therein. The word clearly conveys the idea of succession and not of transfers *inter vivos* including gifts. As observed on page 1230 of the Law Lexicon by Aiyar, 1940 Edition.—

> "The word 'succession' is a word of technical meaning, and refers to those who by descent or will take the property of a ascendent. It is a word which clearly excludes those who take by deed, grant, gift, or any form of purchase or contract."

The word "succession" has a definite connotation in the context of Indian enactments and has been taken to relate to devolution of property on the death of a person. Reference in this connection may be made to Indian Succession Act and Hindu Succession Act both of which enactments deal with devolution of property after the death of last holder. As against that, the subject, of gifts and other *inter vivos* transfers like sales and mortgages are dealt within the Transfer of Property Act. There can, therefore, be no hesitation to reject the contention that succession would include transfer by gift. We, accordingly, hold that where a female gets property by gift from her father, brother or husband, it cannot be said that the property is of a kind to which the female has succeeded through her father, brother or husband as the case may be. Sub-section (2) of section 15 of the Punjab Pre-emption Act, in the circumstances, would not get attracted to the sale in dispute.

The appeal, consequently, fails and is dismissed, but without costs.

D. FALSHAW, C.J.—I agree.

B. R. T.

CRIMINAL MISCELLANEOUS

Before R. S. Narula, J.

CHANDRA PRAKASH AGARWALA,—*Petitioner*

versus

S. G. BOSE MULLICK AND ANOTHER,—*Respondents.*

Criminal Writ No. 24-D of 1966.

April 22, 1966.

Constitution of India (1950)—*Art.* 352—*Notification proclaiming grave emergency not using the words that the President is "satisfied" that grave emergency exists—Whether valid—Defence of India Act* (*LI of* 1962)—*Ss.* 3 *and* 44—*Scope of—Defence of India Rules* (1962)—*Rule* 30(1)(*b*)—*Whether* ultra vires S. 3(2)(4) *of the Defence of India Act.*

Held, that no particular form has been prescribed by the Constitution for the proclamation under Article 352(1) of the Constitution. Specific reference has been made to the Article itself in the President's proclamation. A declaration to the effect that a grave emergency exists presupposes the satisfaction of the President to that effect. Even otherwise the High Court can take judicial notice of historical events and it cannot be disputed that in fact national emergency did exist on the 26th October, 1962, when the proclamation of emergency was made, as China had launched a massive attack on India a few days before that date.

Held, that it is for the petitioner to show that the desired object of preventing him from acting in a prejudicial manner complained of against him could be achieved by taking any step short of detaining him. Moreover section 44 of the Defence of India Act has to be read along with the other provisions of the Act and it cannot be argued that where good grounds for detaining a person under the Defence of India Act are made out, he should still not be detained because of anything contained in section 44. In any case it is for the appropriate State Authority to determine the extent to which interference with the ordinary avocations of life of a person is necessary for ensuring the public safety and interest and the defence of the country and its civil defence. It is not open to the High Court to apply its standards for judging whether the interference in the petitioner's normal avocations of life has or has not exceeded the limits of necessity.

Held, that rule 30(1)(b) of the Defence of India Rules is not *ultra vires* section 3(2)(4) of the Defence of India Act as it does not go further than the Act.

Petition under Article 226 of the Constitution of India, praying that :—

(i) *that the petitioner's detention be declared* mala fide *bad, improper, unjust and* ab initio, *void and a writ in the nature of Habeas corpus be issued against the respondents and the petitioner be set at liberty forthwith.*

(ii) *that respondent No. 2 be directed to produce the petitioner before this Hon'ble Court on the preliminary as well as subsequent hearing of the petition.*

(iii) *that an Amicus Curiae advocate be appointed to argue the petitioner's case before this Hon'ble Court.*

(iv) *that the petitioner be exempted from filing extra or typed copies of his petition as he is unable to do it.*

N. C. Kochhar, Advocate, for the Petitioner and C. P. Agarwala, Petitioner in person.

P. C. Khanna, Advocate, for the Respondents.

JUDGMENT

NARULA, J.—The petitioner was arrested and detained under rule 30 of the Defence of India Rules by the order of the District Magistrate, Delhi, on 14th August, 1965. The order of the detention stated that the District Magistrate was satisfied from information recieved by him that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, public safety, the defence of India and civil defence. He filed Criminal writ petition No. 50-D of 1965 in this Court impugning the legality and validity of his detention on 25th August, 1965. The writ petition was admitted by the Motion Bench (Dulat and Shamsher Bahadur, JJ.) on 13th September, 1965. In the return made to the rule in that case by Shri S.G. Bose Mullick, District Magistrate he averred that the order of detention had been passed after carefully considering the circumstances and after being satisfied that it was necessary to do so in order to prevent the petitioner from acting in any manner prejudicial to the defence of India, civil defence, maintenance of public order and public safety. It was further sworn by the District Magistrate in the said written statement that the petitioner had been exploiting the employees of the Delhi hospitals, University, Colleges, the Carporation and even members of the Police Force in Delhi and creating dissatisfaction in their ranks and threatening to agitate on very minor issues. Mr. S. G. Bose Mullick added in the said affidavit that the petitioner had recently been engaged in activities aimed at subverting the loyalty of the Police Force and that the petitioner had been openly advocating disobedience of the lower Police officials to the orders of their superiors.

The petitioner's criminal Writ Petition No. 59-D of 1965 was dismissed by this Court (Dulat, J.) on October 12, 1965. *Mala fides* were attributed in that case to the District Magistrate on the ground that the detention order was claimed to be due to some personal hostility between the petitioner and the District Magistrate and on the ground that the petitioner in his capacity as General Secretary of several trade unions in Delhi had been engaged in activities which somehow displeased the district authorities. Dulat, J. disposed of the petition on merits in the following words.—

> "The crux of the matter, however, is that the order of detention was made by the District Magistrate according to his

affidavit, on the ground that the petitioner had been telling the lower police officials not to obey the orders of their superiors, which could well lead to the conclusion that he was engaged in subverting the loyalty of the police force. Mr. Sethi admits that it is not open to me to enquire into the truth or otherwise of the information which the District Magistrate had with him. He contends, however, that I can look at the record of the District Magistrate to ensure that in fact this was the real ground on which he acted and to eliminate the possibility that the statement made in the return of the District Magistrate may be an afterthought. I have consequently looked at the file, and the note of the District Magistrate made before the detention order shows that reports had reached him to the effect that the petitioner was engaged in such activities as mentioned by the District Magistrate. It is, therefore, not possible to say that in reality the District Magistrate did not act on the ground and on the information which he had with him".

All other contentions raised by the petitioner were also repelled by Dulat, J., while dismissing the writ petition. However, the learned Judge made the following observations towards the end of the judgment while dismissing the writ petition:—

"I am not persuaded, in the circumstances, that the order of detention was in this case illegal or beyond the terms of the Defence of India Rules or the Act under which they are made. This petition must for this reason fail. I wish only to add that I hope now that conditions have perhaps altered, these cases like the petitioner's will be reviewed in the light of the existing circumstances, so that unnecessary hardship does not occur to individuals ordered to be detained in perhaps other circumstances. The petition, as it stands, is dismissed."

Thereafter the petitioner filed Criminal Writ No. 251-D of 1965 in this court on 2nd December, 1965. That writ petition was ultimately dismissed by H. R. Khanna, J., on January, 1966, on the ground that a fresh petition to challenge the order of detention which had been upheld in the previous case by Dulat, J., was barred in accordance with the law laid down by a Full Bench of this Court

on 28th May, 1965 in *Ram Kumar* v. *District Magistrate, Delhi* (1) Khanna, J., held that although it was open to the petitioner in appropriate circumstances to urge a new ground of attack against his detention, he would not be entitled to file a second petition merely because he wanted to urge a fresh argument. One of the grounds sought to be urged before Khanna, J., was contained in the petitioner's first writ petition and was, therefore, not allowed to be urged as it was deemed not to have been pressed before Dulat, J. All the new grounds urged in the second writ petition were repelled.

It is admitted by both sides that subsequent to the orders of Dulat, J. and Khanna, J. the case of petitioner's detention has again been reviewed by the Administrator of the Union Territory of Delhi on 4th February, 1966 and he has stated that he is satisfied that it is necessary to continue the detention of the petitioner on the grounds contained in the District Magistrate's original order of 14th August, 1965. He has now filed this writ petition on 22nd February, 1966. The mainstay of the petitioner as disclosed in the writ petition is the observation of Dulat, J. relating to the possibility of the changed circumstances justifying reconsideration of the matter. The petitioner has averred in his writ petition that the District Magistrate had ordered petitioner's detention for unmeritorious reasons and that the affidavit of the District Magistrate filed in the previous two cases of the petitioner was false, in connection with which alleged falsity the petitioner has already filed a complaint. Violation of section 44 of the Defence of India Act has also been pleaded in the writ petition.

In the affidavit of the District Magistrate, dated 19th March, 1966, filed in this case, it has been stated that the detention order was passed for valid reasons and that the allegations of the petitioner that the same was passed for unmeritorious reasons is baseless and further that the mere filing of a complaint by the petitioner against the District Magistrate cannot furnish an additional ground for filing a fresh petition. In paragraph 10 of the return the District Magistrate has sworn that the petitioner was engaged in extremely prejudicial activities and the detention order was passed to prevent him from doing so.

At the hearing of the petition it has firstly been contended by *Shri N. C. Kochhar, Advocate*, that the petitioner should have been

(1) I.L.R. (1965) 2 Punj. 853=A.I.R. 1965 Punj. 51.

released on a reconsideration of the matter in view of the observations made by Dulat, J. in the end of the judgement of this court in Criminal Writ No. 59-D of 1965. There is no force in this contention. It is probably in view of the said observations of this Court that the Administrator of the Union Territory has again reviewed the case of the petitioner on 4th February, 1966. This Court cannot go behind the satisfaction of the Administrator in this respect.

It is then contended by the learned counsel that there is no valid declaration of emergency under Article 352 (1) of the Constitution. The relevant notification reads as follows:—

> "In exercise of the powers conferred by clause (1) of article 352 of the Constitution, I, Sarvapalli Radhakrishnan, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by external aggression."

The objection of the Counsel to the above notification is that the President has not stated in the notification that he is "satisfied" that national emergency existed on the 26th October, 1962. He argued that Article 352 (1) of the Constitution states that emergency can be proclaimed only if and when the President is "satisfied" that a grave emergency exists and that inasmuch as the President has not stated in the proclamation that he is so satisfied, the proclamation is neither valid nor legal. I regret I am unable to see any force in this argument of the learned counsel. No particular form has been prescribed by the Constitution for the proclamation under Article 352 (1) of the Constitution. Specific reference has been made to the Article itself in the President's proclamation. A declaration to the effect that a grave emergency exists presupposes the satisfaction of the President to that effect. Even otherwise this Court can take judicial notice of historical events and it is not disputed by the learned counsel that in fact national emergency did exist on 6th October, 1963 as China had launched a massive attack on India a few days before 6th October, 1962.

The next contention of Mr. Kochhar is that while passing the order under rule 30 of the Defence of India Rules the District Magistrate has completely ignored and has not considered the mandatory provisions of section 44 of the Defence of India Act. The said section reads as follows.—

> "Any authority of person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the

purpose of ensuring the public safety and interest and the defence of India and civil defence."

There is no quarrel with the statutory provisions contained in section 44 of the Defence of India Act. It has not, however, been shown by the petitioner that the desired object of preventing him from acting in a prejudical manner complained of against the petitioner could be achieved by taking any step short of detaining him. Morever, section 44 has to be read along with the other provisions of the Act and it cannot be argued that where good grounds for detaining a person under the Defence of India Act are made out, he should still not be detained because of anything contained in section 44. In any case it is for the appropriate State Authority to determine the extent to which interference with the ordinary avocations of life of a person is necessary for ensuring the public safety and interest and the defence of the country and its civil defence. In reply to the allegations under section 44 of the Act contained in para 10 of the writ petition it has been sworn by the District Magistrate in his written statement that the petitioner was engaged in extremely prejudicial activities and, therefore, the detention order had to be passed to prevent him from indulging in the same. That being so, it is not open to this court to apply its own standards for judging whether the interference in the petitioner's normal avocations of life has or has not exceeded the limits of necessity. I have, therefore, no hesitation in repelling this contention of the petitioner.

I have not been able to follow the next argument of Mr. Kochhar. He urged that rule 30 (1) (b) of the Defence of India Rules is *ultra vires* section 3 (2) (4) of the Defence of India Act because the said section of the Act provides, for making a rule even in a case where a person is suspected of acting in a particular manner but the rule does not contain the word "suspect". If the rule went further than the Act some valid argument could possibly be advanced which might have deserved consideration. But in this case the scope of the section in the Act is definitely wider than the scope of the rule. It is not disputed that the impugned order of petitioner's detention does fall within the rule. In any case the petitioner has not been detained for any suspicion but on definite information. There is, therefore, no force in this argument of the learned counsel.

The last argument of Mr. Kochhar is based on an affidavit which he has filed before me today. In that affidavit it is stated that a detention order had been served on one Shri Brij Mohan who had

been kept under detention on the basis of the order which bears the seal of the District Magistrate but which is not signed by him (by the District Magistrate). It is stated by the petitioner that Brij Mohan was detained for about two months in the Central Jail, New Delhi, under the said order though he was thereafter released because he had filed a writ petition. The petitioner has filed in this Court with his affidavit today a document purporting to be the original order of the District Magistrate, Delhi, dated 3rd September, 1965, directing the detention of Brij Mohan, son of Shori Lal under rule 30 of the Defence of India Rules. The document produced by the petitioner is indeed not signed by the District Magistrate. But it is wholly irrelevant for me to go into this matter in the present case. Mr. Kochhar wants to build an argument on the basis of these allegations to the effect that this particular District Magistrate is careless and issues such orders even without signing them. I am not prepared to raise any such inference from the allegations made by the petitioner in his today's affidavit about which the District Magistrate has had no opportunity to say anything.

Mr. P. C. Khanna, the learned counsel for the State urged that this writ petition is an abuse of the process of this Court and is barred on the principles laid down by the Full Bench in *Ram Kumar's* case. In that case it was held that no petition for a writ of habeas corpus lies to the High Court on a ground on which a similar petition had already been dismissed. Their Lordships of the Full Bench held that a second petition would lie when a fresh and a new ground of attack against the legality of detention or custody has arisen after the decision on the first petition, and where for some exceptional reason a ground has been omitted in earlier petition, in appropriate circumstances, the High Court might hear the second petition, on such a ground for ends of justice. It was authoritatively laid down in that case that merely because an argument was missed at the time of the hearing of the earlier petition in support of a ground, that would not justify the entertainment of the second petition. It appears to me that *prima facie* this petition was not maintainable. But in view of the liberty of the citizen being involved, I have heard the learned counsel on all possible points which he urged in support of the writ petition and have dealt with the same.

No other point was argued before me in this case. The writ petition, therefore, fails and is dismissed.

B.R.T.