. No objective tests to determine or adjudge the expediency or practicability of restoring or not restoring the property, have been indicated in the section, or in any other part of the Act. The learned Deputy Advocate General has not been able to cite any authority before us where it might have been held that the criteria of expediency or practicability without laying down any objective tests or any guiding principles, might have been held to be sufficient to justify and validate a legal provision authorising

the arbitrary decision on a quasi-judicial matter by a Tribunal. Moreover, even words "expedient or practicable" have not been used at the second step in the discrimination permitted by the impugned provision. Even after the Central Government is of the opinion that it is either not expedient or not practicable to restore the land to the person entitled to it, it is made lawful, by sub-section (1) of section 20 of the Act, for the Central Government either to transfer other immovable property or even to decline to give any such property, but merely to give cash compensation to the person concerned. In what cases cash would be offered in place of alternative immovable property, is not required to be tested even on the altar of expediency or practicability. What may be expedient in the view of one particular officer, may be wholly inexpedient in the view of another. What may be thought to be practicable by one authority, may be considered to be entirely impracticable by another. Merely referring to expediency or practicability, does not, therefore, appear to me to satisfy the requirements of law in a matter of this type. "Expedient" in its ordinary dictionary meaning, only implies suitable or advisable. The guiding principles required in a provision of this type, are meant to indicate as to when should it be considered to be suitable or advisable or expedient to decline restoration. Merely to say that expediency itself is good enough a reason to pass an order, one way or the other, is only a dignified way of leaving the decision to the arbitrary caprice or whim of the official concerned. What may be practised or carried out or accomplished, is called "practicable". This is not a word of art and no particular significance is attached to it in the field of law. Practicability alone being mentioned as a ground for permitting discrimination, is merely giving another name to what has been held to be prohibited in the field of legislation, by one particular aspect of Article 14 of the Constitution. As stated above, even practicability and expediency are given a go-by in exercising discrimination at the second stage, in determining whether the relief envisaged by clause (a) or clause (b) of sub-section (1) of section 20-B, is to be granted to the person concerned.

The legal aspect of this contention of Mr. Wasu, does not appear to present any difficulty. The law which has been laid down by the Supreme Court in this respect in the *State of West Bengal v. Anwar Ali Sarkar and another* (1), and in *Messrs. Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh and others* (2), and other such cases, was ultimately digested very succinctly and with great

(1) A.I.R. 1952 S.C. 75.
(2) A.I.R. 1954 S.C. 224.

clarity by S. R. Das, C.J. (as he then was) in *Shri Ram Krishna Dalmia and others* v. *Shri Justice S. R. Tendolkar and others* (3), in the following words:—

"(12) A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Article 14 of the Constitution may be placed in one or other of the following five classes:—

(i) * * * *

(ii) * * *

(iii) 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

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

in *State of West Bengal* v. *Anwar Ali Sarkar* (*supra*), *Dwarka Prasad* v. *State of Uttar Pradesh* (4), and *Dhirendra Kumar Mandal* v. *Superintendent and Remembrancer of Legal Affairs* (5).

(iv) * * * * *

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court, e.g., in *Kathi Raning Rawat* v. *The State of Saurashtra* (Supra) that in such a case the executive action but not the statute should be condemned as unconstitutional."

This aspect of Article 14 of the Constitution again came up for consideration before their Lordships of the Supreme Court in *Moti Ram Deka and others* v. *General Manager, North-East Frontier Railway and another* (6), wherein it was held in connection with the *vires* of rules 148(3) and 149(3) of the Railway Establishment Code, permitting the compulsory retirement of a permanent Government servant at any time after his appointment, that the said rules did not lay down any principle or policy for guiding the exercise of discretion by the authority, who is entitled to terminate the services of a Railway employee, in the matter of selecting or classifying the person to be hit by the said rules and, therefore, arbitrary and uncontrolled power has been left in the authority concerned to select, at its will, any person against whom action could be taken under those rules. The rules were, therefore, held to 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. In the absence of any principle to guide the exercise of the discretion by the said authority, the rules were held to be liable to be struck down as contravening the requirements of Article 14 of the Constitution.

(4) (1954) S.C.R. 803=A.I.R. 1954 S.C. 224.
(5) (1955) 1 S.C.R. 224=A.I.R. 1954 S.C. 424.
(6) A.I.R. 1964 S.C. 600.

Reference was also made by Mr. Wasu to the Division Bench judgment of this Court in *Harke* v. *Giani Ram and others* (7), wherein section 8(2)(a) of the Punjab Gram Panchayat Act (4 of 1953) (which provision permitted the prescribed authority to set aside an election, on being satisfied that "a failure of justice had occurred") was struck down on the ground that the said provision did not contain any principle by which it could be said with certainty that the Legislature had laid down the rules for guidance for setting aside an election. It was in that context that Grover, J (with whom Falshaw, C.J., concurred) observed that the Legislature had not, in the aforesaid section, declared its policy and purpose so as to guide the prescribed authority constituted under that Act, with regard to the ground on which it could come to the conclusion as to whether there had been a failure of justice or not, and that even an appeal had not been provided against the decision of the prescribed authority, by which its decision could be challenged before a superior Tribunal, which could possibly have served as a check or curb on the prescribed authority acting arbitrarily. The section was declared unconstitutional as being violative of the rule of law. The learned counsel then referred to the Division Bench judgment of this Court in *Satish Chander and another* v. *Delhi Improvement Trust, etc* (8), by which judgment, the Government Premises (Eviction) Act (27 of 1950), was declared to be *ultra vires* the guarantee of the fundamental right to property, conferred on citizens by sub-clause (f) of clause (1) of Article 19 of the Constitution and as not having been saved by clause (5) of that Article, on the ground that the Act was capable of widest possible employment in matters of wholly different nature, and that the powers given to the competent officer, under that Act, were so wide and capable of abuse and the protection provided by the Act to the rights of any person affected by the orders passed thereunder, so inadequate that the provisions of the Act as a whole, amounted to infringement of the fundamental rights of citizens. Reference was also made to a recent judgment of a Division Bench (Shamsher Bahadur, J., and myself) of this Court in *Nand Lal* v. *The Estate Officer, Chandigarh and others* (9), wherein section 12(2) of the Punjab New Capital (Periphery) Control Act (34 of 1961), was declared *ultra vires* Article 19 of the Constitution, as it vested an unregulated power in Deputy Commissioners to make orders for demolition of buildings constructed by citizens without there being any provision to show cause against the proposed orders. On the

(7) I.L.R. (1962) 2 Punj. 74=1962 P.L.R. 213.
(8) 1957 P.L.R. 621.
(9) I.L.R. (1967) 1 Punj. 728=1966 P.L.R. 947.

basis of the said judgment as also on the authority of the Full Bench judgment of this Court (Falshaw, C.J., Mahajan, J., and myself) in *Khan Chand* v. *The State of Punjab and another* (10), by which judgment, the East Punjab Movable Property (Requisitioning) Act (15 of 1947), was declared by this Court to be *ultra vires* Article 14 of the Constitution), it was argued by Mr. Wasu that the restriction placed by section 20-B of the Act on the fundamental right of the petitioner guaranteed under Article 19(1)(f) of the Constitution, to hold and dispose of his property in dispute, was neither reasonable nor in the interest of the general public, and was, therefore, not saved by clause (5) of Article 19. It was also submitted by counsel that inasmuch as no provision was made in section 20-B of the Act or in any other part of the said statute or in any rules framed thereunder for affording the petitioner any opportunity to show cause against the right of restoration of the land in question being denied to him, the restriction was likely and had, in fact in the petitioner's case, worked hardship which was wholly unreasonable. Counsel also claimed the restriction to be unreasonable on the ground that the Act had not conferred on the persons affected any right of appeal against the decision of the Central Government under section 20-B of the Act. I am not able to find any force in the last contention of the learned counsel. Reference to the absence of a provision for appeal, has often been made while dealing with the rigour or unreasonableness of a restriction in the sense that even the check or curb of an appeal against the arbitrary exercise of quasi-judicial power by a Tribunal, may be wanting in certain cases, but I do not think it has ever been held, nor I am prepared to so hold, that the mere fact that no appeal is provided against the decision of quasi-judicial Tribunal in a particular statute, renders the authority given to the Tribunal itself, void or unconstitutional. There is, however, great force in the contention of Mr. Wasu that the restriction placed on the right of the petitioner to hold and dispose of his property, by section 20-B, of the Act, is unreasonable, for the reason that the statute does not provide for even an opportunity being afforded to the affected person, to show cause (i) why his original land should not be restored to him, and in case of his failure to satisfy the Central Government to that effect; (ii) to show that he is entitled to alternative immovable property in that particular village, or failing that in some adjoining village or at some particular place and not to mere cash compensation. The object sought to be achieved by section 20-B of the Act has an obvious rational connection with the declared objects of the Act. It is one of the objects of the Act mentioned in its

(10) I.L.R. (1966) 2 Punj. 794 (F.B.)=1966 P.L.R. 752.

Preamble to provide for matters connected with payment of compensation and rehabilitation grants to displaced persons. Lawful provision can be made by the Parliament for acquisition of private property subject to the safeguards provided in the Constitution. The restriction of the kind sought to be imposed by the impugned provision, can certainly be provided by the Parliament. All that is necessary for doing so besides providing adequate compensation to the person sought to be deprived of his property, is that he should have a reasonable opportunity to show cause against his proposed deprivation like the safeguards contained in section 5-A of the Land Acquisition Act (1 of 1894), and to give an indication either in the Act itself or in the statutory rules framed thereunder about the objective tests to be applied by the appropriate authority in determining the cases in which restoration may be allowed or not and out of the latter set of cases, those in which land may be given as compensation instead of cash. If a provision for adequate opportunity to show cause against the deprivation of the property had been made in the section, and if it had been provided that land shall not be restored in cases, where displaced persons had been in occupation of it, and had cultivated it for a definite number of crops or had spent substantial amount in its improvement or for other cogent reasons, the attack against the validity of the section may possibly have failed. As in this case, the denial of the right of the petitioner to get back his property from respondent No. 5, has been based on the ground that it was in occupation of a displaced person, we are not called upon to decide the effect of the use of the vague expression "or otherwise" in sub-section (1) of section 20-B of the Act on its constitutionality. Mr. C. D. Dewan referred to the object of introducing the impugned provision into the Act, as disclosed by the statement of objects and reasons for the introduction of the Bill by which the provision was brought into the Act (which has been quoted in an earlier part of this judgment). Nothing, however, appears to turn on the same. The learned Deputy Advocate-General argued that it was impossible to prescribe a precise yardstick for the Central Government to exercise its discretion for deciding as to when it might allow restoration and when it might decline to do so. According to Mr. Dewan's submission, the best that could be done by the Legislature, was to leave it to expediency and practicability, according to the subjective determination of the Central Government. I have already dealt with this aspect of the matter, and have rejected this argument. Learned Counsel for the Central Government then referred to the judgment of their Lordships of the Supreme Court (which is said to be unreported) in *Caltex India Limited* v. *Presiding Officer*,

Labour Court and others (C.A. No. 1006 of 1964), decided on February, 23, 1966, wherein it was held that sub-section (4) of section 26 of the Bihar Shops and Establishments Act (8 of 1954), had been saved from the defect of excessive delegation. A short note of this judgment appears at No. 140 at page 111 of 1966 Supreme Court Notes. Clause (c) of section 46(2) of the Bihar Act specially empowered the State Government to frame rules to provide for the nature of misconduct of an employee for which, his services might be dispensed with without notice. In exercise of that power, the State Government framed sub-rule (1) of rule 20, which specified as many as 11 acts which were to be treated as misconduct on proof of which facts no notice as required by sub-section (1) of section 26 of the Act, was held to be necessary for terminating the services of an employee. It was in that situation that their Lordships of the Supreme Court held that there was guidance in the words of the section itself, in the matter of specified misconduct, on proof of which, no notice would be necessary as it was well-known in the industrial law, that there were two kinds of misconducts, namely, major ones and minor ones justifying punishment of dismissal or discharge on the one hand and if lesser ones on the others. The judgment of the Supreme Court in the case of *Caltex India Limited* (supra), does not appear to be of any avail to the respondents, and does not even touch the fringes of the proposition with which we are concerned in the instant case. Mr. Dewan then referred to the Full Bench judgment of the Allahabad High Court in *Jai Kishan Srivastava* v. *Income-tax Officer, Kanpur and another* (11), and to the judgment of the Supreme Court in *Kishan Chand Arora* v. *Commissioner of Police, Calcutta and others* (12), in support of the proposition that no law could be struck down, on the solitary ground that action was provided by the particular statute to be taken without affording the person affected thereby, an opportunity of being heard. In this connection Mr. Dewan first argued that the impugned section envisaged exercising of administrative powers by the Central Government as contra-distinguished to quasi-judicial power. He referred to the judgment of the Supreme Court in *Province of Bombay* v. *Khushaldas S. Advani* (13), and argued that no *lis* of any kind was created by section 20-B, and the Central Government was not, therefore, expected to conform to judicial norms while giving a decision on the various matters covered by that provision. I regret, I am unable to agree with this contention of the learned State

(11) A.I.R. 1960 All. 19.
(12) A.I.R. 1961 S.C. 705.
(13) A.I.R. 1950 S.C. 222.

counsel. At the very first step of the adjudication required to be made by the Central Government under sub-section (1) of section 20-B of the Act, it has to decide whether the final quasi-judicial order passed for restoration of the property by the Custodian-General or by the appellate officer, has to be implemented or not. There are always two parties to the contest in that behalf. The parties would be the person claiming restoration on the one hand and the displaced person in occupation of the property, interested to defend dispossession, on the other. Even the Custodian may be another party interested to side with one party or the other. What has to be decided is whether in the circumstances of a given case, on the basis of the criteria, which may be furnished by the Legislature, one party or the other, should succeed. Such a decision has to be arrived at on an objective basis. The objective matter to be decided is not preliminary to the exercise of an administrative power but is the culminating step in a long-drawn battle between the parties in quasi-judicial proceedings. The scheme of the Act is that all authorities under it, are required to have a judicial approach to matters, which they are called upon to decide. What has to be done under section 20-B is to determine the questions affecting rights of subjects. One of the things to be decided is the form of compensation to be paid to a person, who is denied restoration of his own property. Still another matter on which the Central Government has to adjudicate is as to what quantity of land or of the quantum of cash compensation, would be "as nearly as may be of the same value as the property which was to be restored." These cannot be said to be administrative matters. The functions enjoined on the Central Government under section 20-B of the Act, are quasi-judicial and must be performed according to the well-settled principles of natural justice and by conforming to judicial norms. So far as the guarantee contained in Article 14 of the Constitution is concerned, it is applicable as much to administrative acts as to quasi-judicial acts. The judgment of the Supreme Court in *Kishan Chand Arora's case* (supra), has no application to the present dispute, as the finding of the Supreme Court in that case (about the absence of a provision for hearing an applicant for a licence and to record reasons for refusal to grant the licence, not rendering section 89 of the Calcutta Police Act unconstitutional), was based on the premises that the order of the Commissioner of Police under that provision, was administrative, and neither judicial nor-quasi-judicial. Similarly the Full Bench judgment of the Allahabad High Court *in Jai Kishan Srivastava* v. *Income-tax Officer, Kanpur and another* (supra), is of no avail to the respondents, as all that was held in that case, was that the provisions of section 34(1)(a) of the Income-tax Act, cannot be challenged on

the ground that the section had not provided for a notice to show cause why a notice under that section should not be issued. All that the said section provides is that if the Income-tax Officer has reasons to believe certain things, he may serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess his income or profit, etc. The income-tax case did not present any question parallel to the one raised in the case before us.

The last contention of Mr. Wasu was that even for assessing compensation in cash or in kind, no machinery for hearing the petitioner, has been provided and no material criteria have been laid down. Even the indication of the compensation being made equivalent to the value of the land of which a citizen is sought to be deprived is vague, inasmuch as the section does not specify whether the value has to be of the date on which the property was allotted to the displaced person or the date on which the order for restoration was made or the date on which a final order under sub-section (1) of section 20-B resulting in the extinguishment of the right, title and interest of the original owner, under sub-section (2) thereof, is passed. There is substantial force in this contention of Mr. Harnam Singh Wasu. In fact the Learned Deputy Advocate-General, was not able to advance any argument against this submission of the learned counsel for the petitioner.

For the foregoing reasons, I would allow this writ petition, and hold—

(1) that the property in dispute, which was admittedly composite property, was specifically excluded from the notification of acquisition (No. S.R.O. 697, dated March 24, 1955) under section 12 of the Act, and was never in fact acquired by the Central Government, and did not consequently form part of the compensation pool. The transfer of the proprietary rights therein by the Managing Officer, under section 20 of the Act, in favour of respondent No. 5, was wholly without jurisdiction, and the same is, therefore, set aside on that short ground;

(2) that "occupation" in section 20-B(1) of the Act, means lawful occupation, in pursuance of an allotment or a lease granted to a displaced person, either by the Custodian of Evacuee Property (in case of evacuee property)

or by the Managing Officer (in case of a property in the compensation pool), as the case may be, and does not include mere physical occupation of the property, such as by a trespasser;

(3) that the occupation of the land in dispute by Wadhawa Singh, respondent No. 5, in the instant case, was valid as he was admittedly an allottee of the Custodian and he continues to be so till this day, as the property has never vested in the Central Government, as not having been acquired under section 12 of the Act;

(4) that section 20-B of the Act is unconstitutional, being *ultra vires* Articles 14 and 19 (1) (f) of the Constitution, inasmuch as it suffers from excessive delegation of unfettered, unguided and uncontrolled arbitrary discretion, to the Central Government, which provision is capable of abuse, by discrimination amongst persons similarly situate and falls within category (iii) of the classes of cases, enumerated by S. R. Das, C.J., in the judgment of the Supreme Court in *Ram Krishana Dalmia's case* (supra). The restriction imposed on the right of citizens to hold and dispose of their immovable property, guaranteed to them under sub-clause (f) of clause (1) of Article 19 of the Constitution, is violative of that clause, and is not saved by clause (5) of that Article, as the same far exceeds the limits of reasonableness, though it may yet be in the interest of the general public to impose such a restriction; and

(5) that the impugned order passed by the Central Government on the 4th of March, 1963, is even by itself, violative of the principles of natural justice, as it was passed not only without affording the petitioner an opportunity of being heard against the proposed order, but by declining to consider even his written objections against the claim of the Custodian.

As a result of my above-quoted findings, the impugned order of the Central Government, has to be set aside, and is accordingly quashed. The petitioner would be entitled to have his costs of the proceedings in this Court from respondent No. 1.

D. K. MAHAJAN, J.—I agree.

K.S.K.