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and we would, accordingly, dismiss this appeal with costs.

B.R.T.

CIVIL MISCELLANEOUS.

Before D. Falshaw and Gurdev Singh JJ.

HARI KISHEN DASS AND ANOTHER,—*Petitioners.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 1119 of 1960.

Public Premises (Eviction of Unauthorised Occupants) Act (XXXII of 1958)—Provisions of—Whether offend against the principles of articles 19 and 14 of the Constitution.

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Sept.' 8th.

Held, that the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, do not offend the provisions of article 19(1)(f) of the Constitution nor does any question under article 14 arise. The Act provides for a full-dress inquiry (S. 8) and a regular hearing of an appeal by an experienced judicial officer (S. 9). Even if a question of disputed title arises out of the issue of a notice under section 4 by an estate officer, the affected person has every opportunity to present his case and the dispute can be properly adjudicated on before any final action is taken under section 5 of the Act.

Petition under article 226 of the Constitution of India praying that a writ of certiorari be issued quashing the order of the Military Estate Officer, Delhi Circle, Delhi Cantonment, dated the 18th May, 1960.

B. S. CHAWLA, ADVOCATE, *for the Petitioners.*

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL.

K. S. CHAWLA, ADVOCATE, *for respondent No. 3.*

ORDER

Falshaw, J.

FALSHAW, J.—This is a petition under article 226 of the Constitution filed by Hari Kishan Dass and Smt. Shila Devi challenging notices issued under sections 4(1) and 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act (Central Act No. 32 of 1958).

The first of these notices was issued on the 26th of November, 1959, by the Military Estates Officer, Delhi Circle, to Messrs Mussadi Lal-Hari Kishan Dass, Mussadi Lal Garden, Ambala Cantonment, stating that he was of the opinion that they were in unauthorised occupation of 119 square feet of public land on which they had encroached, and calling on them to show cause on or before the 10th of December, 1959, why they should not be evicted.

It appears that no steps were taken by anybody to show cause in response to this notice and the Military Estates Officer issued the second notice under section 5(1) of the Act on the 18th of May, 1960, ordering Messrs Mussaddi Lal-Hari Kishen Dass and all persons who might be in occupation of the encroached land to vacate it within forty-five days, failing which they will be liable to be evicted, by force if necessary. The present petition challenging the validity of these notices was filed on the 27th of June, 1960.

The petitioners' case is that they are managers of an institution called "Dharamsala Mussadi Lal" which owns the garden known as "Mussadi Lal Gardens" and it was denied that there had been any encroachment on Government land. It was alleged that Hari Kishan Dass had not taken any action on the first notice under section 4, as it did not concern him in his personal capacity, and Mussadi Lal had died more than twelve years before, and the notice was alleged to be illegal on the

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ground that it was not served on the proper persons, namely the managers of the *dharamsala*. It was also objected that the notices were illegal as they had been issued by a person who had no local jurisdiction in the land in dispute, but this point has not been raised before us. Finally the validity of the Act as a whole was challenged on the ground that it offended against the principles of articles 19 and 14 of the Constitution.

As regards the first point, it is clear that the notices reached Hari Kishan Dass, who has in fact appended them, together with the plan which accompanied the original notice, along with the petition, and it appears to me a mere quibble that he did not think it necessary to take any steps by way of showing cause against the eviction on the ground that the notice did not concern him in his personal capacity. As a matter of fact it is pointed out in the written statement filed by the Military Estates Officer that when a similar notice was served under the corresponding section of the Government Premises (Eviction) Act of 1950 (Central Act No. 27 of 1950) in the year 1955, an appeal against the order of the competent authority was filed under section 5 of the Act and a copy of the memorandum of appeal has been appended to the written statement which shows that it was filed on the 4th of March, 1955, by Hari Kishan Dass for Mussadi Lal-Hari Kishan Dass, owners of Mussadi Lal Garden, Ambala Cantonment. In the circumstances I cannot see anything wrong with the issuing of the impugned notices in the name of Messrs Mussadi Lal-Hari Kishan Dass.

In attacking the Act as a whole as offending principles of the Constitution, the learned counsel for the petitioners naturally relied mainly on the fact that the earlier Act of 1950, which was

repealed by the present Act, was declared to be *ultra vires* by this High Court as well as by the High Courts of Calcutta and Allahabad. The decision of this Court, *Satish Chander and another* v. *Delhi Improvement Trust, etc.* (1), was the last of these decisions in point of time and the judgments of the Calcutta and Allahabad Courts have been discussed therein. It appears that the Act was held to be *ultra vires* by the Allahabad High Court on the ground that it offended the provisions of article 14, whereas the Act was held to be bad by the Calcutta High Court because it offended the principles of article 19(1)(f) of the Constitution. The case which came to this Court was on a reference from a Subordinate Judge, under section 113, Civil Procedure Code, and it was heard by Mehar Singh, J., and myself. We disagreed with the view of the Allahabad High Court that the Act offended the provisions of article 14 of the Constitution, and while agreeing with the learned Judges of the Calcutta High Court that the Act offended the principles of article 19(1)(f) we did so on somewhat different grounds. The chief reason is contained in the following passage :—

> "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 persons 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

(1) 59 P.L.R. 621.

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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. The section gives no right to the person affected to be heard by the appellate authority, and on this point it is also to be borne in mind that in the first instance the competent officer is empowered to issue orders under sections 3 and 4 on being satisfied that certain conditions exist, and there is no provision in these sections for the issuing of any preliminary notice to show cause to the person affected, who thus at no stage has any right to be heard in his defence. According to section 5 all that the appellate authority has to do is to call for a report from the competent authority, who may naturally be expected to state the case as he himself sees it, and to justify his order and who is not likely to mention any fact which the person affected by the order may have to set up in his defence, and then the appellate authority, if it thinks necessary, may hold some further inquiry, but it may not do so. It is obvious that any report submitted by the competent officer to justify his orders is hardly likely to contain any grounds which suggest the necessity of any further inquiry. Finally, in order to bar any loophole by which the person affected by the order

might escape, the Legislature has expressly taken away the powers of civil Courts to entertain any actions challenging any orders passed under the Act or to issue any injunctions.

"It seems to me that the Act as a whole might not be so bad if it were only to be applied to the sort of cases for which, to judge by the passage from the statement of objects and reasons set out above, it seems to have been intended, and if competent officers were only to pass orders under sections 3 and 4 in clear cases of wrongful occupation of premises either owned or requisitioned or leased by the Government for allotment for residential purposes to Government servants by virtue of their occupation. The ordinary way of getting rid of persons in wrongful or unauthorised occupation of premises, or persons who have contravened the terms of their leases by subletting or otherwise, is by proceedings for their ejectment under the ordinary law, which, generally speaking, at any rate in urban areas, means proceedings under the local Rent Restriction Act. In most of such Acts there is already a provision excluding premises which are allotted or leased to employees by their employers as a direct consequence or condition of their employment. Thus the use of an Act allowing Government to adopt summary methods for the eviction of persons in wrongful occupation of Government residential premises might appear to be legitimate.

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"The trouble, however, is that the Act is capable of widest possible employment in matters of a wholly different nature to the cases mentioned above. For instance, in the Calcutta case the Act was invoked to get rid of certain hawkers who were alleged to have wrongfully occupied the pavements of the ground floor of office premises leased by the Government, whereas apparently, according to the judgment the hawkers in question had been paying rent for a long period of years. Moreover the suit from which this reference has arisen is of a different kind from that originally contemplated by the Act if the statement of objects and reasons is correct, since the powers conferred by the Act on the competent officer are being used in this case to terminate an agreement conferring leasehold rights for 90 years for the purpose of building shops, and obviously a person whose leasehold rights are terminated in this way is entitled to more of a hearing than he can possibly get under the provisions of the Act. The question whether the cancellation of the leasehold rights in question is justified is one which requires to be fully thrashed out which obviously can properly be done in a regular trial in a Civil Court."

There is no doubt that the Act of 1958 was brought in because the earlier Act had been held to be unconstitutional by the Courts, and in fact the statement of objects and reasons shows that the Act was intended to provide for "the eviction of persons who are in unauthorised occupation of

public premises keeping in view at the same time the necessity of complying with the provisions of the Constitution," and in my opinion the most objectionable features of the earlier Act, which furnished the main reason for our holding it to be bad, have now been removed. As was pointed out in the earlier case, the procedure was simply that a notice to quit was issued by a competent officer and against that the person affected had a right of appeal to the Central Government, which meant an officer appointed by the Central Government who need not even hear what the appellant had to say. Now section 4 provides for the issue of a show-cause notice, which gives the person affected a right to appear and state his case before the estate officer who has been substituted for the "competent officer". Further provisions of the Act make it clear that, if necessary, a full dress inquiry is contemplated, since section 8 provides that—

> "8. An estate officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil Court under the Code of Civil Produre, 1908, when trying a suit, in respect of the following matters, namely :—
>
> (a) summoning and enforcing the attendance of any person and examining him on oath;
>
> (b) requiring the discovery and production of domuments;
>
> (c) any other matter which may be prescribed."

It is thus clear that in the present case if the peitioners claimed that they owned the land on

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which the encroachment was alleged to have taken place, whether in their individual capacity or as managers of the *dharamsala,* it was open to them to prove their claim by production of evidence. Moreover the right of appeal conferred by the new Act is much more comprehensive and satisfactory than that in the old Act. Section 9 deals with appeals and sub-section (1) provides that—

> "9(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in this behalf."

Sub-section (2) deals with limitation and sub-section (3) provides that—

> "9(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit."

Sub-section (4) provides that—

> "9(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible."

This clearly envisages a regular hearing of an appeal by an experienced judicial officer. It is thus clear that even if a question of disputed title arises out of the issue of a notice under setcion 4

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by an estate officer, the affected person has every opportunity to present his case and the dispute can be properly adjudicated on before any final action is taken under section 5 of the Act. In these circumstances I am of the opinion that the provisions of the Act of 1958 do not offend the provisions of article 19(1)(f) of the Constitution, and I do not see how any question under article 14 arises. The result is that I would dismiss the petition with costs. Counsel's fee Rs. 50.

Gurdev Singh, J.

GURDEV SINGH, J.—I agree.

B.R.T.

REVISIONAL CIVIL.

Before Inder Dev Dua, J.

DHANJI RAM SHARMA,—*Petitioner.*

versus

UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Revision No. 263-D of 1959.

1960 — Sept.' 8th.

Payment of Wages Act (IV of 1936)—S. 15—House allowance and city allowance—Whether can be granted by the Authority under the Act—Employee suspended from service—Suspension held illegal and ultra vires *and employee re-instated—Whether entitled to the payment of house allowance and city allowance for the period of suspension.*

Held, that where an employee is in receipt of house allowance and city allowance before his suspension and after his re-instatement, he is entitled to receive these allowances for the period of his suspension and the Authority under the Payment of Wages Act, 1936. has the jurisdiction to grant them to the employee under section 15(2) of the said Act.

Divisional Engineer, G.I.P., Railway v. *Mahadeo Raghoo and another* (1) relied on.

(1) A.I.R. 1955, S.C; 295