Government under sub-section (5) of section 111 and the Court under section 155. Since section 155 does not purport to confer overriding powers on the Court, it should be held that the two sections provide alternative remedies. In that sense, the case relied upon by Mr. Aswsthy does help him.

Arjan Singh and others
v.
The Panipat Woollen & General Mills Company Limited and others

Capoor, J.

For the reasons given above, I answer issue No. 2 in the negative and as a result the petition is dismissed. As the legal question was one of first impression, I make no order as to costs.

B.R.T.

FULL BENCH

Before D. Falshaw, C.J., Tek Chand and Harbans Singh, JJ.

THE NORTHERN INDIA CATERERS PRIVATE LTD.

AND ANOTHER,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 16 of 1960

1963

Jan., 22nd.

Punjab Public Premises and Land (Eviction and Rent Recovery) Act (XXXI of 1959)—Whether contravenes Articles 14 and 19(1) (f) of the Constitution—Constitution of India (1950)—Article 14—Class legislation—When permissible—Purpose and policy of the special Act—Whether afford clue to classification—Tenancy at sufferance—What amounts to—How to be determined—Rights of tenant at sufferance—Whether safeguarded by the Constitution—Act XXXI of 1959—S. 4(2) (b)—"Not earlier than ten days"—Whether means ten clear days' notice.

Held, that the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, is *intra vires* the Constitution of the India and does not contravene Articles 14 and 19(1) (f) of the Constitution. The line of demarcation between public premises and private premises is distinct and the segregation has for its basis a reasonable differentia; and on this ground the Act cannot be impugned

as violative of the provisions of Article 14. Nor can the Act be impugned on the ground that it discriminates between lessees of public premises *inter se*. The Act covers the whole subject-matter of law relating to eviction of tenants from public premises. It could not be the intention of the Legislature to permit the general law and the special law to co-exist in view of the inconsistency and repugnancy between the two which is both manifest and irreconcilable. A closer scrutiny leaves no room for doubt that the new law was intended to replace the old and not to supplement it.

Held, that class legislation is not prohibited if within its ambit it uniformly affects persons in similar situations. So long as there is equality under similar conditions and among persons similarly situated, there is no infringement of Article 14. Persons within the same class are subject to similar obligations and privileges in like circumstances. Such persons are on equal footing and law which makes a discrimination between them will certainly infringe Article 14. It cannot be said that tenants of public premises and those of private premises do not form separate classes. The distinction is rational rather than arbitrary and the lessors of public premises can reasonably form a class apart from private persons leasing out their land and premises.

Held, that the purpose and policy of the special Act is to be seen in order to find out whether it furnishes a clue for the classification. The object of the framers of this Act was "to keep all Government-owned lands whether put to agricultural or non-agricultural use free from all encroachers and unlawful possessions". The Government as a class has a special interest in the public premises which are scattered all over the State and which should be free from unauthorised encroachments whether they be owned by the Government or belong to specified public bodies, like District Boards, Municipal Committees, Notified Area Committees or Panchayats. The State has a particular interest in seeing that the dues are regularly received in the public exchequer and unauthorised occupants do not retain possession after the expiry of the lease. A law which provides for eviction of unauthorised occupants and for the recovery of rent or damages in respect of public premises as arrears of land revenue operates in respect of

a distinct class which has a special and distinct interest. The difference warranting a classification is real and substantial and bears just and reasonable relation to the object of the legislation.

Held, that a tenancy at sufferance arises where a tenant, having entered under a valid tenancy, holds over without the landlord's assent or despite his dissents Though it is styled as tenancy, but is suffers from absence of privity as between the parties and does not create the relationship of landlord and tenant. A tenant at sufferance is liable to be ejected by the landlord. A tenancy at sufferance is determined whenever a landlord may choose to enter without notice or demand to quit. It is true that the law in India does not allow a landlord to evict the tenant otherwise than in due course of law. Even on the assumption, that a right of a tenant at sufferance not to be evicted except in accordance with law, may be termed as property right, or more appropriately, a right in property, it does not follow, that it is such a right the protection of which has been safeguarded by the Constitution.

Held, that the provisions of Article 19(1) (f) of the Constitution have not been violated by the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. It cannot be said that having regard to the circumstances which had led to the enactment of this law, the requirement for the vacation of the premises by eviction of unauthorised occupants in the manner prescribed amounts to an imposition of an unreasonable restriction.

Held, that the phrase "not earlier than ten days from the date of issue thereof" in section 4(2) (b) of the Act means that there must be an interval of ten clear days between the date of the issue of the notice and the date fixed for hearing by excluding both these dates.

Case referred by Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice K. L. Gosain to a larger Bench on 12th May, 1961, owing to the importance of the questions of law involved in the case. The case was finally decided by a Full Bench consisting of the Hon'ble Chief Justice, Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice Harbans Singh on 22nd January, 1963.

Petition under article 226 of the Constitution of India praying that a writ of mandamus or any other appropriate writ, direction or order be issued quashing the notice of 1st January, 1960.

C. B. AGGARWAL AND RAJINDAR SACHAR, ADVOCATES, for the Petitioners.

S. M. SIKRI, ADVOCATE-GENERAL AND H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, AND S. S. SODHI, ADVOCATE, for the Respondents.

ORDER

Tek Chand, J.

TEK CHAND, J.—The main question which the Full Bench is required to decide is whether the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959) contravene Articles 14 and 19(1)(f) of the Constitution. The facts of the case may be briefly narrated.

The State of Punjab, after verbal settlement of the terms, agreed to lease its property known as the Mount View Hotel, Chandigarh, comprising of the main building and other appertaining building including kitchen, pantries, stores, garages, lanes, etc., to the first petitioner, the Northern India Caterers (Private) Ltd. The rent was fixed at Rs. 72,000 per year, but later on reduced to Rs. 50,000 per year. The possession was delivered to the petitioners on 24th September, 1953, and it is from this date that the lease became operative. No deed of lease was drawn up or executed till 21st May, 1959. According to the terms of the deed of sale, the petitioners were entitled to remain in occupation of the premises for six years commencing from 24th September, 1953, the date of petitioners' entry on the premises. The petitioners maintained that they had made an initial investment of over Rs. 1,50,000 in equipping the Hotel with cutlery, crockery, glassware, utensils, linen, etc. According to the petitioners' contention, an option was given to them

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and and others

Tek Chand, J.

though it was not reduced to writing, to extend the lease to them for another period of six years. This contention of the petitioners has been denied by the State of Punjab, who maintained that the date of expiration of the lease was 24th September, 1959, without any writing having been given to the petitioners to extend the period. According to the Punjab State, the petitioners were given an option to purchase the premises on payment of Rs. 12,00,000 and this was communicated to them on 27th August, 1959 (*vide* annexure vii). In order to enable the petitioners to make up their mind, the Estate Officer, Capital Project, respondent No. 2, was intimated by the Government to extend the period of the lease from the date of expiration on 24th Sptember, 1959, to 31st December, 1959. The offer made to the petitioners to purchase the premises on payment of Rs. 12,00,000 remained open for acceptance up to 15th October, 1959. The petitioners were required to vacate the building before the morning of 1st January, 1960. On 6th November, 1959, the petitioners were informed that the offer which the Government had made to them for purchasing the premises for Rs. 12,000,000 stood withdrawn and that the premises be vacated by 31st December, 1959, and the arrears due to the Government may be cleared by that date (*vide* annexure ix). The second petitioner, who is the chairman of the board of directors of the Northern India Caterers (Private) Limited, addressed a letter to Shri B. B. Vohra, Secretary to Government Punjab, Capital Project, Chandigarh, stating that the price of the Mount View Hotel according to his estimate ought not to exceed Rs. 7,57,483 and there was no basis for demanding Rs. 12,00,000. The Secretary to Government, Punjab, Capital Project, wrote back to say that the premises must be vacated by 31st December, 1959, and that the petitioners' occupation after that date

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and others

Tek Chand, J.

would be deemed illegal and unauthorised (*vide* annexure xii). As the parties have not been *ad idem* on the question of option to extend the lease, this petition has been argued on the basis that the lease had expired on 31st December, 1959, and that the first petitioner has continued in possession as a tenant holding over.

On 1st January, 1960, the Estate Officer and Collector, Capital Project, Chandigarh, respondent No. 2, served the second petitioner with a notice alleging that the occupation of the premises had become unauthorised after 31st December, 1959, and the petitioners were, therefore, required under section 4 of Punjab Act 31 of 1959 to show cause on or before 11th day of January, 1960, as to why an order of eviction from the public premises in question be not made against the petitioners.

No cause was shown as the writ petition was filed on 7th January, 1960, and an order staying eviction *ad interim* was made by this Court. The petitioners have continued to remain in possession of the premises uptil now by virtue of that order. It was stated in the writ petition that the notice issued in question had been issued for the collateral purpose of coercing the petitioners into purchasing the premises at the excessive price of Rs. 12,00,000. It was also said that Punjab Act 31 of 1959 had infringed the petitioners' fundamental right under Article 14 of the Constitution in so far as the Act was discriminatory. The Act also infringed the provisions of Article 19(1)(f) and (g) of the Constitution imposing unreasonable restrictions on the petitioners' right to hold property and to carry on business. It was maintained that the second respondent had no authority to decide the constitutionality of Punjab Act 31 of 1959 and that there was patent lack of jurisdiction in him to proceed further in the matter.

On the other hand, it was contended on behalf of the State of Punjab that on the expiration of the lease, it could take a decision to sell the building for Rs. 12,00,000 which in its view represented fair price. The violation of fundamental rights of the petitioners, as alleged, was denied. The impugned Act, it was asserted, was valid and *intra vires* the Constitution.

Before considering the arguments addressed at the bar, a resume of the impugned Act may be given.

The Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959) was published in the official gazette on August 10, 1959. It is an Act to "provide for the eviction of unauthorised occupants from public premises and for certain incidental matters". The objects and reasons which led to the passing of the Act are as under—

> "There is no provision in the Land Revenue Act or in any other Act providing for the summary removal of unauthorised encroachments on or occupation of Government and Nazul properties including agricultural lands and residential buildings and sites; and for recovery of rent. The only procedure laid down for the purpose is to sue the party concerned in a civil Court which is a very cumbersome procedure and often involves considerable delay. To keep all Government owned lands whether put to agricultural or non-agricultural use, free from all encroachers and unlawful possessions, it is necessary to provide speedy machinery for this purpose. Hence this Bill."

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and others

Tek Chand, J.

The word "Collector" is defined in section 2(a) to mean the Collector of the district, and includes any other officer appointed by the State Government for performing the functions of the Collector under this Act. The definition of "public premises" is wide so as to include premises belonging to or taken on lease or requisitioned by the State or by any other competent authority.

The relevant portion of section 3 runs as under—

> "3. Unauthorised occupation of public premises.—For purposes of this Act a person shall be deemed to be in unauthorised occupation of any public premises—
>
> (a) * * * * *
>
> (b) where he, being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises;
>
> (c) * * * * *."

Section 4 deals with the procedure and manner of issuing notice to show cause against order of eviction. The relevant part of the section is reproduced below:—

> "4. Issue of notice to show cause against order of eviction.—(1) If the Collector is of opinion that any persons are in unauthorised occupation of any public premises situate within his jurisdiction and that they should be evicted, the Collector shall issue in the manner hereinafter provided a notice in writing calling

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and others

Tek Chand, J.

upon all persons concerned, to show cause why an order of eviction should not be made.

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons, who are, or may be, in occupation of, or claim interest in, the public premises, to show cause, if any against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

* * * * *."

Section 5 deals with eviction of unauthorised persons and sub-section (1) provides that if after considering the cause, if any, shown by any persons in pursuance of a notice under section 4 and any evidence he may produce in support of the same, and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorised occupation, the Collector may make an order of eviction giving reasons.

Section 6 allows the Collector to dispose of the property left on public premises by unauthorised occupants.

Section 7 empowers the Collector to recover rent in arrears and assess and recover damages in respect of public premises as arrears of land revenue.

Section 9 relates to appeal from the order of Collector passed under section 5 or section 7 which lies to the Commissioner.

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and others

Tek Chand, J.

Section 10 confers finality to every order made by the Collector or the Commissioner under the Act and such an order cannot be called in question in any original suit, application, or execution proceedings.

Under Section 12, the rule-making power is conferred upon the State Government. The Government of Punjab in the exercise of the above powers has made the Punjab Public Premises and Land (Eviction and Rent Recovery) Rules, 1959,—*vide* notification No. 10651-JN-(IV)-59/10629, dated 24th November, 1959. It is not necessary to give any detailed reference to the Rules as nothing hinges on their intepretation.

I may now deal with the arguments addressed to us. The first contention of Mr. C.B. Aggarwala, who argued the case of the petitioners is that the provisions of Punjab Act 31 of 1959 contravene Article 14 of the Constitution in two ways: firstly, they discriminate between the occupants of public premises *inter se*, and secondly, there is a discrimination between occupants of public premises on the one hand and those of private property on the other and the ordinary rights and obligations as between landlords and tenants are curtailed in respect of occupants of public premises and a tenant of the public premises is singled out in so far as he has been subjected to disabilities which are not suffered by a tenant of a private landlord. The restrictions placed by the Act were said to be unreasonable and the principles of natural justice were infringed.

Mr. S. M. Sikri, Advocate-General, in reply maintained that it is a case of reasonable classification, the basis being the public premises to which this Act applies and the private premises which are governed by the ordinary law.

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and others

Tek Chand, J.

Class legislation is not prohibited if within its ambit it uniformly affects persons in similar situations. So long as there is equality under similar conditions and among persons similarly situated, there is no infringement of Article 14. Persons within the same class are subject to similar obligations and privileges in like circumstances. Such persons are on equal footing and law which makes a discrimination between them will certainly infringe Article 14. It cannot be said that tenants of public premises and those of private premises do not form separate classes. The distinction is rational rather than arbitrary and the lessors of public premises can reasonably form a class apart from private persons leasing out their land. In *State of West Bengal* v. *Anwar Ali,* (1) Dass J., observed—

> "Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the clasification and the object of the Act are distinct things and

(1) 1952 S.C.R. 284 (334).

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and others

Tek Chand, J.

what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained."

The purpose and policy of the special Act is to be seen in order to find out whether it furnishes a clue for the classification. In this case, the object of the framers was "to keep all Government-owned lands whether put to agricultural or non-agricultural use, free from all encroachers and unlawful possessions". The Government as a class has a special interest in the public premises which are scattered all over the State and which should be free from unauthorised encroachments whether they be owned by the Government or belong to specified public bodies, like District Boards, Municipal Committees, Notified Area Committees or Panchayats. The State has a particular interest in seeing that the dues are regularly received in the public exchequer and the unauthorised occupants do not retain possession after the expiry of the lease. A law which provides for eviction of unauthorised occupants and for the recovery of rent or damages in respect of public premises as distinct class which has a special and distinct arrears of land revenue operates in respect of a interest. The difference warranting a classification is real and substantial and bears just and reasonable relation to the object of the legislation

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and others

Tek Chand, J.

in accordance with the test laid down by the Supreme Court in several decisions, *inter alia,—vide Vuburao Shantaram More* v. *The Bombay Housing Board,* (2), *Ameerunnissa Begum* v. *Mahboob Begum,* (3), and *Suraj Mal* v. *Biswa Nath,* (4). The case of Ameerunnissa Begum furnishes an instance where the Act was discriminatory and there was no rational or reasonable basis for the discrimination and, therefore, contravened the provisions of Aticle 14. In a recent unreported decision of the Supreme Court, in *Lachhman Dass* v. *the State of Punjab,* etc., petitions Nos. 92 and 128 of 1959, decided on 23rd April, 1962 [since reported (5). Editor.], the Patiala State Bank had taken steps to realise the sums owed by the appellants in accordance with the provisions of the Patiala Recovery of State Dues Act and the Rules framed thereunder. It was provided by the Act that "State dues" included debts due to the Patiala State Bank. Section 5 enacted that dues to the Patiala State Bank, being State dues, were recoverable from the defaulter as arrears of land revenue. The question raised was that the provisions of the Act had become void on the coming into force of the Constitution as they were repugnant to Article 14 and Article 19(1)(f) and (g) of the Constitution. On behalf of the respondents, the contention was that the Patiala State Bank formed a category in itself, distinct from other banks established by private agencies in which the working capital was subscribed by individuals. The Supreme Court held that the Patiala State Bank was a class by itself and it was within the power of the State to enact a law with respect to it. The Supreme Court expressed the view that the differentia between the Patiala State Bank and

(2) 1954 S.C.R. 572 (577).
(3) 1953 S.C.R. 404.
(4) A.I.R. 1954 S.C. 545 (552).
(5) A.I.R. 1963 S.C. 222.

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and others

Tek Chand, J.

other banks had a rational bearing on the object of the legislation. The observations of the Supreme Court in the case of *Manna Lal* v. *Collector of Jhalawar*, (6) were cited with approval. They were to the effect that the Government even as a banker can be legitimately put in a separate class as the dues of the Government of a State are the dues as the dues of the entire people of the State and, therefore, a law giving special facility for the recovery of such dues cannot be said to offend against Art. 14 of the Constitution.

The line of demarcation between public premises and private premises, in the present case, is distinct and the segregation has for its basis a reasonable differentia; and on this ground the Act cannot be impugned as violative of the provisions of Article 14.

The other ground of inequality which allegedly transgresses Article 14 is that there is a choice of procedure and there is no guidance for discrimination between the two procedures particularly when one procedure is very drastic. It is contended that there should be no distinction between occupiers of public premises *inter se*. Two procedures, one under the ordinary law for eviction of tenants holding over and the other under the impugned Act which is more drastic in its consequences, are permitted to co-exist and are equally applicable indiscriminately. When one procedure is less advantageous, a discrimination is created when the Government resorts to one procedure in the case of one occupant of public premises and the other in the case of different persons, though similarly situated. The present state, according to the learned counsel, enables the Government to pick and choose and to single out a particular tenant for being proceeded against under the new Act and

(6) A.I.R. 1961 S.C. 828.

another under the ordinary law. In so far as Act 31 of 1959 is enabling, it does not take away the powers of the Government under the ordinary law. In other words, the new Act supplements the existing law and does not replace it. Leaving to the Government the choice of procedure without any principles or policy to guide it, in the manner of choice, is in the nature of infraction of the fundamental right under Article 14. It was said that the special Act is neither an emergency measure nor is it a temporary statute.

After giving my careful consideration, I am of the view that this Act cannot be impugned on the second ground, that it discriminates between lessees of public premises *inter se*. If the special Act was supplemental and not substitutive, the contention raised might deserve closer scrutiny and sympathetic consideration. No question of unguided or indiscriminate picking and choosing for visiting a party with the dire consequences of this Act arises if the Act replaces the existing law and is made exclusive in its operation in respect of matters within its purview. If the special Act replaces the existing provisions, even for a limited purpose, the ordinary law would cease to govern *pro tanto*. There is nothing in the provisions of the Act itself which makes it substitutive, but from the preamble and objects of the new Act, and, from its construction it can be gathered whether the new law is intended as a substitute for the old. The question, in a case like the present, is to determine what the legislative intention is: whether the ordinary provisions have ceased or whether the new provisions have supplemented the old. Whether a statute has been repealed by implication either in part or in entirety depends upon the intent of the Legislature; and it is for the Courts to ascertain the legislative intent. Ordinarily, the Courts are reluctant to construe in

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and another

Tek Chand, J.

favour of an implied repeal, unless such an intention is clear, and admits of no ambiguity, and is fres from any reasonable doubt. Courts do not favour repeal by implication and usually lean against such repeal if it is possible to reconcile the co-existence of the two Acts. Moreover, in order to construe repeal by implication, the mere presence of discrepancy, a conflict, or repugnancy between different acts, on the same specific subject, will not suffice for construing repeal. The provisions contained in two enactments should be irreconcilable. But where a latter statute purports to cover the entire subject, it is deemed to repeal the previous Acts on the same subject even without a repealing clause. The basic rule is that the general legislation must give way to special legislation on the same subject, though a subsequent general legislation is not treated as repealing an earlier special legislation.

In this case, Punjab Act 31 of 1959 covers the whole subject-matter of law relating to eviction of tenants from public premises. It could not be the intention of the Legislature to permit the general law and the special law to co-exist. There is repugnancy regarding eviction and it is not possible to harmonise the two, as both cannot be extant simultaneously. From the fact that the latter statute covers the whole subject-matter, it is legitimate to conclude that the former law was not intended to subsist side by side with the latter. Not only the preamble but also the provisions of Punjab Act 31 of 1959 lend themselves to the deduction that this Act was intended by way of a substitute for the law relating to the same subject as it had prevailed earlier. The object of Punjab Act 31 of 1959 was to discard the cumbersome procedure often involving considerable delay by suing the party concerned in a civil Court. The intention was to provide a speedy machinery to keep public premises free from encroachments and unlawful

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and another

Tek Chand, J.

possession. In so far as the general law stands in the way of the realisation of the objective of this Act, it stands replaced. It is a matter of no significance that the subsequent statute contains no express words of repeal as the latter Act by itself is tantamount to a legislative declaration that, whatever it embraces, that prevails, and whatever it omits that is discarded. It is then said that the procedure under the special Act is far more drastic than under the ordinary procedure. This submission itself shows the existence of a repugnancy and this also militates against co-existence of the two laws. Our attention was drawn to several statutes containing provisions in express terms that the general law or the general procedure was abrogated. Those were cases of express repeal. So long as repeal by implication is known to law, it does not advance the argument of the petitioners that in a large number of cases the former law has been repealed by express terms. The failure to add a repealing clause may lead to a presumption that it was not the intent of the Legislature to repeal the pre-existing law, but such a presumption may be over-thrown where the comparison of the two laws reveals an intention of the Legislature to repeal the previous by the present. I am of the view that there exists sufficient inconsistency and repugnancy to justify the conclusion that the Legislature had intended to supplant the former law. The inconsistency is both manifest and irreconcilable. A closer scrutiny leaves no room for doubt that the new law was intended to replace the old.

In this view of the matter, there is no infringement of Article 14 of the Constitution, and Punjab Act 31 of 1959 cannot be assailed on that ground.

The next argument which may now be examined relates to infraction of the provisions of Article 19(1)(f) of the Constitution.

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and another
——————
Tek Chand, J.

What is contended is that the Punjab Act places an unreasonable restriction on the petitioners' right to hold property which is basic and fundamental. The petitioners are said not to be trespassers, but tenants holding over and as such, persons having a right to the property. The right of property, which is being claimed on behalf of the petitioners, is not *jus possidendi,* which is a right to possess as a legal consequence of ownership, but rather a right in the nature of *jus possessionis,* the simple right of possession capable of existing without ownership. The petitioners claim that they have a right to remain in possession of the property till they are evicted; and that they can resist eviction if it is not in accordance with law. It is a case of tenancy at sufference which arises where a tenant, having entered under a valid tenancy, holds over without the landlord's assent or despite his dissent. Though it is styled as tenancy, but it suffers from absence of privity as between the parties and does not create the relationship of landlord and tenant. A tenant at sufference is liable to be ejected by the landlord. A tenancy as sufference is determined whenever a landlord may choose to enter without notice or demand to quit. It is true that the law in India does not allow a landlord to evict the tenant otherwise than in due course of law. Even on the assumption, that a right of a tenant at sufference not to be evicted except in accordance with law, may be termed as property right, or more appropriately, a right in property, it does not follow, that it is such a right the protection of which has been safeguarded by the Constitution. In *Amar Singh* v. *Custodian E.P.,* (7) while holding, that the right of a quasi-permanent allottee under East Punjab Evacuees Administration of Property Act does not constitute property

(7) A.I.R. 1957 S.C. 599.

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and another

Tek Chand, J.

within Articles 19(1)(f) and 31(1)(2) of the Constitution, the Supreme Court observed that—

> "An interest in land owned by another in such a situation cannot be fitted into any concept of 'property' in itself. The concept of a bundle of rights in agricultural land constituting by itself 'property' is the outcome of a stable and settled state of affairs relating to such bundle of rights. Historical jurisprudence shows that even the concept of individual property in agricultural land was the outcome of stable and settled conditions of society. It is also relevant to observe that the incidents of quasi-permanent allotment are entirely statutory. Subjection to the power of cancellation by the Custodian in whom the property is vested, is one of such incidents and determines the quality thereof. Therefore, having given our best consideration, we are unable to hold that the interest of a quasi-permanent allottee is 'property' within the concept of that word so as to attract the protection of fundamental rights.
>
> Property, to fall within the scope of Article 19(1)(f) must be capable of being the subject-matter of 'acquisition and disposal."

A similar argument was advanced by the learned counsel for the petitioners, and it was also noticed by the Supreme Court, and to that, the following observations are in point—

> "Learned counsel for the petitioners has strenuously urged that under the quasi-permanent allotment scheme the

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and another

Tek Chand, J.

> allottee is entitled to a right to possession within the limits of the relevant notification and that such right to possession is itself 'property'. That may be so in a sense. But it does not affect the question whether it is property so as to attract the protection of fundamental rights under the Constitution. If the totality of the bundle of rights of the quasi-permanent allottee in the evacuee land constituting an interest in such land, is not property entitled to protection of fundamental rights, mere possession of the land by virtue of such interest is not on any higher footing."

In view of the above observations of the Supreme Court, it cannot be contended with any degree of conviction that the provisions of Article 19(1)(f) are attracted and can be availed of by a person in the situation of the petitioner.

It was next urged that the procedure as laid down by the Act and the Rules made thereunder militates against the rule of natural justice in so far as the Judge and the party were one and the same person. The Collector under section 4, after forming an opinion that a person was in an unauthorised occupation of any public premises, and that he should be evicted, proceeds to give show-cause notice. He first assumes the role of a party and then proceeds to determine the *lis* as between himself and the person to whom he gives a notice of eviction. After having come to the conclusion that such a person is in an unauthorised occupation, the same officer then proceeds to evict the occupant and is also authorised to assess dues and damages. The right of appeal to the Commissioner was illusory being an appeal from Caesar

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and another

Tek Chand, J.

to Caesar. Criticism was also levelled against the procedure which does not make it obligatory on the Collector to make available to the occupier of public premises the case of the Government against him or of producing its evidence so that the other side may know of it and challenge it by cross-examination. The procedure merely permits the tenant, who is sought to be evicted to put in his own evidence without giving him an opportunity either to know the case of the Government and then try to rebut it or to cross-examine the witnesses who may be produced on behalf of the Government. According to the learned counsel, a procedure which gives an opportunity to a party merely to put in his point of view and make one sided presentation without an opportunity to know, and then refute the case of the Government, is unfair. Section 6 of the Punjab Act was also criticised as if contemplated a tenant not only losing his possession of the premises but also his possessions on the premises. In *Satish Chander* v. *Delhi Improvement Trust,* (8), the Government Premises (Eviction) Act (27 of 1950) was held by a Division Bench to be *ultra vires* since it offended against the fundamental right to property under Article 19(1)(f) of the Constitution as it was not saved by the provisions of Article 19(5). Reliance was placed upon two decisions in *Juga Singh* v. *M. Shaukat Ali,* (9) and *Brigade Commander, Meerut Sub-Area* v. *Ganga Prasad,* (10).

The Public Premises (Eviction of Unauthorised Occupants) Act (Central Act 32 of 1958) was

(8) I.L.R. 1958 Punjab 195 : 1957 P.L.R. 621.
(9) 58 C.W.N. 1066.
(10) A.I.R. 1956 All. 507.

The Northern India Caterers Private Ltd., and another *v.* The State of Punjab and another

Tek Chand, J.

challenged in *Hari Kishan Das* v. *Union of India*, (11). This Act is in *pari materai* and most of the provisions of the Central Act and Punjab Act 31 of 1959 are similar. Falshaw J., as he then was, had also written the judgment in *Satish Chander's* case, and he said,—

> "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."

(11) I.L.R. (1961) Punj. 354 : 1960 P.L.R. 871.

Referring to section 9(1) of the Act, which provides that appeal shall lie to an appellate officer, who shall be the District Judge. It was remarked—

> "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 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 4 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 Central Act 32 of 1958 and Punjab Act 31 of 1959 are not different in any way except that the appellate officer in the Central Act has to be a District Judge whereas in the Punjab Act he is the Commissioner. It cannot be said in all reason, that an appeal to Commissioner is an appeal from Caesar to Caesar. Any contention relating to lack of judicial independence in the one case or the other, does not merit serious consideration. It cannot be said that officers of the Executive will in pursuit of executive policy disregard the requirements of law or judicial considerations regarding the merits of a particular *lis*. If the Central Act is *intra vires* the Constitution, the Punjab Act cannot be deemed to be violative of any fundamental right on the ground that the appellate authority vests in the Commissioner and not in the District Judge. I find myself in accord with the reasons given in the judgment of Falshaw J., in *Hari Kishan*

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and another

Tek Chand, J.

v. *Union of India*, (11). Elaborate procedure for hearing is provided, as also the right of appeal. Section 4(2) of the Punjab Act requires, that notice shall specify the grounds on which the order of eviction is proposed to be made. Thus the occupant of the public premises is not kept in dark as to the grounds on which the order of eviction is proposed to be made and he is given adequate opportunity to meet them. In a case like the present, the petitioners' case has not suffered from any procedural lacuna which can be said to be violative of principles of natural justice. The argument raised on imputation of bias on the part of the Collector when he is acting in his official capacity is not sustainable. In the absence of proof showing bias, a decision cannot be called in question simply because an officer has acted in his official capacity or occupies an important position in Governmental hierarchy. I cannot persuade myself to raise a presumption that persons required to perform statutory functions will not be able to bring to bear their impartial mind to the consideration of the various matters in dispute. In this connection reference may be made to the observations of the Supreme Court in *H. C. Narayanappa* v. *State of Mysore*, (12).

For reasons stated above, I am not satisfied that the provisions of Article 19(1)(f) of the Constitution have been violated. It cannot be said that having regard to the circumstances which had led to the enactment of this law, the requirement for the vacation of the premises by eviction of unauthorised occupants in the manner prescribed amounts to an imposition of an unreasonable restriction.

I may now deal with the last contention raised by the learned counsel for the petitioners. The

(12) A.I.R. 1960 S.C. 1073.

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and another

Tek Chand, J.

grievance of the petitioners is that requirements of section 4(2)(b) were not complied with. The notice contemplated under this provision to show cause against the proposed order on or before a specified date must be for a date "not earlier than ten days from the date of issue thereof". According to the contention of the learned counsel for the petitioners, there must be a notice of ten clear days. In this case, notice was issued on 1st January, 1960, by the Estate Officer and Collector, Capital Project, Chandigarh, to petitioner No. 2 alleging that the petitioners' occupation had become unauthorised after 31st December, 1959, and the petitioners "should on or before the eleventh day of January, 1960, in my office show cause, if any, as to why an order of eviction from the public premises in question be not made against you". According to the contention of the learned Advocate-General, the words "not earlier than ten days from the date of issue" mean nine clear days' notice and not of ten clear days', as it is the ninth day which is "earlier than ten days" but not the tenth day. If the first of January, which is the date of issue, is excluded then the eleventh January, fell on the tenth day and it was not a date earlier than ten days. The expression "earlier than" means "before" or "previous to". If the words, instead of "not earlier than ten days", had been "not less than ten days" then the petitioners' contention deserved to prevail as that would have meant ten clear days. According to another rule of reckoning, where the time requisite is from a particular date to another date, then the first terminal day is to be excluded from the computation and the last day is to be excluded [*vide* *Radcriffe* v. *Bartholomew*, (13).]

In certain English cases both the terminal days have been excluded from the computation. In the

(13) (1892) 1 Q.B. 161.

The Northern India Caterers Private Ltd., and another
v.
The State of Punjab and another

Tek Chand, J.

case of *In re Railway Sleepers Supply Company,* (14) it was provided under section 51 of the Companies Act, 1862, that interval of not less than fourteen days was to elapse between the meetings passing and confirming a special resolution of a company. This was construed to be an interval of fourteen clear days exclusive of the respective days of meetings. In *McQueen* v. *Jackson,* (15) it was provided by section 19(2) of the Sale of Food and Drugs Act, 1899, that "in any prosecution under the Sale of Food and Drugs Act the summons . . . . shall not be made returnable in less time than fourteen days from the date on which it is served". It was held that fourteen clear days must elapse between the dates of service and that of return. (See also, *Robinson* v. *Waddington.* (16). The facts in *Anokhmal Bhurelal* v. *Chief Panchayat Officer, Rajasthan Jaipur,* (17) were that under rule 4 of Rajasthan Panchayat Election Rules, 1954, notice was to be announced "at least seven days before the date of election". These words were construed to mean that seven days' clear interval was required by the law to elapse between the date of the announcement of notice and the date of election.

The practice seems to differ from jurisdiction to jurisdiction as will appear from the following passage from Sutherland's Statutory Construction, 3rd Ed. Volume I, paragraph 1612,—

> "In general, the Courts will exclude the first day of the period and include the last day, though occasionally the first day is included and the last day is excluded. Statutory provisions in some states regulate the computation of time. Thus

(14) (1885) 29 Ch. D. 204.
(15) (1903) 2 K.B. 163.
(16) (1849) 13 Q.B. 753 : 116 E.R. 1451.
(17) A.I.R. 1957 Raj. 388.

The Northern India Caterers Private Ltd., and another v. The State of Punjab and another

Tek Chand, J.

> when a statute is to take effect ninety days after adjournment, the Courts in some states will exclude the day of adjournment and declare the statute in effect on the ninety-first day, interpreting the constitutional requirement to mean ninety clear days. In other states, the Courts will declare an act to be in effect on the ninetieth day."

There is also a tendency not to take notice of fraction of a day except where otherwise so stated.

I am inclined to hold that the notice served in this case upon petitioner No. 1 is bad as it was short by one day. The intention of the Legislature appears to be to give notice of at least ten clear days which has not been done. But this error is of inconsequential nature for purposes of this petition. No rule of justice has been violated and in consequence of short notice no injury has resulted. I would in the circumstances overlook the short notice.

The result of the above discussion is that this petition fails. I would dismiss the petition with costs.

D. Falshaw, C.J.—I agree.

Harbans Singh, J.—I agree.

B.R.T.

20534 HC—1,000—17-4-63—C., P. & S., Pb., Chandigarh.