agreed that they will abide by the bye-laws of the Stock Exchange. The particular bye-law will in that case operate as a separate arbitration agreement not linked with the contracts the legality whereof is challenged. The legality of those contracts will then fall to be determined by the arbitrators. I would like to refer to the statement of Bhagwan Das, who appeared as R.W. 1 and spoke about the existence of such an independent agreement. The passage from the trial Court's judgment shows that that statement has been accepted.

In these circumstances, I find no merit in the revision petition and the same is dismissed with no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and R. S. Narula, JJ.

NAND LAL,—*Petitioner*

versus

THE ESTATE OFFICER, CHANDIGARH AND OTHERS,—*Respondents*

Civil Writ No. 459 of 1965

August 3, 1966

Punjab New Capital (Periphery) Control Act, 1952 (Act I of 1953)—S. 12(2)—Whether valid—Order for demolition of building passed without affording reasonable opportunity to the owner to show-cause against demolition—Whether valid.

Held, that sub-section (2) of section 12 of the Punjab New Capital (Periphery) Control Act vests an unregulated power in the Deputy Commissioner to make an order of demolition and being clearly in violation of the constitutional protection enshrined in Article 19 must be struck down as *ultra vires.*

Held, that the order passed by the Deputy Commissioner for demolition of the building is vitiated on the grounds that no reasonable opportunity was afforded to the owner to show-cause against the demolition and there was a non-compliance of the requirements of sub-section (1) of section 4 of the Act.

Nand Lal *v.* The Estate Officer, Chandigarh, etc. (Shamsher Bahadur, J.)

Case referred by the Hon'ble Mr. Justice R. S. Narula, on the 26th October, 1965 to a larger Bench for decision of the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice R. S. Narula, on the 3rd August, 1966.

Petiton under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be isued quashing the order of respondents Nos. 1 and 2, dated 23rd December, 1964 and 29th January, 1965, and to declare The Punjab New Capital (Periphery) Control Act, 1953, ultra vires *as being in contravention of Articles 14, 19 and 31 of the Constitution of India.*

RAJINDER SACHAR AND R. K. CHHIBBER, ADVOCATES, for the Petitioner.

CHETAN DASS DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER OF THE DIVISION BENCH

SHAMSHER BAHADUR, J.—The five petitions, *Mukand Lal* v. *State of Punjab, Lakhi Ram* v. *State of Punjab, Bawa Bhagat Singh* v. *State of Punjab, Teja Singh* v. *State of Punjab, and Nand Lal* v. *The Estate Offcer,* numbered as Civil Writs Nos. 1075, 1076, 1085 and 1806 of 1964 and 459 of 1965, respectively, which are being disposed of by this judgment all raise the common question of law about the true construction and validity of sub-section (2) of section 12 of the Punjab New Capital (Periphery) Control Act, 1952, Punjab Act No. 1 of 1953 (hereinafter called the Act). The facts in these petitions which have been referred to the Division Bench by Narula J., are more or less identical and a common argument in these cases has been addressed by Mr. Rajinder Sachar. For the sake of convenience, it would be necessary to set out the facts only in *Nand Lal's* case which is Civil Writ No. 459 of 1965. It may be mentioned that *Ajit Singh* v. *State of Punjab,* Civil Writ No. 1799 of 1963, in which a separate judgment is being recorded, has also been heard along with these cases for the reason that it involves construction of sub-section (2) of section 12 of the Talwara Township (Periphery) Control Act, 1961, Punjab Act No. 34 of 1961, which is verbatim the same as similarly numbered provision of the Act.

Nand Lal, petitioner, purchased in 1960, a plot of land comprised in Khasra No. 320 in village Pinjore at a distance of about 8 miles from the periphery of Chandigarh, the Capital of the State of Punjab.

It is claimed by him that the construction of a house on this plot which was started in June, 1962, was completed by the end of July, 1962. A notice was received by the petitioner from the Estate Officer, Capital Project, on 11th of November, 1963, calling upon him to "demolish the house and put the land into its previous condition" in default of which the Estate Officer himself would have this job done and the petitioner would be liable for the expenses of demolition. It would be necessary for a proper understanding of the objections to the validity of this notice (Annexure A-1) as also of the reply and the subsequent correspondence to set out the relevant provisions of the Act.

Under sub-section (2) of section 1, the provisions of the Act extend to the area "adjacent to and within a distance of *ten* miles on all sides from the outer boundary of the land acquired for the capital of the State at Chandigarh." Before the amendment introduced by Punjab Act No. 28 of 1962, the boundary was fixed at five miles. Under sub-section (1) of section 3:—

> "The State Government may by notification in the official Gazete 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."

Before such a declaration is made under sub-section (1) of section 3, the State Government is enjoined to have it published in the Official Gazette and two newspapers at least three months before it proposes to make such a declaration. Section 4 deals with publication of plans of the controlled area and according to sub-section (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."

Sub-section (2) prescribes the form in which such plans are to be deposited. The restrictions in a controlled area are embodied in section 5 which says:—

> "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."

Section 6 deals with the procedure of making an application to the Deputy Commissioner, who may conduct such enquiry as he considers necessary before the grant or refusal of such permission. The other sub-sections of section 6 deal with the principles which should guide the Deputy Commissioner in dealing with such applications. An appeal from the order of the Deputy Commissioner is provided for in section 7, where the permission to build is given conditionally or refused altogether and an order in appeal passed by the Commissioner is final. Section 8 provides for compensation in cases where the Deputy Commissioner or the Commissioner has passed an order which has resulted in any injury, loss or damage to the claimant. Such compensation is to be fixed by an arbitrator, who is to be appointed by the State Government. Any land which falls within a controlled area shall not be used under sub-section (1) of section 11 except with the permission of the State Government "for purposes other than those for which it was used on the date of notification under sub-section (2) of section 3", and an absolute restriction is placed for the use of land in a controlled area "for the purposes of a charcoal-kiln, pottery-kiln lime-kiln or brick field or brick-kiln, except under, and in accordance with, the conditions of a licence from the Deputy Commissioner on payment of such fees and under such conditions as may be prescribed."

The impugned provision is embodied in section 12 which provides that—

"(1) Any person who—

(a) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions of section 5 or in contravention of any conditions imposed by an order under section 6 or section 7, or

(b) uses any land in contravention of the provisions of sub-section (1) of section 11; shall be punishable with fine which may extend to five hundred rupees and in

the case of a continuing contravention, with a further fine which may extend to fifty rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

(2) Without prejudice to the provisions of sub-section (1), the Deputy Commissioner may order any person, who has committed a breach of the provisions of the said sub-section to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravenion such as is described in the said sub-section has been committed, and if such a person fails to do so within six weeks of the order, may himself take such measures as may appear to him to be necessary to give effect to the order and the cost of such measures shall be recoverable from such person as an arrear of land revenue."

The notice of 11th of November, 1963, blamed the petitioner for contravention of the provisions of section 5 and section 11(1) of the Act, the house on Khasra No. 320 in controlled area having been built without written permission. In reply to this notice, the petitioner, a storekeeper in the cement factory at Surajpur and describing himself as a person of small means submitted in Annexure A. 2 that the felt obliged to build a small house for himself and this was constructed before the notification of 13th August, 1963. In a further communication the petitioner wrote to the Estate Officer on 21st of February, 1964, (Annexure A. 3) that he would be prepared to submit any application or evidence by way of documentary proof in support of what was stated in his reply. This was repeated in his communication seven months later on 23rd of September, 1964, embodied in Annexure A. 4. The petitioner kept on reiterating that he was in possession of documentary proof "that the house in question was built up before the enforcement of the Periphery Control Act" and requested that some date be fixed for production of oral and documentary evidence for this purpose. He asked to be afforded an opportunity before any final action was taken. On December 23, 1964, the petitioner enquired from the Estate Officer (Annexure A. 5) about the action that had been taken and in the concluding sentence stated that "in case any proof is needed, I may be given some date for its production." Eventualy, the petitioner was informed by the Naib Tahsildar, Capital Project, on 29th of January, 1965, that

"there can be no proceedings on your applications, dated 23rd September, 1964, and 23rd December, 1964, about the said house given in the office of the Estate Officer". The petitioner was informed that "the previous order of demolition of the house stands". In other words, the petitioner was told that there was no question of any proceedings or enquiry into the matter and he must accept what had been determined by the Estate Officer and carry out the demolition as required by sub-section (2) of section 12.

I need not linger over the pleas taken by the State of Punjab in its written statement as also in the petition which challenges the action of the Estate Officer and the vires of sub-section (2) of section 12 of the Act. It was asserted that the petitioner was found "engaged in an unauthorised construction of a house on 10th November, 1963, by Kanungo, Periphery". It was further pleaded, and this is not denied, that by notification of 16th of August, 1963, the area was extended to cover Pinjore village in the controlled area. It does not seem to be disputed that Pinjore, though it is within ten-miles limit, as laid down in Punjab Act No. 28 of 1962, is not covered by the original limit of five miles in the principal Act. The replies sent by the petitioner were admitted to have been received and indeed there is no scope of denial on this score in view of the letter of the Naib-Tahsildar (Annexure A. 6). With regard to the allegation made in the petition that the notification of 16th of August, 1963, was not followed by the publication of plans as required by sub-section (1) of section 4, it was vaguely pleaded that the plans as required under rules were duly deposited. It was asserted that the plan was prepared in February, 1963, at the time of issue of notification under section 3(1) of the Act and was "ultimately deposited after it had been duly checked under section 4(1) of the Act."

Mr. Sachar, the learned counsel for the petitioner, has contended that sub-section (2) of section 12 under which the impugned notice has been served in *ultra vires*, the powers given to the authorities being arbitrary, unfettered and capricious and no enquiry before the contemplated action being provided for. It is further contended by him that before a prohibition could be imposed for the erection or re-erection of a building in a controlled area, it is an essential prerequisite that the plan should be deposited under sub-section (1) of section 4. In his final submission, Mr. Sachar has urged that the procedure adopted by the Estate Office is in contravention of the

fundamental rule of natural justice inasmuch as the petitioner was peremptorily refused to be heard.

What is to be borne in mind in considering the first point raised by Mr. Sachar is that the area of Pinjore village was declared a controlled area on 16th of August, 1963. The petitioner claims to have completed the construction of the house before this date, and it was made known to the Estate Office that this was the objection of the petitioner. Plainly, if the house had been completed before the issue of the notification, the restriction imposed by section 5 of the Act could not bind the petitioner. In the written statement it is alleged that the construction made by the petitioner was noticed by Kanungo, Periphery, on 10th of November, 1963, after the notification had been issued. The petitioner was ready and indeed anxious to produce evidence to show that the construction had been completed before hte issue of notification. Mr. Dewan for the respondent has argued that the Estate Office must be presumed to have made an enquiry which is implicit in the discretion vested in the Deputy Commissioner, who may call upon the defaulter to carry out the demolition. Mr. Sachar has urged that sub-section (2) of section 12 does not on the face of it envisage an enquiry and the Deputy Commissioner's powers in substance and effect are un-controlled. The petitioner could have made himself liable to demolition only if he had been found guilty of erecting the building in the controlled area without the requisite permission. An application for permission is provided in section 6 and the Deputy Commissioner has to grant or refuse permission. This is plainly a quasi-judicial act and where an absolute power of grant and refusal of permission is given, an enquiry must be specially provided for. It is not possible to agree with Mr. Dewan's contention that the words" the Deputy Commissioner may order any person who has committed a breach of the provisions of sub-section (1)" contemplate or envisage by this functionary an enquiry into the matter. It is the ensuing suggestion of Mr. Dewan, that the Deputy Commissioner should be presumed to have made his enquiry, a suggestion which is not even pleaded for by the State and is wholly unsupported by any evidence. In any event, the person, who is to be punished for the default must be provided a reasonable opportunity of showing cause against this action. The words relied upon by Mr. Dewan cannot be spelled out to give an extended meaning to sub-setcion (2) of section 12 as contended for by him. A person has a vested right to property and cannot be deprived of it in the manner provided in sub-section (2) of section 12. In *Satish Chander*

and another v. *Delhi Improvement Trust, etc.* (1). Division Bench of Falshaw and Mehar Singh JJ., as they then were, held that the Government Premises (Eviction) Act, 1950, was *ultra vires* and void because its provisions tended to deprive a person of his property on the subjective satisfaction of the Competent Authority, who could decide such a question behind the back of the citizen without giving him an opportunity of vindicating his title. It was observed by Falshaw J., speaking for the Court, at page 626 thus:—

> "I consider, however, that there is more force in the view expressed in both the judgments that the powers given to the competent officer under the Act are so wide and capable of abuse and that the protections provided by the Act to the rights of any person affected by orders passed by the competent authority under sections to be enforced are so inadequate, that the provisions of the Act as a whole amount to interference with the fundamental right of a citizen under Article 19(1)(f) to hold property which is not saved by the provisions of clause (5) of the Article. The only right given to any person affected by such an order is contained in section 5 by way of appeal to the Central Government, which means to an officer appointed by the Central Government, in this behalf and it seems to me that the protection afforded by this so-called appeal is almost illusory."

We merely have to reflect on the powers given by sub-section (2) of section 12 in the setting of this case to see that the case of Mr. Sachar is much stronger than the one with which the Bench was dealing in *Satish Chander's* case. The petitioner when asked to demolish the building requested the authorities to provide him with an opportunity which was denied to him, and what is more, it was stated that there was no provision for such an opportunity. The language of the Act does not indicate that any such opportunity is contemplated. The discretion which is dependent on the subjective satisfaction of the Deputy Commissioner is thus an undisguised power which cannot be countenanced in face of the Constitutional guarantee of Article 19. A Division Bench consisting of Agarwala and Bhargava, JJ. of the Allahabad High Court in *Brigade Commander, Meerut Sub-area* v. *Ganga Prasad* (2) also reached the same conclusion about the

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(1) I.L.R. 1958 Punj. 195=1957 P.L.R. 621.
(2) A.I.R. 1956 All. 507.

Government Premises (Eviction) Act, 1950. Agarwala, J., speaking for the Court thus spoke at page 510:—

> "Under the impugned Act, however, we find that it has been left to the sweet discretion of the 'competent Authority' to determine firstly that the premises are Government premises and secondly that the occupation of the person in possession is unauthorised, or that he has sub-let without the permission of the Central Government the whole or part of the premises or otherwise acted in contravention of any other terms, express or implied, under which he was authorised to occupy the premises.....
>
> All that the competent authority has to do is subjectively to satisfy himself about these matters and then to issue a notice to the person concerned and if he does not vacate the premises within 15 days of the service of notice, to forcibly evict him without giving him a hearing at all as to his right to remain in occupation of the property. Such drastic provisions cannot by any stretch of imagination be called reasonable.....
>
> The result of all these provisions is that the title to the property of a person is to be decided according to the subjective satisfaction of a person who may have no qualifications to do so and without giving any opportunity to the person concerned for the vindication of his rights."

These rulings of the Punjab and the Allahabad High Courts which led to the eventual repeal of the impugned enactments in those cases apply with full force to the provisions of sub-section (2) of section 12 of the Act which clothes a Deputy Commissioner with an absolute power to determine on his subjective satisfaction that a person has contravened the provisions of the Act. It may be observed that in the amended Acts relating to requisition of public premises requisite provisions have now been made to remedy the defects pointed out in the afore-mentioned decisions.

The extenuation pleaded by Mr. Dewan, can at best mean that if in effect the authority which is vested with uncontrolled power actually moderates it by making some kind of enquiry for himself, the statute can be saved. Such an argument was pressed

before their Lordships of the Supreme Court in the *Collector of Customs, Madras* v. *Sampathu Chetty* (3), on the ground that some sort of administrative instructions had been issued by the Central Board of Revenue under which the Customs Officers should regulate their procedure before the goods are adjudged to be confiscated under the provisions of the Sea Customs Act. It was sought to be argued from this that the provision was a reasonable restriction within clause (6) of Article 19 of the Constitution. In dealing with this objection, Mr. Justice Ayyangar, adopted the reasoning of Lord Simonds in *Belfast Corporation* v. *O. D. Cars Ltd.* (4), at pp. 520-521, which is to this effect:—

> "It appears to me that the short answer to this contention (and I hope its shortness will not be regarded as disrespect) is that the validity of a measure is not to be determined by its application to particular cases ... If it is not so exercised (i.e. if the powers are abused) it is open to challenge and there is no need for express provision for its challenge in the statute."

In the words of Mr. Justice Ayyangar:—

> "The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as being unreasonable cannot be saved by its being administered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed."

It appears to us plain that sub-section (2) of section 12 vests an unregulated power in the Deputy Commissioner to make an order of demolition and being clearly in violation of the constitutional protection enshrined in Article 19 must be struck down as *ultra vires*.

As the vires of sub-section (2) of section 12 can be determined on the plain language of its provisions, it is unnecessary to examine

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(3) A.I.R. 1962 S.C. 316.
(4) 1960 A.C. 490.

the further argument of Mr. Sachar, that the same result should be reached on account of the discrimination involved in the two provisions relating to penalty in sub-sections (1) and (2) of section 12. Under sub-section (1), a contravention of section 5, 6, 7 or 11 would make the defaulter liable to fine which may extend up to Rs. 500. In other words, the impugned action could be dealt with in a criminal Court where presumably the defaulter would be treated as an accused person and every facility afforded to him to put his defence. Moreover, an erection or re-erection without previous permission of the Deputy Commissioner, of which the petitioner is also accused, would, if he is criminally prosecuted, result only in a maximum fine of Rs. 500. Why should he then under sub-section (2) be made liable for the much heavier punishment of having his house demolished without even being afforded an opportunity to say anything in his defence? It is not clear whether the penalties in sub-sections (1) and (2) are by way of alternatives and it may be that in that case it would be possible to justify the authorities concerned if they take different actions in different situations. By way of illustration, if a temporary construction has been built like a *jhugi*, the Deputy Commissioner may have it removed or demolished under sub-section (2) whereas in case of permanent structures involving considerable construction the imposition of fine may be found more suitable. The intention of the Legislature is far from clear and without going into the merits of this argument, we will be content to say so that sub-section (2) of section 12 has to be struck down merely because of the range and amplitude of the unfettered discretion vested in the Deputy Commissioner to make an order of demolition.

It seems that Mr. Sachar, is also right in his contention that the action contemplated by the Deputy Commissioner in demolishing the building of the petitioner stands vitiated as no opportunity was given to him to meet the case against him. The facts disclosed show that the petitioner showed himself ready and willing to produce the requisite evidence that his house had been constructed before the restrictions under section 5 could be imposed in Pinjore which was declared to fall within the controlled area in August, 1963. The counsel has relied on the Supreme Court decision of *Brajlal Manilal and Co.* v. *Union of India* (5), where the Central Government under the Mineral Concession Rules was called upon to review an order passed by the Madhya Pradesh Government rejecting the application for grant of renewal of a certificate of approval. Holding that the

(5)A.I.R. 1964 S. C. 1643.

nature of the jurisdiction exercised by the Union Government in disposing of an application of this nature was quasi-judicial, it was observed that the authority could not, therefore, pass an order without affording an opportunity to the aggrieved party to make his representation. As the order in review was passed without such opportunity, it stood vitiated according to the decision of the Supreme Court. The Deputy Commissioner in the instant case had to determine an objective fact namely the time of the construction of the house of the petitioner and it is inconceivable that the matter could be determined satisfactorily without even an examination of the evidence which the petitioner was protesting all the time should be seen. Before leaving this aspect of the argument, reference may be made to the Privy Council decision in *University of Ceylon* v. *E.F. W. Fernando* (6), on which reliance is placed by Mr. Dewan, the learned counsel for the State. Fernando, in that case, a student of the University of Ceylon, had been suspended indefinitely from all University examinations as it had been found that he had come to have prior knowledge of the content of a passage in the German language which had to be translated in one of the papers. A Commission of Inquiry was constituted of which the Vice-Chancelor was also a member. In holding the inquiry, the Commission went into the evidence and though some witnesses were not examined, it was held by the Board that this did not vitiate the inquiry on the ground that it was contrary to the principle of natural justice. The principle enunciated in this authority could hardly be of any assistance to the respondent in this case. The petitioner here had definitely asked for the production of evidence. No evidence was taken at all by the Deputy Commissioner either in the presence of the petitioner or even in his absence. When no enquiry was at all held and indeed when none is contemplated in sub-section (2) of section 12, how could it conceivably be argued that a mere failure to accept the documents which the petitioner was willing to tender was a circumstance which did not vitiate the enquiry?

There then remains the final argument of Mr. Sachar, that the petitioner in any event could not have been asked to desist from constructing a house on the site which he had purchased on account of the non-compliance of the provisions of sub-section (1) of section 4 of the Act. The notification was issued on 16th of August, 1963, in pursuance of section 3 of the Act. The Deputy Commissioner is

(6) (1960) 1 W.L.R. 223.

required under sub-section (1) of section 4 to deposit within three months of the declaration plans showing the area declared to be controlled area for the purposes of this Act. An allegation has been made in sub-paragraph (1) of paragraph 12 of the petition that no such plans were ever filed. The answer of the State Government is somewhat evasive, being to this effect:—

> "The plan as required under rules was duly deposited. The plan was prepared in February, 1963 at the time of issue of notification under section 3(1) of the Act and was ultimately deposited after it had been duly checked under section 4(1) of the Act."

The notification having been published in August, 1963, there was no occasion for the preparation or deposit of plan in February, 1963. No such plan has been produced and what appears to be in contemplation is a draft of the plan which may have been prepared by the office before the intended notification. This is not a sufficient compliance of the requirement of sub-section (1) of section 4. The Legislature obviously intended that the persons living or coming to live in a controlled area should know precisely the limits of this area and these should be accurately delineated in the plans which have to be deposited for this purpose at the office of the Deputy Commissioner and such other place as he considers necessary. There has been no assertion on behalf of the State that such plans were deposited in the office of the Deputy Commissioner. The allegations of the petitioner, therefore, have to be accepted.

In the result, we hold that the action taken by the Deputy Commissioner is vitiated also on the grounds that no reasonable opportunity was afforded to the petitioner and there was a non-compliance of the requirements of sub-section (1) of section 4 of the Act.

In the result, these petitions are allowed with costs. Sub-section (2) of section 12 of the Punjab New Capital (Periphery) Control Act, 1952, is declared *ultra vires* and the action taken by the Deputy Commissioner stands vitiated.

R. S. NARULA, J.—I agree.

B.R.T.