this question. No other point is urged by the learned counsel. It is well settled law that extraordinary jurisdiction of this Court under Article 226 of the Constitution can only be invoked where there is grave or manifest injustice done to the petitioner. In the present case, no grave or manifest injustice or even injustice or prejudice is shown to have been done by the adoption of Panjab University regulations or by its amendment. On the other hand, if the regulation in question had not been adopted and amended. it would have led to grave injustice to the hundreds of teachers in the recognised colleges of Kurukshetra University. Teachers cannot be allowed to be thrown at the arbitrary mercy of the private managements. Such safeguards as the impugned regulations were achieved by the teaching community after a long struggle of several years.

(16) For the foregoing reasons, I find no merit in the writ petition and the same is dismissed with costs. Counsel fee Rs. 500.

N.K.S.

Before Bal Raj Tuli and S. S. Sandhawalia, JJ.

SHIROMANI GURDWARA PARBANDHAK COMMITTEE, AMRITSAR,—*Appellant.*

versus

UNION TERRITORY OF CHANDIGARH, ETC.,—*Respondents.*

Letters Patent Appeal No. 668 of 1974.

February 12, 1975.

The Punjab New Capital (Periphery) Control Act (1 *of* 1953)—*Sections* 3, 4, 12 *and* 15(*b*)—*Provisions of sections* 3 *and* 4—*Whether can be complied with in the absence of rules—Notification issued under section* 3(1) *in such absence—Whether valid—Requirement of prescribing mode of publication—Whether directory—Action under section* 12(2)—*Whether can be taken only after taking proceedings under section* 12(1)—*Exemption under section* 15(*b*)—*When can be claimed.*

Held, that the publication of a notification under section 3 of the Punjab New Capital (Periphery) Act 1952 declaring a controlled area does not depend on the making of the rules under the Act. The provisions of sections 3 and 4 of the Act are capable of compliance

substantially even without the rules and consequently a notification issued under section 3(1) in the absence of rules is not invalid and can be enforced.

(Para 4).

Held, that the prescription of the maner of the publication in the rules is merely to guide the Deputy Commissioner how to publicise the notification. This prescription can every easily be termed as directory as without following a particular procedure the Deputy Commissioner can comply with the requirement of the law in a known and recognised manner and carry out the object of the legislature. Thus the requirement of prescribing the mode of publication at the office of the Deputy Commissioner or in the area desired to be controlled is directory in nature.

(Para 5).

Held, that sub-section (2) of section 12 commences with the words "without prejudice to the provisions of sub-section (1)", which clearly mean that whether any proceedings are taken under sub-section (1) or not, the Deputy Commissioner can take proceedings under sub-section (2). Both the provisions are independent of each other. The provision in sub-section (1) of section 12 creates a criminal liability while sub-section (2) creates a civil liability and one is not dependent on the other. Thus, action under section 12(2) for demolition of unauthorised constructions can be taken without first having to take proceedings under section 12(1) of the Act.

(Para 11).

Held, that a bare reading of section 15(b) of the Act shows that the place of worship for which exemption is claimed should have been in existence on the date of the notification under section 3(2) or the plot in which such a place of worship is erected should have been in the occupation of the person erecting it for the purposes of construction of a place of worship.

(Para 12).

Letters Patent appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Muni Lal Verma, dated 28th November, 1974 *in Civil Writ Petition No.* 4215 *of* 1974.

Narinder Singh, Advocate, *for the appellant.*

R. K. Chhibbar, Advocate, *for the respondent.*

JUDGMENT

Tuli, J.—(1) This judgment will dispose of L.P.A. Nos. 662, 663, 664 and 668 of 1974 and Civil Writ No. 6362 of 1974, as common questions of law are involved.

(2) The appellants and the petitioner in C.W. 6362 of 1974 are residents of villages comprised in the controlled area of Union Territory of Chandigarh within the meaning of the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter referred to as the Act). They erected certain constructions on their lands without obtaining the permission of the Deputy Commissioner under section 6 of the Act and notices were, therefore, issued to them under section 12(2) of the Act to show cause why the unauthorised constructions should not be demolished. Their applications for permission to grant *ex post facto* permission for the constructions already made were refused by the Deputy Commissioner. Since they refused to demolish the unauthorised constructions, warrants for the demolition of the constructions were issued by the Deputy Commissioner. At that stage, the appellants and the petitioner filed their writ petitions for staying the operation of the impugned orders of the Deputy Commissioner for demolition of their structures. The writ petitions, out of which the above mentioned letters patent appeals have arisen, were dismissed by the learned Single Judge by order dated November 28, 1974. C. W. 6362 of 1974 was admitted on December 6, 1974, and was ordered to be heard along with L.P.A. 662 of 1974. All these cases have, therefore, been heard together.

(3) The first point seriously urged by the learned counsel for the appellants and the petitioner is that there is no valid notification under section 3(1) of the Act declaring the whole or any part of the area to be a 'controlled area' for the purposes of the Act and, therefore, the provisions of the Act are not applicable to the constructions made by them. In support of this plea, it has been submitted that the provisions of section 3(2) and section 4 of the Act were not complied with and, therefore, the notification issued under section 3(1) of the Act was of no effect. In order to appreciate this submission, it is necessary to set out sections 3, 4 and 5 of the Act, as were in force in 1953 when the notification under section 3(1) was issued. These sections read as under:—

> "3(1). The State Government may by notification in the official Gazette declare the whole or any part of the area to which this Act extends to be a controlled area for the purposes of this Act.
>
> (2) Not less than three months before making a declaration under sub-section (1), the State Government shall cause

to be published in the official Gazette, and in at least two newspapers printed in a language other than English, a notification stating that it proposes to make such a declaration, and copies of the notification or of the substance thereof shall be published by the Deputy Commissioner in such manner as may be prescribed at his office and in the area desired to be controlled.

4(1). The Deputy Commissioner shall within three months of the declaration under sub-section (1) of section 3 deposit at his office and at such other places as he considers necessary, plans showing the area declared to be a 'controlled area' for the purposes of this Act, signifying therein the nature of the restrictions applicable to the controlled area.

(2) The plans so deposited shall be in the form prescribed and shall be available for inspection by the public free of charge at all reasonable times.

5. Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation, or lay out any means of access to a road, in the controlled area save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing."

The analysis of these sections shows that the Government had to take the following steps for declaring the whole or any part of the area as controlled area for the purposes of the Act:

1. Not less than three months before issuing notification under section 3(1), the State Government had to publish in the official Gazette, and in at least two newspapers printed in a language other than English, a notification stating that it proposes to make such a declaration;

2. Copies of the notification or of the substance thereof were to be published by the Deputy Commissioner in such manner as may be prescribed at his office and in the area desired to be controlled.

3. After the expiry of three months the notification containing the declaration was to be issued under section 3(1) of the Act; and

4. Within three months of the declaration under section 3(1), the Deputy Commissioner was to deposit at his office and at such other places as he considered necessary plans showing the area declared to be controlled area for the purposes of the Act, signifying therein the nature of the restrictions applicable to the controlled area. The plans so deposited were to be in the form prescribed and they were to be available for inspection by the public free of charge at all reasonable times.

It is admitted by the parties that notification under section 3(2) of the Act was published in the official Gazette dated February 27, 1953, and in two newspapers printed in a language other than English, that is, 'Hind Smachar' and 'Ajit' Jullundur in the month of April, 1953. Thereafter, the notification under section 3(1) was published in the official Gazette dated September 5, 1953. It is submitted on behalf of the appellants and the petitioner that the copies of the notification under section 3(2) or of the substance thereof were not published by the Deputy Commissioner at his office and in the area desired to be controlled for the simple reason that no rules had been framed by that time providing the manner of such publication. The word "prescribed" is defined in section 2(5) of the Act to mean prescribed by rules made under the Act. Admittedly, the rules made under the Act were published in the official Gazette dated May 15, 1959, on which date they came into force. There were thus no rules in 1953 providing the manner of the publication of the copies of the notification or the substance thereof as mentioned in section 3(2) of the Act. But, it is urged on behalf of the respondents that the copies of the notification were published at the office of the Deputy Commissioner, Ambala, Sub-Divisional Officer (Civil), Ropar, Tahsildar, Kharar, Naib Tahsildar, Kalka, and Tahsildar, Capital Project, Chandigarh. Publicity was also given to the notification at all conspicuous places, that is, the tahsil and district headquarters and by beat of drum in the villages concerned. The manner of publication provided in rule 3 of the 1959 Rules, is as under:—

"3. The notification under sub-section (2) of section 3 of the Act shall be displayed on the notice board outside the offices of the Deputy Commissioner and all the Panchayat Houses and Patwar-khanas in the controlled area. The announcement shall also be made by beat of drum in all

the villages situated in the controlled area and affected by the provisions of the notification."

Although this rule was not there in 1953, more than substantial compliance was made with the requirements of that rule then. To me, it appears that the well known modes of publication was adopted by the Deputy Commissioner when notification under section 3(2) of the Act was issued. Even if it is conceded that in the absence of the manner of publication in the villages comprised in the controlled area having been prescribed by the rules, no publication was made in that manner, it is not disputed that all the other four methods of publication were adopted, that is, notification in the official Gazette. notification in 'Hind Smachar', Jullundur, notification in 'Ajit', Jullundur, and copy of the notification exhibited at the office of the Deputy Commissioner. Under these circumstances, it cannot be said that the condition precedent to the publication of the notification under section 3(1) was not fully or very substantially complied with. The notification under section 3(1) was issued more than six months after the publication of the notification under section 3(2) in the official Gazette and more than four months after its publication in the two newspapers. There was thus ample publicity given to that notification. After the expiry of more than twenty years, it cannot be held that the notification under section 3(1) was not made in accordance with law. Under section 114 of the Evidence Act, there is a presumption that all official acts have been regularly performed. Onus heavily lay upon the appellants and the petitioner to prove that what has been stated in the return filed by the respondents with regard to the publication of the notice was not correct.

(4) The learned counsel for the appellants and the petitioner have strongly relied on a Division Bench judgment of this Court in *Bishan Singh* v. *The Central Government and others* (1), for the proposition that in the absence of the rules the compliance with the provisions of sections 3 and 4 of the Act was not possible and, therefore, any action taken in the absence of the rules, that is, the notification issued under section 3(1) of the Act, was invalid and could not be enforced. That case related to section 8 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which provided that a displaced person was to be paid out of the compensation

(1) 1961 P.L.R. 75.

pool the amount of net compensation determined under sub-section (3) of section 7 as being payable to him and subject to any rules that may be made under that Act. The petitioner in that case was a displaced person from West Pakistan who had settled at Jullundur after migration to India and in lieu of his agricultural land within the Corporation area of Lahore, he was given on lease 46 *kanals* of evacuee agricultural land within the municipal area of Jullundur City. His lease was renewed from year to year and thus he had remained in possession throughout. Instead of framing rules under the Displaced Persons (Compensation and Rehabilitation) Act as to the manner in which urban agricultural lands were to be permanently transferred, the Central Government issued a press note prescribing the manner thereof. In accordance with that press note, the Settlement Commissioner, Jullundur, informed the petitioner that only one *khasra* number valued at Rs. 10,000 could be transferred to him. That order was challenged on the ground that the press notes and the memorandum had neither been incorporated in the Act nor in the Rules and, therefore, amounted to mere executive instructions which had no statutory force and the petitioner was entitled to get the whole of the area under lease with him or at least that much area whose value did not exceed Rs. 10,000 by setting off its valuation against the compensation payable to him and he could not be deprived of the same by the press notes and the memorandum. It was held that it was necessary for the Central Government to frame the rules for the class of displaced persons like the petitioner in that case and if the Government did not frame any rules, the press notes and the memorandum could not be acted upon as if they amounted to rules under the Act. There is no dispute about the *ratio decidendi* of that decision but it is not applicable to the cases in hand. As I have pointed out above, only one of the various modes of publication could not be adopted because of the absence of the rules but all other modes were adopted and wide publicity was given to that notification by beat of drum in the villages affected and by exhibiting the notification outside the various offices of the Deputy Commissioner, Tahsildar etc. The publication of the notification declaring the controlled area did not depend on the making of the rules under the Act. The provisions of section 3 were capable of compliance substantially even without the rules. The requirement of prescribing the mode of publication at the office of the Deputy Commissioner or in the villages affected was, thus directory in nature, as has been held by the learned Single Judge.

(5) The learned counsel for the appellants and the petitioner has referred to a passage on pages 872 to 874 of Corpus Juris Secundum, Volume 82, 1953, Print, which is to the following effect:—

> "In the application of subsidiary rules for the determination of the legislative intent in this respect there is no small confusion in the decisions *Koch* v. *Bridges* (2), but certain principles have been recognized as established. Whether a statute is mandatory or directory depends on whether the thing directed to be done is of the essence of the thing required, or is a mere matter of form (*Kavanaugh* v. *Fash*) (3), and what is a matter of essence can often be determined only by judicial construction (*Sharrock* v. *Borough of Keansburg*) (4). Accordingly, when a particular provision of a statute relates to some immaterial matter, as to which compliance with the statute is a matter of convenience rather than substance (*John C. Winston Co.* v. *Vaughn*) (5), or where the directions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business (*Skelly Estate Co.* v. *City and County of San Francisco*) (6), it is generally regarded as directory unless followed by words of absolute prohibition (*Smith* v. *City Commissioner of City of Grand Rapids*) (7), and a statute is regarded as directory where no substantial rights depend on it, no injury can result from ignoring it, and the purpose of the legislature can be accomplished in a manner other than that prescribed, with substantially the same results (*Rodgers* v. *Campbell*) (8). On the other hand, a provision relating to the essence of the thing to be done, that is, to matters of substance, is mandatory (*John C. Winston Co.* v. *Vaughn*) (9), and when a fair interpretation of a statute, which directs acts or proceedings to be done in a certain way,

(2) 45 Miss. 247.
(3) C.C.A. Okl. 74 F. 2nd 435.
(4) 83 A 2d 11, 15 N. J. Super 11.
(5) D.C. Okl., 11F. Supp. 954.
(6) 69 P. 2d 171, 9 Cal. 2d 28.
(7) 274 N.W. 776 778, 281 Mich. 235.
(8) 101 S.W. 2d 937, 267 Ky 261.
(9) D.C. Okl., 11 F. Supp. 954.

> shows that the legislature intended a compliance with such a provision to be essential to the validity of the act or proceeding (*Davelaar* v. *Marion County* (10), or when some antecedent and prerequisite conditions must exist prior to the exercise of power (*Davelaar* v. *Marion*) or must be performed before certain other powers can be exercised (*Smith* v. *City Commission of City of Grand Rapids* (supra), the statute must be regarded as mandatory. So it has been held that, where a statute is founded on public policy, those to whom it applies should not be permitted to waive its provisions (*Heim* v. *American Alliance Ins. Co. of New York* (11)".

These observations do not help the learned counsel because according to the principle laid down, the requirement of publication of the copies of the notification at the office of the Deputy Commissioner and at other places in the manner to be prescribed in the rules, was in substance complied with and the prescription of the manner of the publication in the rules was merely to guide the Deputy Commissioner how to publicise the notification. That prescription could very easily be termed as directory as without following a particular procedure the Deputy Commissioner could and did comply with the requirement of the law in a known and recognised manner and carried out the object of the legislature. In this case I have already held above that there was substantial compliance with the requirement.

(6) Lastly, reliance has been placed by the learned counsel on a Supreme Court judgment in *State of Mysore* v. *Abdul Razak Sahib* (12), wherein it was held that the publication of the notification under section 4(1) of the Land Acquisition Act or the substance thereof were necessary to be made at convenient places in the concerned locality in addition to publication in the official Gazette. It was held to be a mandatory requirement because in the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they would be deprived of the right or representation provided

(10) 277 N.W. 744, 224 Iowa, 669.

(11) 180 N.W. 225, 1022, 147 Minn. 283.

(12) A.I.R. 1973 S.C. 2361.

under section 5A which is a very valuable right. The case is clearly distinguishable as there is no such requirement of giving a right to the residents of the area, which is declared as controlled area under the Act, to file any objections to the declaration made in a notification under section 3(2) of the Act. There is thus no substance in the argument advanced on behalf of the appellants and the writ-petitioner on this point.

(7) It may also be noticed that the notification under section 3(1) of the Act was made on September 5, 1953, and these writ petitions were filed in 1974, challenging the validity of that notification. The principle laid down by the Supreme Court in *Aflatoon and others* v. *Lt. Governor of Delhi and others* (13), which was followed in *Indrapuri Griha Nirman Shakari Samiti Ltd.* v. *The State of Rajasthan and others* (14), applies squarely to the cases before us. In *Aflatoon's* case, the notification under section 4(1) of the Land Acquisition Act was issued in 1959 and its validity was challenged by a writ petition filed in 1972 on the ground that particulars of public purpose were not specified and that the Chief Commissioner was not competent to issue notification in view of section 15 of the Delhi Development Act. It was noticed that declaration under section 6 of the said Act was published in 1966 but even then the validity of the notification was not challenged. The notification in these cases, having remained unchallenged for more than twenty years cannot now be quashed on the ground of some procedural irregularity, even if established.

(8) The next submission made by the learned counsel for the appellants and the writ-petitioner is that the plans of the controlled area were never deposited at the office of the Deputy Commissioner in pursuance of section 4 of the Act and, therefore, the restrictions placed on construction of buildings or other structures did not take effect and that the Deputy Commissioner was not justified in holding that the constructions made by the appellants and the writ-petitioner were unauthorised and should be demolished under section 12(2) of the Act. It has been held by the learned Single Judge that the plans were in fact deposited in August, 1954 or August, 1964. This conclusion is based on two letters wherein these years are mentioned. Although the learned Single Judge has opined that 1964 is a typographical error for 1954, he nevertheless

(13) A.I.R. 1974 S.C. 2077.

(14) C.A. 943 and 980—989/73 decided on 17th September, 1974.

held that the provision was complied with before the appellants made their constructions. Reliance is placed on the order of the Assistant Estate Officer, exercising the powers of Deputy Commissioner, Chandigarh, dated March 13, 1974, in the case of Ved Parkash and Ram Sarup of village Mani Majra, a copy of which is annexure 'A-1' to the rejoinder filed by the S.G.P.C. in its writ petition (No. 4215 of 1974). It is stated therein that—

> "the plan showing the area denoted to be the controlled area for the purposes of the Act was deposited in the office of the Deputy Commissioner in August, 1964, and the same is available for inspection by the public. The plan also clearly indicates the restrictions applicable in the 'controlled area'.
>
> The only objection which remains unmet is that the plans in question were not deposited in the office of the Deputy Commissioner at the time of the publication of the notification under section 3(1) as required under section 4(1) of the Act. In this connection, the opinion of the then Legal Remembrancer was obtained and he advised on 23rd November, 1972 that the plans may now be deposited in the office of the Deputy Commissioner and others concerned and made available for inspection of the public."

On the basis of this observation in the order, it is argued that till November, 1972, the plans were not deposited at the office of the Deputy Commissioner. I regret, I cannot agree to the submission made. All that the observation means is that the opinion was sought on the fact that the plans were not deposited at the time of the publication of the notification under section 3(1) of the Act and the Legal Remembrancer gave his opinion that the plans could be deposited even later on. The earlier part of the order clearly contains a finding that the plan had been deposited in the office of the Deputy Commissioner in August, 1964, and it was available for inspection of the public. In a later part of the order it has been stated—

> "Besides, a glance through letter No. 43805/P-67 dated 24th August, 1954 from the Estate Officer to the Senior Architect to Government, Punjab, shows that a copy of the plan showing the controlled area under the Periphery Control Act was duly prepared" and it was concluded

that the provisions of section 4 of the Act had been duly complied with as the copy of the plan showing the declared area was available in the Deputy Commissioner's office for inspection by the general public. Thus the observations made in this order, as read by the learned counsel out of context, do not help the appellants or the petitioner.

(9) It is worthy of note that section 4(1) of the Act provides for something which is to be done after the notification under section 3(1) of the Act is issued. Even if the provisions of section 4(1) were not complied with, the notification issued under section 3(1) does not become invalid or unenforceable. That notification came into force on the date of its publication which was September 5, 1953.

(10) The significant fact in all these cases is that under section 5, irrespective of the deposit of the plan under section 4(1), every person before erecting or re-erecting any building or making or extending any excavation or laying out any means of access to a road in the controlled area had to obtain permission of the Deputy Commissioner in writing and section 6 of the Act makes a provision for such application for permission to be made to the Deputy Commissioner. Without his previous permission, the appellants or the writ-petitioner could not erect their buildings or make constructions as they did. All of them stated that applications for sanction were made after the constructions had been completed and they were rejected by the Deputy Commissioner. Even if the plans had not been deposited, the appellants and the writ-petitioner had to apply for prior permission to the Deputy Commissioner which they admittedly did not. They cannot take advantage of their own omission in complying with the provisions of the Act. They thus clearly committed a breach of section 5 of the Act which entitles the Deputy Commissioner to take proceedings under section 12(2) of the Act for the demolition of the unauthorised constructions made at any place within the controlled area. It is not the case of the appellants or the writ-petitioner that they went to the office of the Deputy Commissioner to inspect the plan deposited under section 4(1) of the Act and they did not find any such plan there. All that has been vehemently urged is that no such plan exists in the office of the Deputy Commissioner even now. The order of the Assistant Estate Officer, exercising the powers of the Deputy Commissioner, a portion

of which has been quoted above, clearly shows that such a plan was deposited and is to be found on the record and is available for the inspection of the general public.

(11) The learned counsel for the writ-petitioner has then urged that the proceedings under section 12(2) for demolition of the unauthorised constructions could not be taken unless proceedings had first been taken under section 12(1) of the Act wherein it could be determined whether the writ-petitioner had contravened any of the provisions of section 5 of the Act. I regret my inability to agree to this submission. Sub-section (2) of section 12 commences with the words "without prejudice to the provisions of sub-section (1)" which clearly mean that whether any proceedings are taken under sub-section (1) or not, the Deputy Commissioner can take proceedings under sub-section (2). Both the provisions are independent of each other. The provision in sub-section (1) of section 12 creates a criminal liability while sub-section (2) creates a civil liability and one is not dependent on the other. There is thus no force in this submission which is repelled.

(12) An additional point has been raised in L.P.A. 688 of 1974, to the effect that the construction of a Gurdwara is exempt from the provisions of the Act under section 15(b) thereof. This section reads as under:—

> 15. Nothing in this Act shall apply to—
>
> (a) * * * * *
>
> (b) the erection or re-erection of a place of worship or a tomb or cenotaph or of a wall enclosing a graveyard, place of worship, cenotaph or samadhi on land which is, at the time of the notification under sub-section (2) of section 3, occupied by or for the purposes of such place of worship, tomb, samadhi, cenotaph or graveyard;"

The bare reading of this provision shows that the place of worship should have been in existence on the date of the notification under section 3(2) of the Act or the plot in which such a place of worship is erected should have been in the occupation of the person erecting

it for the purposes of construction of a place of worship. No such pleas have been taken in the writ petition or in the grounds of appeal. Before the Assistant Estate Officer, exercising the powers of the Deputy Commissioner, Chandigarh, this plea was taken in reply to the notice. He inspected the spot and came to the conclusion that the entire land measuring 36 *kanals* 9 *marlas* comprised in Khasra Nos. 13/28 and 14/26 was purely agricultural and on a part of it there was a mango garden. An area of 1 *kanal* had already been acquired out of it for a road passing along the boundaries of proposed Sectors 43 and 44. This land was originally owned by one Sant Dass Chela Surmukh Dass in the year 1887-88 and after his death Mahant Karan Dass Chela Sant Dass continued to be recorded as the owner of the land in the *jamabandi* right up to the year 1925-26. After the enactment of the Sikh Gurdwaras Act, 1925, this land was transferred to Gurdwara Chola Sahib, tahsil Tarn Taran, district Amritsar,—*vide* mutation No. 944, sanctioned on August 10, 1928. Since then, the owner of this land is the S.G.P.C. The land has historical significance because Banda Bahadur camped at this place while leading his armies for the liberation of Sirhind but no Gurdwara was ever constructed on this land till November, 1973. It is stated by the appellant in its Writ petition that there was a kutcha Gurdwara existing on the spot which was renovated in 1974. It is nowhere mentioned when that kutcha Gurdwara was constructed. It appears that a kutcha Gurdwara was constructed in November, 1973, and mention thereof was made in the *khasra girdawaris* and thereafter its construction was slightly improved. There is no averment that land measuring 10 *marlas*, on which the Gurdwara has been built, had already been reserved for its construction prior to the date of the notification under section 3(1) of the Act. The construction, which has now been made, consists of four rooms, one of which is meant for Guru Granth Sahib and the other three rooms are presumably for the residence of the Granthi. The rooms meant for residence are shed type with corrugated sheets in the southern boundary of the land which clearly shows that the construction is not pucca. Nishan Sahib has also been installed there to give the place the look of a Sikh Gurdwara. On these facts, the appellant cannot claim exemption under section 15(b) of the Act. Since the construction has been unauthorisedly made in November, 1973, in contravention of the provisions of the Act, action taken under section 12(2) of the Act cannot be said to be illegal or without authority.

(13) It has been vehemently urged by the learned counsel for the appellant that the S.G.P.C. was not allowed adequate opportunity to prove its case. There is no allegation made in the writ petition or in the grounds of appeal that the appellant asked for such an opportunity being granted and it was refused. Shri Narinder Singh, the learned Advocate for the appellant has referred to the *khasra girdawari* for *rabi* 1974, wherein the existence of a Gurdwara in a plot of land measuring 10 *marlas* has been noted in November, 1973. The learned counsel for the respondents has stated that in no revenue record prior thereto the existence of the Gurdwara has been noted and this fact is admitted by the learned counsel for the appellant. The entry in the revenue record, therefore, clearly leads to the conclusion that the Gurdwara has no historical importance but has been very recently constructed in November, 1973, and within a few months thereof notice was issued under section 12(2) for its demolition. The respondents, therefore, acted promptly in the matter.

(14) The learned counsel then argued that the appellant has been discriminated against inasmuch as the permission for the erection of the Gurdwara has not been granted to the appellant while a temple constructed by Miss Kalyan Mai *alias* Smt. Saint Chand of village Burail in violation of the provisions of the Act has not been ordered to be demolished. A copy of the order dated May 24, 1974, passed by the Assistant Estate Officer, exercising the powers of the Deputy Commissioner, has been produced in support of the allegation. In the first place there is no fundamental right of equality before the orders passed by the quasi-judicial authority under any statute. If a wrong order is passed in one case, it does not give the right to another person to claim equality before wrong order by saying that a similar wrong order should be passed in his case. A perusal of the order of the Estate Officer, however, bears out some distinguishing features. In that case, it was found that the piece of land constituting field No. 35/30/2 contained the idols of ancient Thakurs and the ancestors of the petitioner in that case had been worshipping the same since time immemorial. There was thus consecration of the idols of the Thakurs since time immemorial. Kalyan Mai *alias* Saint Chand, renounced her wordly attachment and adopted renunciation, when she was 9 or 10 years old and since then she had been leading a life of celibacy. She had been worshipping these ancient Thakurs and got enlightenment due to their worship. It was also alleged that at that spot she had a face

to face glimpse of Almighty God and after enlightenment she got inspiration to resurrect the wrecked idols and convert the place into an abode of God. On these facts, permission was granted to the construction of the temple on the condition that the site would not be put to use for a purpose other than purely religious. On the date of the order, one room for the Mandir and another room along with a verandah and a kitchen for the residence of Kalyan Mai had already been constructed which were not ordered to be demolished. It was, however, ordered that any addition to the building in future would be in accordance with the plans duly approved by the Chief Architect, Chandigarh. Even if that order was not strictly in accordance with the provisions of the Act, it cannot be said that any violation of Article 14 of the Constitution has taken place. Every case has to be decided on its own facts. The equality enshrined in Article 14 of the Constitution is before law and an order of an executive authority under an Act does not amount to law. The submission is, therefore, repelled.

(15) For the reasons given above, there is no merit in the appeals and the writ petition which are dismissed but in the circumstances, the parties are left to bear their own costs.

S. S. Sandhawalia.—I agree.

N.K.S.

CIVIL MISCELLANEOUS

Before S. S. Sandhawalia and K. S. Tiwana JJ.

M/S. DHANNA MAL SEHAJ RAM AND OTHERS,—
Petitioners.

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 6372 of 1974.

February 14, 1975.

The Essential Commodities Act (X of 1955)—Sections 3 and 5—Constitution of India 1950—Articles 19(1) (f) and (g) and 31(3)—Delegated legislation—Whether can withdraw an earlier undertaking given by similar legislation and acted upon by others—The