

Bibi Batool and ors. Vs. the Principal Judge, City Civil Court, Bombay and ors.

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Court : Mumbai

Decided On : Aug-23-1967

Reported in : AIR1972Bom254; (1972)74BOMLR22

Judge : Mody and ;Chandrachud, JJ.

Acts : Bombay Municipal Corporation Act, 1888 - Sections 105 and 105-B; Maharashtra Municipal Corporation (Amendment) Act, 1961; [Constitution of India](#) - Article 14; [Code of Civil Procedure \(CPC\), 1908](#)

Appeal No. : Special Civil Appln. Nos. 1116 and 1138 of 1966 and O.S. Misc. Petn. No. 478 of 1966

Appellant : Bibi Batool and ors.

Respondent : The Principal Judge, City Civil Court, Bombay and ors.

Advocate for Def. : C.J. Shah, Adv., i/b., ;Crawford Bayley and Co. Attorneys, ;H.M. Seervai, Adv. General and ;A.M. Setalvad, Adv., i/b., ;Little and Co. Attorneys

Advocate for Pet/Ap. : S.C. Chagla, Adv., i/b., ;Gagrat & Co., ;M.M. Bhagadia, Attorneys, ;S.J. Sorabji, Adv. and ;V.R. Chhatrapati, Adv., i/b., ;Chhatrapati and Co., Attorneys

Judgement :

Mody, J.

1. Orders of eviction have been passed against the petitioners in these three petitions in respect of 'corporation premises' under the special provisions contained in Chap. V - A of the Bombay Municipal Corporation Act, 1888. The petitioners in two of the three petitions have filed their petitions under Art. 227 of the [Constitution of India](#) and the petitioner in the third petition has filed its petition under Art. 226 challenging the validity of the order of eviction passed against each of them. Various grounds have been taken in each of the three petitions in support of the challenge, but all the three petitions raise one common question which is a question of law. The common question is whether the provisions of Chapter V - A of the Bombay Municipal Corporation Act, and particularly Section 105 - B thereof, violate Arts. 14 and 19(1) (f) and (g) of the Constitution and are therefore void. Counsel in all the three petitions stated that they were agreed that the above question be tried as a preliminary point in all these three matters as a common question and that only thereafter each of the three matters be dealt with separately if and to the extent it may be necessary.

2. The provisions of Chapter V - A were introduced in the Bombay Municipal Corporation Act by a Maharashtra Act, being Act No. XIV of 1961, as an amendment to the main Act. Section 105 - A contains the definitions of 'Commissioner', 'corporation premises' and 'unauthorised occupation in relation to any corporation premises'. These definitions are not material for the purpose of this case. Section 105 - B contains six sub - sections all of which are not relevant. Sub - sections (1) and (2) are very material and they read as follows :-

'105 - B. (1) Where the Commissioner is satisfied -

(a) that the person authorised to occupy any Corporation premises has, whether before or after the commencement of the Bombay Municipal Corporation (Amendment) Act, 1960, -

(i) not paid for a period of more than two months, the rent or taxes lawfully due from him in respect of such premises; or

(ii) sub - let, contrary to the terms or conditions of his occupation, the whole or any part of such premises; or

(iii) committed, or is committing, such acts of waste as are likely to diminish materially the value or impair substantially the utility, of the premises; or

(iv) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises;

(b) that any person is in unauthorised occupation of any corporation premises;

(c) that any corporation premises in the occupation of any person are required by the corporation in the public interest, the Commissioner may notwithstanding anything contained in any law for the time being in force, by notice (served by post or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be provided for by regulations, order that that person, as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.

(2) Before an order under sub - section (1) is made against any person, the Commissioner shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

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 corporation premises to show cause against the proposed order, on or before such date as is specified in the notice. If such person makes an application to the Commissioner, for the extension of the period specified in the notice, the Commissioner may grant the same on such terms as to

payment and recovery of the amount claimed in the notice, as he deems fit.

Any written statement put in by any person and documents produced, in pursuance of the notice, shall be filed with the record of the case, and such person shall be entitled to appear before the Commissioner by Advocate, attorney or pleader.

The notice to be served under this sub - section shall be served in the manner provided for the service of a notice under sub - section (1); and thereupon the notice shall be deemed to have been duly given to all persons concerned.'

3. These provisions indicate that the Commissioner is to be satisfied as mentioned therein at two stages, the first stage is before he issues a show cause notice and the second is before he makes his final order of eviction.

The first satisfaction is a mere prima facie satisfaction, arrived at ex parte, on such material as is then placed before him. The only purpose or object for providing for such satisfaction is to prevent him from issuing a show cause notice wantonly or out of caprice. The final satisfaction however is to be reached after duly considering all the material placed before him after notice to the occupier of corporation premises concerned. In the decision of this case before us what is material is this final satisfaction and it is this final satisfaction to which reference will be made in this judgment.

4. Sub - section (3) of S. 105 - B empowers the Commissioner to evict a person who refuses or fails to comply with an order made under sub - s. (1) . Sub - s. (6) empowers the Commissioner to cancel an order made by him under sub - s. (1) if the person against whom the order has been made, vacates the premises or complies with certain terms of the order as more specifically mentioned in sub - s.(6)

5. Section 105 - E reads as under :

'The Commissioner shall, for purpose of holding any Enquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 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 documents ;
- (c) any other matter which may be prescribed by regulations made under Section 105 - H'.

6.Sub - section (1) of S. 105 - F provides that an appeal shall lie from every order of the Commissioner made in respect of any corporation premises, under Section 105 - B or S. 105 - C, to an appellate officer who shall be the Principal Judge of the City Court of Bombay or such other judicial officer in Greater Bombay of not less than ten years' standing, as the principal Judge may designate in this behalf. Sub - section (2) provides a period of thirty days for filing an appeal from an order under Section 105 - B or S. 105 - C; the period to be calculated as mentioned in that sub - section. The proviso to that sub - section empowers the appellate officer to entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellate was prevented by sufficient cause from filing the appeal in time. Sub - section (4) provides that every appeal shall be disposed of by the appellate officer as expeditiously as possible.

7.Section 105 - G provides that save as otherwise expressly provided in this Chapter, every order made by the Commissioner or the appellate officer under that Chapter shall be final, and shall not be called in question in any original suit, application or execution proceeding.

8.Although the common question relates to a challenge under Art. 19(1) (f) & (g), no contention has been advanced in respect of the same. The contention about the violation of Art. 14 has been pressed. In support of the contention that Section 105 - B violates Art. 14, two main contentions have been urged. The first contention is that Section 105 B differentiates between persons in possession or occupation of corporation premises and persons in possession or occupation of non - corporation premises, that is to say, premises other than the Corporation premises, and that there is no valid basis for making such differentiation. The second contention is that even assuming that there is a valid basis for making

such differentiation, there is discrimination inter se, i.e., within the class of persons in possession or occupation of corporation premises because of three reasons. The first reason is that Section 105 - B gave to the Commissioner a discretion or option to select one out of two procedures for recovery of corporation premises, the two procedures being the one under Chap. V - A and the other under the general law through ordinary courts, the two procedures being alternative and not substitutive. The second reason is that the procedure for recovery of corporation premises under Chap. V - A is more drastic and more prejudicial than that under the general law. And the third reason is that the discretion so given to the Commissioner is an unguided and unfettered discretion of an executive officer.

9.As regards the first contention, Mr. Setalvad, the learned Counsel for the State, contended that a differentiation has been made between persons in possession and occupation of corporation premises on the one hand and persons in possession and occupation of non - corporation premises on the other, but that the differentiation has been made on a valid basis, the classification having been validly made. As regards the second contention he did not dispute the first reason stated by Mr. Sorabji, the learned Counsel for some of the petitioners. He, however, disputed the second and the third reasons. As regards the second reason he contended that the alternative procedure under Chap. V - A is not more drastic or more prejudicial to the person against whom it is adopted as compared with the procedure under the general law and followed in the ordinary courts of law. As regards the third reason he contended that the discretion given to the Commissioner is not unguided or unfettered. He contended that the object and purpose of introducing Chap. V - A by the Maharashtra Act XIV of 1961 and the policy underlying the provisions of Chap. V - A is to provide for speedier recovery of corporation premises and that the policy furnishes guidance to the Commissioner in the exercise of his discretion in selecting one out of the two procedures. He contended that the object and policy is disclosed by the provisions of Chap. V - A itself, the Statement of Objects and Reasons in connection with the Maharashtra Act XIV of 1961 and the affidavit in reply filed on behalf of the State. He contended that in view of this object and policy a condition must be read as it were under Section 105 - B to the effect that the Commissioner shall adopt the special procedure under Chapter V - A if he is satisfied that speedier recovery of

Corporation premises is necessary in a particular case.

10. The provisions of Chap. V - A clearly show - and it is not at all disputed before us - that the special procedure provided for under Chap. V - A is a quasi - judicial and principles of natural justice would apply to it.

11. In the case of the Northern India Caterers Private Ltd. v. State of Punjab, being Civil Appeal No. 1101 of 1965, which was decided by the Supreme Court by its judgment dated 4-4-1967 (reported in : [1967]3SCR399), which Judgment is not yet reported. Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, XXXI of 1959, was held to be violative of Art. 14. The petitioners before us contend that material provisions of the Punjab Act are substantially similar to those of Chapter V A and that therefore we must hold that Section 105 - B also violates Article 14 and is therefore void. It is really because of that judgment that the above common question is being tried by us as a preliminary point. For arriving at a correct assessment of the effect of that Supreme court Judgment in deciding the point raised before us it is necessary to first refer to the material provisions of the Punjab Act.

12. The preamble of the Punjab Act states that it was passed to provide for eviction of unauthorised occupants from public premises and for certain incidental matters. Section 2 (e) defines 'public premises' and, briefly stated, they mean premises belonging to the State Government, District Board, Municipal Committee, notified area committee or panchayat. Section 3 provides that a person shall be deemed to be in unauthorised occupation of any public premises if he falls within the various categories mentioned in that section. A comparison of Section 3 of the Punjab Act and Section 105 - B, sub - section (1), of the Bombay Act shows that their provisions are similar in all material respects. As a matter of fact, there is no dispute that they are materially similar. Section 4 provides that if the Collector is of opinion that any person is in unauthorised occupation of public premises and that he should be evicted, he shall issue a notice in writing calling upon such person to show cause why an order of eviction should not be made against him and that the notice shall specify the grounds on which the order of eviction is proposed to be made and require all persons concerned to show cause within the time specified in

the section. The provisions of sub - sections

(1) and

(2) of Section 4 of the Punjab Act are materially similar to those of sub - section

(2) of Section 105 - B of the Bombay Act. Section 5 of the Punjab Act provides that if, after considering the cause, if any, shown and the evidence produced by such person and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorised occupation, he may make an order of eviction for reasons to be recorded therein. This provision in the Punjab Act is materially similar to the corresponding provision contained in the Bombay Act, there being a few minor differences. For example, the words 'for reasons to be recorded therein' occurring in the Punjab Act do not find place in the Bombay Act. Sub - section

(2) of Section 5 and sub - sections

(1) and

(2) of Section 6 and Section 7 of the Punjab Act materially correspond to sub - sections (3),

(4) and

(5) of Section 105 - B and Section 105 - C of the Bombay Act. The provisions of Section 8 of the Punjab Act are identical with those of Section 105 - E of the Bombay Act. Section 9 of the Punjab Act provides for an appeal to the Commissioner from every order of the Collector made under Section 5 or Section

7. The other provisions about appeal contained in Section 9 of the Punjab Act are materially similar to the corresponding provisions contained in Section 105 - F of the Bombay Act. the provisions of Section 10 and 12 of the Punjab Act are materially similar to those of Sections 105 - G and 105 - H of the Bombay Act. Section 11 of the Punjab Act provides for protection of action taken in good faith under that Act. The provisions of that section are not material to the question which arises before us.

13.A comparison of the provisions of the two Acts show that a material difference exists between them only on two points. Sub - section (2) of Section 105 - B specifically provides that the person against whom the proceedings are taken under that section shall be entitled to appear before the Collector by advocate, attorney or pleader. There is no such specific provision in the Punjab Act. The other point is that the Punjab Act provides for an appeal against the order of the Collector to the Commissioner who also is an executive officer, whereas Section 105 - F provides for an appeal against the order of the Municipal Commissioner to a judicial officer. The judicial officer provided for is a senior and experienced judicial officer because the section provides that the appeal shall lie to the Principal Judge of the City Civil Court of Bombay or such other judicial officer in Greater Bombay of not less than ten years' standing as the Principal Judge may designate.

14.The said Northern India case was heard by a Bench of five Judges of the Supreme Court and decided by a majority of three judges who held Section 5 to be void. We will refer to the Judgment of the majority delivered by Shelat, J. The Judgment shows that in that case contentions similar to the two contentions raised before us of discrimination by classification and of discretion inter se the class of persons similarly situated were urged. Because of the rival contentions urged before us about the effect of that Judgment on the point to be decided by us, it is necessary to refer to that judgment in some detail. The Judgment first refers to the Statement of Objects and Reasons. It states that the objects and reasons for the enactment of the Punjab Act were that there was no provision in the Land Revenue Code or in any other Act providing for summary removal of unauthorised encroachments or occupation of Government, Nazul and other specified properties that the only procedure available to Government was to sue the party concerned in a Civil Court which was a cumbersome procedure involving delay and that therefore to keep all Government owned lands free from encroachments and unlawful possessions it was necessary to provide a speedy machinery. The Judgment then refers to the various provisions of the Act to which we have already referred. It then considers the contention urged in that case that the special provisions for eviction under the Punjab Act impliedly repealed the Government's ordinary remedy for eviction under the ordinary law and negatives it. There is no

such contention before us. It then considers the contention which was of the nature of the first contention before us as to whether the classification between public premises and other than public premises was valid. In so doing the Judgment, refers to the Statement of Objects and Reasons as indicating that the Act was passed, inter alia, to provide a speedier machinery for eviction of unauthorised occupants from public properties as against lengthy proceedings under the ordinary law of eviction involving delay. In discussing this point about classification the Judgment uses phrases and words like 'It is possible to say' and 'Assuming' which would show that the statements in the Judgments were made as an expression of only a prima facie opinion that the differentiation and classification was valid but without expressly so deciding it. The Judgment indicates that it was the prima facie opinion of the Supreme Court that the segregation of tenants of public properties and premises from the tenants of private properties was based on justifiable reason and that such segregation had a rational nexus with the object and policy of the Act. The Judgment then proceeds to consider the second head of attack on the ground of discrimination inter se the tenants and occupants of Government premises. The Judgment considers certain previous Judgments of the Supreme Court and states that the principle which emerges from those decisions is that discrimination would result if there are two available procedures one more drastic or prejudicial to the party concerned than the other and which can be applied at the arbitrary will of the authority entrusted with such discretion. The Judgment holds, firstly, that under Section 5 of the Punjab Act the Collector has a discretion or option to select one of two remedies, the one being under the Code of Civil Procedure and the other being under Section 5. Secondly, the Judgment then reaches a conclusion that the remedy provided under Section 4 and 5 was more drastic than that of the ordinary remedy under the Code of Civil Procedure. We reproduce the words material in this connection :-

'There can be no doubt that if the Collector were to proceed under Sections 4 and 5, the remedy is drastic, for a mere opinion by him that a person is in unauthorised occupation authorises him to issue a show cause notice and his satisfaction under Section 5 is sufficient for him to pass an order of eviction and then to recover under Section 7 rent in arrears and damages which he may assess in respect of

such premises as arrears of land revenue' and.

'The procedure under Section 5 is obviously more drastic and prejudicial than the one under the Civil Procedure Code where the litigant can get the benefit of a trial by an ordinary court dealing with the ordinary law of the land with the right of appeal, revision, etc. as against the person who is proceeded against under Section 5 of the Act as his case would be disposed of by an executive officer of the Government, whose decision rests on his mere satisfaction, subject no doubt to an appeal, but before another executive officer, viz., the Commissioner.'

The Judgment also reaches the third conclusion that Section 5 does not lay down any guiding principle or policy under which the Collector has to decide in which cases he should follow one or the other procedure and, therefore, the choice is entirely left to his arbitrary will. It also finds in that connection that there can be no doubt that Section 5 confers an additional remedy by way of suit and that by providing two alternative remedies to the Government and leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic procedure under Section 5, that section has lent itself open to the charge of discrimination and as being violative of Art. 14. The Judgment, in consequence, declared Section 5 to be void as it manifestly violated the right of equality guaranteed by Article 14.

15.2 Mr. Sorabji once contended that the Supreme Court Judgment is 'binding' on us. Now we are not dealing with the Punjab Act, but with another piece of legislation. This case, therefore, necessitates an examination of the provisions of the Bombay Legislation, an examination whether the procedure under Chapter V - A is more drastic, an examination of what the object and policy of the Bombay Legislation is and whether it furnishes any guidance for the exercise of a discretion by the Commissioner and then consider what is the effect of the decision in the case of the Northern India Caterers on the contentions before us relating to the Bombay Legislation. As we are considering a piece of legislation different from that considered by the Supreme Court, it would be the ratio and reasoning of the Supreme Court Judgment which would be binding on us. We must, therefore,

examine the provisions of the Bombay Legislation and ascertain whether the provisions of the two pieces of legislation are identical or similar or in any way different. If there is no material difference, we would be bound by the Supreme Court Judgment and must hold the Bombay Legislation void by way of analogy. If, however, there is any material difference we will have to consider to what extent, if at all it will affect the application of the ratio and reasoning of the Judgment in the case of the Northern India Caterers to the case before us. Mr. Sorabji invited our attention to the decision in three cases in support of his contention that under Article 14 of the Constitution the law declared by the Supreme Court is binding on the High Courts even if some aspect or some argument has not been considered by the Supreme Court. The three Judgments he referred to were in *Sharda Prasad v. A. G. of Uttar Pradesh*, : (1957)ILLJ37All , *Coomr. of Income - tax v. Man Mal Uttam Chand.* : [1961]42ITR203(All) and *Somawanti v. State of Punjab*, : [1963]2SCR774 .

As the last Judgment is that of the Supreme Court it is not necessary to refer to the two earlier Judgments which are of the High Courts. The Judgment of the Supreme Court in *Somawanti's case.* : [1963]2SCR774 lays down that the binding effect of a decision does not depend upon whether a particular argument was considered or not provided that the point with reference to which an argument was subsequently advanced was actually decided. We will bear this principle in mind and refer to it at the appropriate time when that point arises during the course of our Judgment.

16.The Bombay Rents, Hotel and Lodging House Rates Control Act, being Act 57 of 1947, gives special protection to tenants, inter alia, of premises situated within the area of Greater Bombay, Section 4 of that Act, however, excludes the application of its provisions to nay premises belonging inter alia, to a local authority, which would include the Bombay Municipal Corporation. In the case of *Baburao Shantaram More v. Bombay Housing Board* : [1954]1SCR572 . Section 4 was challenged as being ultra vires of Article 14 of the Constitution on the ground that it discriminated against tenants of properties belonging to Government or local authority, in that such tenants were denied the benefits of the Bombay Rent Act which were available to all other tenants in Bombay. That challenge was repelled

by the Supreme Court in that Judgment in the ground that the two classes of tenants were not by force of circumstances placed on equal footing and the tenants of Government or local authority would not therefore complain of any denial of equality before the law or equal protection of the law and that there was no real discrimination, because the two classes were not similarly situated. In that case the classification of tenants into those of properties belonging to Government or local authority and of those of properties belonging to persons other than the Government or local authority was held not to be discriminatory for the purposes of the Bombay Rent Act.

17. In the case of the Northern India Caterers, Civil Appeal No. 1101 of 1965 D/- 4-4-1967 (Reported in : [1967]3SCR399) the Supreme Court has reiterated that the two tests for a valid classification are that it must be founded on an intelligible differentia which distinguishes those who are grouped together from the others and that that differentia must have a rational relation to the objects sought to be achieved by the Act and that when, therefore an enactment is challenged on the ground of discrimination, the Court must first ascertain the object sought to be achieved by the legislature and then apply the two tests. In that case the Supreme Court was considering the Punjab Act the provisions of which for the purpose of deciding as to classification are practically similar to those of Chapter V - A of the Bombay Act. The Supreme Court has, as stated earlier, not finally decided the point about classification, but it has expressed an opinion that it is possible to say that in making the classification Section 5 of the Punjab Act did not violate the fundamental right guaranteed by Article 14. That opinion having been expressed on a parallel legislation is entitled to the highest respect. In expressing that opinion the Supreme Court considered the Objects and Reasons and the Preamble of the Punjab Act, and reached the conclusion that that Act was passed to provide for eviction of unauthorised occupants from public properties and premises, and to keep such properties free from encroachment and unlawful possession and to provide a speedier machinery for that purpose as against the lengthy proceedings under the ordinary law of eviction involving delay. The Judgment further states that it is possible to say that there is an intelligible differentia between the two classes of occupiers and that they are similarly situated in that in the case of public properties and premises the members of the public have a vital interest and are

interested in seeing that such properties and premises are freed from encroachment and unauthorised occupation as speedily as possible. It then states that it is also possible to contend that such classification is justified in that it is in the interest of the public that speedy recovery of rents and speedy eviction of unauthorised occupiers is made possible through the instrumentality of a speedier procedure instead of the elaborate procedure by way of suit involving both expense and delay. The Statement of Objects and Reasons in respect of the Maharashtra Act XIV of 1961 and the Preamble of that Act is, for the present purposes, ver similar to that of the Punjab Act. The above reasoning of the Supreme Court, therefore, applies in full force to the case before us. We therefore hold that the classification of tenants into tenants of corporation premises and tenants of non - corporation premises is based on justifiable reason and that such classification has rational nexus with the object and policy of the Bombay Act, which introduced Chapter V - A. We have not dealt with this point in greater detail. Firstly because of the opinion expressed by the Supreme Court in the Northern India Caterers' case and as the reasons stated in that case as the basis of that opinion exist in our case and secondly because the position itself is so clear that Mr. Sorabji, though he did not give up this contention argued it very briefly and it appeared to us very feebly.

18. That takes us to the second contention urged by Mr. Sorabji. As regards Mr. Sorabji's argument in respect of that contention, there is no dispute that Section 105 - B confers upon the Commissioner a discretion or option to select between two procedures. The two procedures being alternative and substitutive.

19. The second argument of Mr. Sorabji necessitates a consideration whether that discretion of the Commissioner is unguided and unfettered. Mr. Setalvad has contended that the guiding principles for the exercise of the discretion are to be gathered from the object and the purpose of the amending Act and the contents of Chapter V - A itself. Before turning to the material on which he based this argument, it is necessary to bear in mind the principles of law relevant to this contention Mr. Setalvad has contended that the guiding principle is the necessity of a speedier trial in each case falling under Section 105 - B.

20. The first case relied upon by Mr. Sorabji is that of *State of West Bengal v. Anwar Ali Sarkar*. : 1952 CriLJ510 . In that case the validity of the West Bengal Special Courts Act was challenged on the ground that it contravened Article 14. The title of that Act, as also its Preamble, specifically stated that the Act was to provide for speedier trial of certain offence. The Supreme Court held that the necessity of a speedier trial was too vague, uncertain and elusive a criterion to form a rational basis for discrimination and that the necessity of speedier trial may be the object which the legislation had in view or that it may be the occasion for making the enactment. (See for example the Judgment of Mukherjea, J. at page 316 of the Report and of Mahajan J. at page 314 of the Report). Shortly thereafter a similar point arose before the Supreme Court in the case of *Kathi Raning Rawat v. State of Saurashtra* reported in : 1952 CriLJ805 . In that case the Saurashtra State Public Safety (Third Amendment) Ordinance, which empowered the State to constitute special Courts to try special classes of offences mentioned in that Ordinance, was challenged as violative of Article 14. The Preamble of the Act showed that it was passed 'to provide for public safety, maintenance of public order and preservation of peace and tranquillity in the State of Saurashtra'. It was held in that case that the mere mention of speedier trial as the object of the Act did not cure the defect of a class being picked out and subjected to a special procedure because the expression 'speedier trial' standing by itself provided no rational basis for classification. The Court, however, found from the affidavit filed in that case on behalf of the State that when the Ordinance was passed an alarming lawlessness prevailed in some of the districts within the State, that there were gangs of dacoits operating in different places and their number began to increase gradually and that the ordinary law was found to be insufficient to cope with nefarious activities of those criminal gangs. The Court held that in the light of the circumstances prevailing at the date when the Ordinance was promulgated the necessity of speedier trial Court be the guiding principle in exercising the discretion that the particular cases in which the persons were charged with offences covered by the Ordinance should be referred by the Government to the Special Courts under that Act. The test of the necessity of speedier trial as furnishing guidance in exercise of discretion was again considered by the Supreme Court in *Kedar Nath Bajoria v. State of West Bengal*. : 1953 CriLJ1621 .

That case concerned the challenge to the validity of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, which empowered the Provincial Government to constitute special Courts of criminal jurisdiction for special areas and to appoint Special Judges to preside over such Courts and to allot cases for trial to the Special Judges in respect of the charges for the offences specified in the Schedule to that Act. In that case the title and the Preamble of the Act showed that the Act was to provide for the more speedy trial and more effective punishment of certain offences. The Court considered various earlier Judgments of that Court, including the cases of Anwar Ali Sarkar, : 1952 CriLJ510 and Kathi Raning Rawat, : 1952 CriLJ805 and then made the following observations :-

'Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary. There are to be found cases on each side of the line ; Anwar Ali Sarkar's case, : 1952 CriLJ510 is an authority on one side; the Saurashtra case is on the other. Apart from the dicta here and there in the course of the judgments delivered in these cases and the decisions based on them, there is no real conflict of principle involved in them.'

As regards Anwar Ali Sarkar's case, : 1952 CriLJ510 it explained that no principle or policy was disclosed in the legislation challenged in that case to guide the exercise of discretion by the Government and all that was relied upon as indicative of a guiding principle for selection was the object disclosed in the Preamble of the West Bengal Act, of providing for the speedier trial of certain offences and it was for that reason that it was held to be too indefinite and vague to constitute a reasonable basis for classification.

21. In Asgarali Nazarali Singaporewalla v. State of Bombay, : 1957 CriLJ605 the Act impugned was the Criminal Law Amendment Act (XLVI of 1952) which provided for trial of certain offences by Special Judges and it was held that the Act did not violate Article 14 of the Constitution because not only that the Preamble of the Act showed that it was enacted for providing a more speedy trial of certain

offences but also that from material gathered that the circumstances providing when the Act was passed were that bribery and corruption was rampant and the need for weeding them out was urgently felt and it was necessary to enact measures for the purpose of eliminating all possible delay in bringing the offenders to book and that it was with that end in view that provisions were enacted in the impugned Act for speedier trial of those offences by the appointment of Special Judges. This case re-affirms the Principle laid down in the case of Kedar Nath Bajoria : 1953 CriLJ1621 that if in addition to the test of speedier trial there are other circumstances, the necessity for speedier trial would furnish a test for the exercise of discretion in selecting one or the other Court.

22. In *Jyoti Pershad v. Union Territory of Delhi*, : [1962]2SCR125, The Supreme Court has by way of a summary laid four propositions which are relevant in considering an attack on a piece of legislation made on the ground of violation of Article 14. Only the third and the fourth propositions are relevant for our purpose and they are stated at page 1609 of the Report as follows :-

'(3). It is manifest that the above rule would not apply to cases where the legislature lays down the policy and indicates the rule or the line of action which should serve as a guidance to the authorities where such guidance is expressed in the statutory provision conferring the power, no question of violation of Art. 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applied to persons or things similarly situated. Even where such is not the case, there might be a transgression by the authority of the limits laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of a violation of Art. 14 but as really being beyond its power.

(4). It is not, however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority which is to exercise the power or which is vested with the discretion should be laid down in express terms in the statutory provision itself.'

Proposition 3 applies when the guidance is expressed in the statutory provision itself proposition 4 states that such guidance may not be laid down in express

terms in the statute itself. The conclusion is, as stated later in that judgment that such guidance can be obtained from and afforded by the preamble read in the light of the surrounding circumstances which necessitated the legislation. That judgment shows that such surrounding circumstances can be ascertained from the well known facts of which the Court might take judicial notice or of which it is apprised by evidence produced before the Court in the form of affidavits. This statement makes it clear that the function of such affidavits is to produce evidence of facts which can go to make up the surrounding circumstances.

In *P. J. Irani v. State of Madras.* : [1962]2SCR169 , the Act impugned therein vested a discretionary power in the Government to exempt any building or class of buildings from all or of the provisions of the Act and the Act was because of that reason challenged being violative of Article 14. That decision shows that guidance in the exercise of such discretion can be furnished by the purpose of that Act as also from the preamble and all the provisions of the Act. It further shows that it may not be possible for the statute itself to contemplate every contingency and made specific provision therefore in the enactment that particular cases should or should not be exempted and it was for that reason that the power of exemption in general terms was conferred on the State Government which however could be used not for the purpose of discriminating between tenant and tenant, but in order to further the policy and purpose of the Act which was, in the context of that case to prevent unreasonable eviction of tenant and that in such cases the vesting of a discretion would not offend against the provisions of Article 14.

23.The Judgment of the Supreme Court in *Ram Sarup v. Union of India.* : 1965 CriLJ236 , shows that the policy and the purpose of the Act can be gathered from the enactment which is impugned as a whole as violative of Article 14 and the policy of that Act so gathered would serve as guiding principles in the exercise of the discretion vested under the impugned Act.

24.Another case relied upon was that of *M/S. Devi Das Gopal Krishnan v. State of Punjab* cases Civil Appeals Nos. 526, 527 and 529 of 1966 and certain others decided by a common Judgment of the Supreme Court D/- 10-4-1967, which has not yet been reported (Since reported in AIR 1957 SC 1895). That case was

concerned with a challenge to a piece of legislation on the ground of excessive delegation, but the principle laid down therein is equally useful in considering a challenge under Art. 14 of the Constitution. It reiterates that for a statute to effectively withstand that challenge, it must give guidance to the authority in whom discretion is vested, but that whether such guidance is given or not much depends upon the provisions of a particular Act and that merely because of a statute defines the purpose or the purpose for which a statutory authority was constituted and vests a discretion in it, it could not be said that the statute necessarily contains the necessary guidance because it will depend upon the provisions of the statute itself.

25. We may last refer to the said Northern India Caterers Case Civil Appeal No. 1101 of 1965 D/- 4-4-1967 (reported in : [1967]3SCR399) in which the Supreme Court expressed its opinion about classification by referring to the Preamble and the Statement of Objects and Reasons of the Act.

26. The conclusion to be drawn from these cases is that when a legislation vests discretion in the nature of an option in an authority it would not amount to discrimination if there exist principles which would guide that authority in the exercise of its discretion. Such guiding principles may be specifically stated in the Act itself or they can be gathered from the various provisions of that Act, including its title and preamble or even from the Statement of Objects and Reasons of the Act. Such guiding principles may also be yielded by the surrounding circumstances which existed at the date of the legislation and which occasioned the legislation. It should be borne in mind that even when same object has been stated in the preamble of two different Acts the presence or absence of different circumstances may lead to different conclusions as has been specifically so stated in the cases of Kedar Nath Bajoria : 1953 CriLJ1621 and Jyoti Pershad : [1962]2SCR125 . Mr. Sorabji as well as Mr. Setalvad had drawn our attention to various passages occurring in the Judgments of the above cases and tried to show how one or the other case or the remarks made in the Judgments therein were more or less applicable to the case before us. It is, however, the principle which these cases lay down which would guide us and it would be erroneous to emphasize or attach greater importance or greater weight to some remarks or

some identity of facts without taking into account the entire perspective.

27. The State contends that guiding principles do exist in this case and that they are to be gathered from the provisions of Chapter V - A itself. The Statement of Objects and Reasons in respect of the Maharashtra Act XIV of 1961 and the affidavit in reply filed on behalf of the State. To show that guiding principles is the necessity for a speedier trial, reliance has been placed on three provisions contained in Chapter V A itself. the first is the provision contained in sub - section (1) of section 105 B which requires that the Commissioner shall call upon the person to vacate within a short period of one month from the date of the service of the notice. The second is the provision contained in sub - section (2) of Section 105 B which required a person on whom a show cause notice has been served as mentioned in that sub - section to apply to the Commissioner for extension of the period specified in the notice and empowers the Commissioner to grant such extension only on terms as mentioned in that sub - section. The third requirement is that sub - section (4) of section 105 F provides that every appeal shall be disposed of as expeditiously as possible. According to Mr. Setalvad, these provisions show that Chapter V - A was enacted to apply to those cases in which speedy recovery of corporation premises was necessary. The Statement of Objects and Reasons in respect of the Maharashtra Act XIV of 1961 shows that Chapter V - A was introduced in the main Act 'for enabling the Bombay Municipal Corporation to carry out its policy of slum clearance, speedy development of the estate of the Corporation and providing more housing accommodation.' Paragraph 4 of the affidavit in reply of Gulam Hamid Shaikh, under Secretary to the Government of Maharashtra, Urban Development, Public Health and Housing Department dated 31st March 1967 contains statements relevant to this point. It first points out that the corporation premises are exempted from the application of the Bombay Rent Act. It then stated that it was found that the ordinary processes of law were dilatory and important public purposes of such authorities as the Bombay Municipal Corporation were being unduly delayed by reason of the necessity of such authorities to resort to the ordinary processes of law to evict persons in unauthorised occupation of premises belonging to such authority. It further states that in the context of the Bombay Municipal Corporation it was found in particular that projects of the Corporation for slum clearance and the speedy

development of the Corporation estates and the providing of further housing accommodation were being held up by reason of the delays inevitable in following the ordinary processes of law. So far as these statements are concerned, they are statements of fact which can certainly be said to constitute the circumstances existing at the date of the enactment of the amending Act. But thereafter follows that the statement that in those circumstances the State Government was of opinion that it was desirable to enact the said Act. This statement is a statement as to the opinion of the State Government. The Judgment of the Supreme Court in the case of Jyoti Pershad shows that when a Court is ascertaining what the guiding principles are the data can be furnished by the surrounding circumstances existing at the date of the enactment and that such surrounding circumstances may be gathered from facts of which the Court itself can take judicial notice or from evidence in the form of affidavits. The opinion of the State Govt. however cannot be said to form part of the surrounding circumstances. It cannot, therefore, be legitimately referred to for this purpose.

28. A question then arises whether in these circumstances speedy recovery of corporation premises serves as a guiding principle in this case as contended by Mr. Setalvad. In this respect the preamble of the Act is not helpful, but the provision of Chapter V - A itself that thirty day's time is to be given in the order of eviction and particularly a provision that even the whole proceeding is to be disposed of as expeditiously as possible show that speedy recovery was the object. That Statement of Objects and Reasons refers to three subjects, being the Corporation policy of slum clearance, speedy development of its estates and providing more housing accommodation. The jurisdiction of the Corporation extends to Greater Bombay. The existence of slums within that area and the acute scarcity of housing accommodation prevailing within that area at the date of the amending Act are factors of which this Court can take Judicial notice. This Court can also take judicial notice that speed is very essential for clearing slums and for providing more housing accommodation. The old slums and the new ones which sprang up in Bombay after partition of India were expanding fast in 1961 and spread over open lands and even on the load sides. At the date of the amending Act lands and immovable properties in Greater Bombay were developing and developing fast. Bungalows with large gardens and one and two storeyed

structures are being replaced with skyscrapers of ten to twenty storeys. Estates of the Corporation are in the nature of public property, in the sense that those who pay taxes to the Municipality are interested therein. It was necessary that the slums should be speedily cleared and that the estate of the Corporation should be speedily developed. All the three objects mentioned in Statement of Objects and Reasons and repeated in the affidavit in reply necessitated speed. The objects were possible of being carried out by the corporation because the protection of the Rent Act did not extend to its tenants. The delays in law courts due to accumulation of large arrears is a subject within the special knowledge of the Courts of which Courts can take judicial notice. Such delays would cause corresponding delay in the execution of the said three objects. In our opinion, therefore what is stated in the affidavit in reply is mostly material of which this Court can take judicial notice. The only additional point contained in the affidavit in reply is a statement of fact that delay was being caused in the recovery of corporation premises. In these circumstances it is possible to say, as contended by Mr. Setalvad, that the object and the policy of the amending Act was speedy recovery of corporation premises and that it would serve as a guidance to the Commissioner in exercising his discretion or option in selecting whether the special procedure under Chapter V - A or the ordinary procedure in the ordinary courts should apply in different cases which involved recovery of corporation premises. No speed may be necessary to recover a small portion of a large tenanted corporation building from its tenant, if he be solvent, merely on the ground that he was in arrears of some rents. On the other hand, the recovery of possession of a whole tenanted corporation building may require speed if the corporation intends to urgently replace it by a suitable building for a hospital or a school. Mr. Setalvad invited us to hold that the necessity of speedier recovery furnishes guidance to the Municipal Commissioner in the exercise of his discretion under Section 105 - B. Mr. Sorabji, however, contended that in the case of the Northern India Caterers the necessity of speedier recovery of public premises was the basis on which the Supreme Court expressed its opinion that the classification of Government and non - Government premises may not be violative of Article 14. He pointed out that although it was present to the mind of the Supreme Court and in fact it used it as a basis when expressing its opinion on this classification, the

Supreme Court has in fact not relied upon it or even referred to it when the Supreme Court held that the discretion vested in the Collector was unguided and unfettered that is in respect of the sub - classifications between occupiers of Government property. He contended that it must therefore be held that the necessity of speedier recovery cannot be further extended to such sub - classification and that it is therefore not open to us to take this factor into account when considering discrimination by such sub - classification. He stated that it has been held in Somwanti's case AIR 1963 Sc 51, that the binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided. Mr. Sorabji contended that the point about the necessity of speedy recovery serving as a guidance for the purpose of sub - classification was the point to be decided by the Supreme Court in the Northern India Caterers' case that that argument was present to the mind of the Supreme Court, but the Supreme Court has not even referred to or discussed the effect of that point in relation to the sub - classification. He contended that though the test of speedier recovery was available in the case of Northern India the Supreme Court has nevertheless held that the discretion of the Collector was unguided and unfettered. At the highest, according to him, it can be contended that when deciding that point the Supreme Court did not consider this particular argument, but that this Court cannot distinguish the final conclusion of the Supreme Court on this point concerning the sub - classification merely on the ground that this particular argument was not considered by the Supreme Court in the Northern India Caterers' case. Now the ratio as laid down by the Supreme Court in Somwanti's case : [1963]2SCR774 is quite clear. So far as this particular point is concerned, we do not see nay difference between the provisions of the Punjab Act and the Bombay legislation. Although Mr. Setalvad's contention is that the Supreme Court has not considered this aspect in connection with the sub - classification, we are of the opinion that we are not free to examine the position on the basis that we should ignore the conclusion of the Supreme Court on this point and re - consider what would be the effect on the identical point but as arising in the case before us. We, therefore, hold that , as decided by the Supreme Court in the Northern India Caterers' case in this case also there are no principles to guide

the Commissioner in the exercise of his discretion to resort to one or the other of the two procedures and to pick and choose occupiers and occupiers of corporation premises.

29. This brings us to the consideration whether the procedure provided under Chapter V - A of the Bombay Municipal Corporation Act is more drastic than that under the ordinary law applied in ordinary courts. It is common ground that the proceedings under Chapter V - A are quasi - judicial. Section 105 - F provides for an appeal. Although the order under Section 105 - B is to be made if he is so satisfied it is not the result of a proceeding which is arbitrary but is a quasi - judicial and appealable. In spite of the fact that the order rests on the Commissioner's satisfaction, he must state his reasons in his order. (See the Judgment in the case of C. R. H., Readymoney Ltd. v. State of Bombay, : AIR1956 Bom304 and the observations of Tendolkar J. at page 807 and those of the Division Bench on appeal in the Judgment of Chief Justice Chagla at page 825). An appeal under Section 105 - F is to a judicial officer. Any defects which occurred in the original proceedings before the Commissioner are therefore, capable of being corrected in appeal by a judicial officer. Now the test to judge whether a remedy is more drastic than another or not is whether one remedy is substantially different from the other from the point of view of the incidence of prejudice which may be caused to the parties against whom the proceedings may result in such orders. Such parties, in the impugned provisions before us, from whose point of view it is to be examined, would be the occupiers of corporation premises.

30. Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri : [1954]26ITR1(SC) , has decided that if person dealt with by the impugned Act are deprived of substantial and valuable privileges which they would otherwise have if they were dealt with under the ordinary law, which in that case was the Income - tax Act, it would be no defence to say that the discriminatory procedure also advances the course of justice. It further decided that the special procedure in that case would be more drastic if it was substantially different and more prejudicial than the procedure under the Indian Income - tax Act. That decision is also useful as showing that for assessing whether a special procedure is more drastic than the ordinary procedure or not. The Supreme Court took into account such factors as to whether

the Investigator and the Judge who was to make the order were rolled into one without there being any provision for reviewing the conclusions of the Investigator, whether the right of inspection was taken away, whether a party was deprived of his right of second appeal or revision, etc. Barring the general principles so disclosed in that Judgment, the further decision in that case is not useful to us because it applies those principles to the facts of that case. We do not propose to discuss the different aspects in that other part of that case because the facts of this case are different from those in that Supreme Court case. The same test was reiterated and again applied by the Supreme Court in the case of Jagannath Prasad v. State of Uttar Pradesh, : (1961)11LLJ166SC . It was a case relating to a disciplinary enquiry against a Government servant which also is a quasi - judicial enquiry. Certain observations made in that case may be noted at this stage. They are to the effect that in a quasi - judicial proceeding the approach of the Tribunal must be judicial and that therefore the Tribunal would not be entitled to rely upon hearsay evidence and further that parties could appear by their lawyers. Bearing these principles in mind we will consider Mr. Sorabji's contention that the procedure under Chapter V - A is more drastic. He has supported this contention by several arguments.

31.Mr. Sorabji's first argument was that the original decision under Chapter V - A is that of an executive officer, whereas under the ordinary procedure it would be that of a judicial officer. He contended that the executive officer would lack the training, background and approach to the matter before him which a judicial officer would have. He contended that Chapter V - A does not even provide that the commissioner or the person who would hold the enquiry should have any judicial or even legal qualifications or training. We will consider this argument a little later.

32.His second argument was that though the enquiry under Chapter V - A is a quasi - judicial enquiry, the provisions of the Code of Civil Procedure and the strict rules of evidence will not apply and it would therefore be more drastic in several respects. In this connection, he relied upon the decision of the Supreme Court in *Charat Barrel and Drum v. New Suwarna Transport Co. Ltd.* : [1957]1SCR98 and *Western India Match Co. v. Industrial Tribunal* (1962) 1 Lab LJ 629 (SC) and thereafter the decision in the case of *Bharat Barrel* itself. In our opinion, a correct

appreciation of these three judgments shows that none of them lays down a general principle as canvassed for by Mr. Sorabji. All the three cases, of course, do relate to quasi - judicial enquiries. In the case of New Prakash, however, the statute itself provided that in the appeal the Appellate Authority shall hear such persons as may appear and after such further enquiry, if any, as may have been necessary, confirm, vary or set aside the order against which the appeal was preferred. It was, therefore, a case where a statute itself limited the scope of oral evidence and therefore the Judgment in Bharat Barrel points out that neither the sections nor the rules framed under the Act contemplated anything like recording oral or documentary evidence in the usual way as in the Courts of law, nor did they contemplate a regular hearing as in a Court of justice. The Supreme Court of India in its judgment in the Bharat Barrel case explained that the refusal to record oral evidence was justified in the other case of the Western India Match Co. because the Tribunal had held that the agreement in dispute in that case reached between the parties had been recorded by the Conciliation Officer in some of his letters and so it was a matter of construction of those letters and in that view there would be no violation of the principles of natural justice by reason of the refusal to examine the Conciliation Officer orally. In the Bharat Barrel case itself the petitioner who challenged the order made against him was prevented from leading oral evidence of his witness Lalta Prasad to prove an agreement alleged by the petitioner. It was the petitioner's contention that there was thereby violation of the principles of natural justice. The Supreme Court held that there was no such violation, because firstly, on a construction of the consent order it was held that that order did not contemplate leading of oral evidence and, secondly, that on the facts of the case the prevention of recording of oral evidence caused no prejudice because the agreement was set out in the correspondence which correspondence itself had been produced on the record. The prevention of leading oral evidence was justified in all these three cases on the individual facts of each of the three cases, but they do not lay down a general principle that rules of natural justice would not necessarily in every case be violated if oral evidence is prevented to be led in a quasi - judicial enquiry.

33. The third argument of Mr. Sorabji was in a quasi - judicial enquiry there would not be a right of cross - examination and that even if cross - examination is prevented

there will be no violation of principles of natural justice. In support of this argument he relied upon the case of Bakshi Gulam Mohamed reported in : AIR 1967 SC122 . The Supreme Court was concerned in that case with a fact finding enquiry and not a quasi judicial enquiry. Moreover, the statute expressly limited the right of cross - examination. It cannot therefore be contended that the observations made by the Supreme Court in that judgment apply to quasi - judicial enquiries.

34.Mr. Sorabji also relied on the Judgment of the Supreme Court in Calcutta D. L. Board v. Jaffar Imam, : 1966 CriLJ189 . He drew our attention to certain remarks occurring in that judgment in paragraph 12 at page 287 of the Report to the effect '.....; but such a hearing is often, if not always, likely to be ineffective because the detenu is deprived of an opportunity to cross - examine the evidence on which the detaining authorities rely and may not be able to adduce evidence before the Advisory Board to rebut the allegations made against him.' These observations have not been made in connection with a quasi - judicial enquiry. The absence of a right to cross - examine is here considered in connection with the enquiry of the Advisory Boards under the Preventive Detention Act, 1950. The enquiry by an Advisory Board, is not a quasi - judicial enquiry, but the function of the Advisory Board is limited to consider the relevant material placed before it and the representation received from the detenu and then submit a report to the Government. As a matter of fact, the observations in paragraph 13 of that Report relate directly to a quasi - judicial enquiry, the same being in respect of a disciplinary inquiry against an employee alleged to be guilty of misconduct and they are that it was absolutely essential that the employer should have held a proper enquiry at which reasonable opportunity should have been given to the employee to show cause and that before reaching its conclusion the employer was bound to give evidence against the employee, give him a reasonable chance to test the said evidence, allow them liberty to lead evidence in defence, and then come to a decision of its own. The reference here to 'a chance to test the evidence led against him ' can only mean a right of cross - examination. In our opinion, this case, far from laying down that a quasi - judicial enquiry would not be violative of principles of natural justice by reason of a refusal of the right of cross - examination, affirmatively lays down that the right to cross - examine forms a part of the principles of natural justice as applicable to quasi - judicial enquiries. This

argument of Mr. Sorabji must therefore, fail.

35. The fourth argument of Mr. Sorabji was that the principles of res judicata do not apply to quasi judicial enquiries and that therefore the enquiry under Chapter V - A is more prejudicial because an occupier of the corporation premises can be subjected to defending identical proceedings in respect of identical allegations against him over and over again. In *Burn and Co. v. Their Employees* : (1957)ILLJ226SC which related to an enquiry under the Industrial Disputes Act, it has however been laid down that the rule of res judicata enacted in Section 11 of the Code of Civil Procedure is no doubt, in terms, inapplicable to an enquiry, but that principle underlying that Section is founded on sound public policy and is of universal application. It quotes with approval the observation of Sir Jenkins C. J. in *Sheoparsan Singh v. Ramnandan Prasad Narayan Singh*, 43 I A 91 ; AIR 1916 PC 78 'The rule of res judicata is dictated by a wisdom which is for all time.' These observations, although made in a case dealing with an enquiry under the Industrial Disputes Act, is in general terms and can apply to all quasi - judicial enquiries. It is not the terms of Section 11 of the Code of Civil Procedure which will apply but the principles underlying it which will apply and those principles have been stated to be of universal application and embodying wisdom which is for all time. To the same effect are the observations in the Judgment of the Supreme Court in *Daryao v. State of U. P.* : [1962]1SCR574 . In paragraphs 9 and 10 of that Report it has been pointed out that the rule of res judicata as indicated in Section 11 of the Code of Civil Procedure is a technical rule, but although it has no doubt some technical aspects the basis on which the rule rests is founded on considerations of public policy and that it is in the interest of the public at large that a finality should attach to binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. Mr. Sorabji, however, contended that the principle of res judicata does not apply and has been held not to be applicable to many quasi - judicial enquiries. He referred to the judgment of the Supreme Court in *Remington Rand of India v. Its Workmen*, (1962) 1 Lab LJ 287 (SC). He relied particularly on the remark at page 290 of the Report : 'Indeed, it is hardly necessary to add that the decision of industrial disputes in a large number of matters may not easily admit the application of all the technical implications of the doctrine of res judicata'.

A correct appreciation of this decision however shows that it does not lay down a general principle that the principle of res judicata is not applicable to quasi-judicial enquiries. The particular remark referred to by Mr. Sorabji has been made in a case which related to an inquiry under the Industrial Disputes Act. Principles relating to industrial disputes have been set out in that Judgment. It has there been pointed out that although there may have been an industrial award or industrial agreement which is to subsist for a particular period, the workers may yet demand a change. In that case it was because the demand was made during the period of the subsistence of an industrial agreement or award that the principle of res judicata was sought to be invoked. But it is inherent in the industrial law as at present interpreted that even when there is an agreement or award which is to subsist for a particular period, two factors, being a subsequent rise in the cost of living index and a change for the better in the financial position of the employer company, may nevertheless justify a demand for a revision upwards of the amounts payable to the workers thereunder. The principle of res judicata has therefore been held to be inapplicable in such cases not because a previous decision is not binding on the parties, but because the law under which the agreement or award was made enables a change to be made if new circumstances come into existence subsequently to the agreement or award. It would not therefore, be a decision on the same facts or on the same allegations which was the basis of earlier decision, whereas the decision on same facts is the very basis of the principle of res judicata. In such industrial disputes a fresh decision can be invoked because it involves a determination of new facts and the effect of those facts on the demand of the workers.

36.Mr. Sorabji then relied upon two other decisions in Asscd. Cement Staff Union v. Asscd. Cement Co. Ltd. : (1964)ILLJ12SC and Workmen of B. L. and Co. Ltd. v. B. L. and Co. : (1964)ILLJ380SC . Each of these two cases relates to a position under the Industrial Disputes Act and what we have just stated in connection with the Remington Rand case equally applies to these two cases.

37.Mr. Sorabji also relied upon the Judgment of the Supreme Court in Visheshwara Singh v. Commr. of Income - tax, : [1961]41ITR685(SC) . The Judgment in that case states 'That is no such thing as res judicata in income - tax

matters'. Now Mr. Sorabji is right in a sense in relying upon this observation. It should, however be read in the context of the facts of the case in which it is made. It was a matter under the Indian Income - tax Act. There was an earlier decision by the Income - tax Officer in respect of the assessee but for the year 1941 - 42. The particular period to which this case related was the subsequent period to the years 1942 - 43 to 1946 - 47. The question was whether the decision in respect of the earlier year 1941 - 42 whereby the assessee had been held to be dealer in shares and securities for that year would on the basis of the principle of res judicata shut out an enquiry as to whether the assessee was a dealer in shares and securities in respect of the subsequent period. It is quite clear that the decision on the later period would depend on a fresh set of facts and circumstances and therefore a fresh investigation would not be barred on the principle of res judicata.

38.Mr. Sorabji had contended that it is possible for the Commissioner to record statements behind the back of the occupant against whom action is being taken. The procedure would, according to him, be more drastic because although a copy of the statement would be furnished to the occupant, the occupant would not have an opportunity to watch and comment on the demeanour of the witness during his examination - in - chief and notice and point out how the witness develops his story. In this connection the observation of the Supreme Court in the State of Mysore v. Shivabasappa, : (1964)ILLJ24SC , of the Report may be noted :

The same are : 'The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross - examine him. To enquire in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance.'

According to these observations, it is clear that this difference in the two procedures is not of any substance.

39.It was also contended that the provisions of Sections 91, 92 and the other provisions of the Indian Evidence Act like excluding hearsay evidence would not

apply. It is true that the technical provisions of the Evidence Act will not apply, but the basic principles embodied in the Evidence Act would apply. Therefore, no hearsay evidence would be admitted. Similarly although it would be open to give oral evidence of the contents of a document in proper cases, the appellate officer who would be a trained judicial officer would take those factors into consideration and would attach due weight, in the sense of less weight, if any weight can be attached, to the oral evidence as to the contents of a document except, of course, in cases where even under the Evidence Act it would be open to lead oral evidence of the contents of documents. But these are but technical differences and not differences of any substance causing any material prejudice.

40. The fifth argument of Mr. Sorabji was that although the appeal under Chapter V - A is to a judicial officer, the appeal itself will have a limited scope. Now, in this contention the distinction between the personal factor of the appellate officer and the scope of the appeal must be borne in mind. In both cases the original order would be of an executive officer, but when the Appellate Officer is a judicial officer, he will examine the record like a Court and in that respect there would be no difference whether an appeal be to a judicial officer or to a Court under the ordinary law.

41. When the Appellate Officer is an executive officer however, honestly and conscientiously he may act, he may possibly take into consideration departmental talks because he would not be trained to avoid even a sub-conscious impression created by them. Now, so far as the scope of the appeal is concerned, though the Commissioner's decision under appeal would rest on his satisfaction, such satisfaction would be reached under a quasi-judicial procedure at an enquiry. As seen earlier, so far as the procedure before the Commissioner is concerned, and there is no of substance between that procedure and the procedure which would be followed ordinarily in a court of law and he has to record his reasons of his order in the order which he makes to the end of the proceedings. The result would be that the scope of the appeal would be substantially similar to the scope of an appeal from a lower court to a higher Court.

42. The sixth argument of Mr. Sorabji was that in respect of a parallel act the Supreme Court has held in the Northern India Caterers' case that the procedure under the Punjab Act is more drastic than the ordinary procedure followed in an ordinary court and that we must therefore apply the ratio and reasoning in the case before us and reach a similar conclusion. We have reproduced the two relevant passages from that Judgment of the Supreme Court. A very careful reading of those two passages shows that there is an important difference between the Punjab Act and Chapter V - A. The Punjab Act provides for an appeal to an executive officer, whereas Chapter V - A provides for an appeal to a judicial officer. We are of the opinion that that particular factor is of very great importance. The difference lies not merely in the provision as to the person who is to hear the appeal, that, whether he be an executive officer or a judicial officer, but it changes the whole evaluation of the entire procedure followed before the officer who makes the order at the initial stage. When the appellate officer is a judicial officer, he would judge even the original proceedings with a trained eye. With his qualifications, training and experience as a lawyer and a judicial officer he would notice every defect or shortcoming in the original proceedings before the Commissioner and wherever he is so satisfied he would in his appellate order set them right, in this connection it must also be noticed that because of the provision in Chapter V - A, and such provision does not exist in the Punjab Act, even in the original proceedings the person against whom the order is to be made is entitled to appear by an advocate, attorney or pleader. This point also is of great importance because as he would be represented by a trained lawyer, the lawyer would not only represent the occupant's case properly, but he would see that even the record before the Commissioner is properly and fully prepared. Of course, the appeal to a judicial officer does not widen the scope of the appeal. But the combined effect of the two provisions that a lawyer can appear for the occupier at the stage of the initial inquiry before the Commissioner and the appeal thereafter being to a judicial officer would have very important consequences of a substantial nature. The presence of the lawyer would ensure, so far as the initial inquiry is concerned, proper evidence being led, opposite side's witnesses being properly cross-examined, the case being properly argued and a full and proper record being kept. As an appeal would lie to a judicial officer, the inquiry officer himself would be

more careful and the judicial officer would have a full record before him, deal with it judicially like a court and correct all shortcoming if any, in the initial proceedings. If the two procedures, namely, the one under Chapter V - A and the other being the ordinary procedure under the Code of Civil Procedure in ordinary courts of law are compared in the light of these circumstances, there appears to be no substantial difference at all between the two procedures. The procedure before the original forum will be substantially similar. The procedure at the stage of appeal will be substantially similar. From the enquiry under Chapter V - A a second appeal or a revision may not lie. But, in our opinion, the remedies of a second appeal and a revision would be substantially substituted by a writ petition to the High Court under Article 227 which would be equally efficacious. We are, as contended by Mr. Sorabji, bound to follow the ratio and reasoning of the Supreme Court's Judgment in the Northern India Caterers' case. But in this case we have to follow it by way of an analogy. We can, however, do so only on points the facts and circumstances relative to which are substantially similar. In fact, it is on that very basis, and even though one argument or one reason was not considered by the Supreme Court, that we have followed the ratio and the reasoning of that judgment in connection with the point as to whether there exist principles to guide the Commissioner in the exercise of his discretion under Section 105 B. But the ratio and reasoning of the Supreme Court Judgments referred to earlier requires that the two procedures available to the authority vested with a discretion to select between them must first critically compared and a conclusion then reached whether they are or not substantially similar for ascertaining whether one is or is not more drastic and more prejudicial than the other. As we find that the two procedures available to the Commissioner under Chapter V - A are substantially similar, we cannot, with respect, apply, by way of a so - called analogy the conclusion in the case of the Northern India Caterers to the legislation impugned in this case and hold that the procedure under Chapter V - A is more drastic. The relevant provisions of the Punjab and impugned legislations are substantially different and no Court can ignore its duty to compare, the two procedures available under Chapter V - A and record a finding whether one of the two is or is not substantially similar to the other. No Court is entitled to make a mere superficial comparison and adopt what may be called the easier way of holding

that it is bound by analogy to reach the same conclusion in this respect as that in the case of the Northern India Caterers. We find that in the case before us the two procedures available under Chapter V - A are, substantially similar and we therefore hold that the procedure under Chapter V - A is not more drastic or more prejudicial than the ordinary procedure to be followed in the ordinary courts of law.

43. That leads us to a consideration as to what is the effect of our holding that there are no principles to guide the Commissioner in exercise of his discretion under Section 105 - B, but the procedure under Chapter V - A is not more drastic. If the special procedure be more drastic and there is lack of guidance, it would render the legislation void as happened in the Northern India Caterers' case. If however the special procedure be not more drastic and there also be lack of guidance, the result would be that the element of lack of guidance would not cause any prejudice because the two procedures would be substantially similar and the impugned legislation in such a case would have to be held to be valid. If, however, the special procedure is found to be more drastic and prejudicial, but there being no lack of guidance, that is, there exist principles for guidance, the impugned legislation would have to be held valid, because although the special procedure is more drastic, in the selection of one of the two procedures, the authority concerned would be guided by those principles and there would be no discrimination or violation of Article 14. In such a case it would not be the legislation which would be void, but if in any particular case or cases the officer concerned violates the principles for guidance, his decision in that particular case or those particular case or those particular cases may be set aside, because the legislation itself would be valid but only the exercise of the power would be violative of Article 14. The principle therefore appears to be that when there is an option to pick and choose, the existence of both the factors, namely the element of the special procedure being more drastic and the element of lack of guidance, would make the legislation void and violative of Article 14. But if either of them is absent, so far as the legislation itself is concerned, it would not be violative of Article 14. This principle, when it is considered basically and without reference to any decided case, appears to be so clear that it is not necessary to refer to any authorities on that point. Mr. Sorabji had drawn our attention to three decided cases in *London Jewellers Ltd. v. Atten - Borough*. (1934) 2 K. B. 206, *Jacobs v.*

London County Council, 1950 A. C. 361 and Suraimal v. State of Madhya Pradesh. : AIR 1958 MP103 . None of these cases appears to be of any direct help to us. To state it in other words the principles appears to be that in cases where a decision has been reached for two independent reasons, either of which taken individually was sufficient by itself to justify the final conclusion, it cannot be urged that the decision on one of the reasons is the only or main factor leading to the conclusion and the decision on the other is in the nature of obiter. In that class of cases the decision on each of the two points being capable of leading to the conclusion actually reached in that case would lay down a ratio and such ratio on each of the two points would be binding on any lower court. In the other class of cases would fall a final conclusion arrived at as a result of the decisions on several points, the conclusion being based on the cumulative effect of the decisions on each of those points in that case. The final conclusion would in that class of cases rest on the cumulative support of the decisions on each of the points and such a conclusion would serve as a precedent and be of binding effect only in those cases where all such reasons cumulative exist, but in cases where any of those reasons is absent, though the other reasons be present it would be of the absence of any particular reason or reasons and after assigning due effect to them to reach its own conclusion. Adopting these principles we hold that in our case though there is a lack of guiding principles as the two procedures available under Chapter V - A are substantially similar there is no denial of equality and the impugned provisions do not violate Article 14.

44. In the circumstance we hold that Section 105 B and therefore also the provisions of Chapter V - A do not violate the provisions of Article 14 and are valid.

45. In the result the other points arising in each of these three petitions will have to be tried before a final order can be made in these petitions.

46. As regard costs, each of the three petitioners in which this question was tried as a common question will now have to be tried in respect of the other disputes involved therein. So far as the parties to each of these petitions are concerned, we therefore order that the costs of those parties in respect of the trial of this preliminary point shall be costs in that petition. That State, however, has appeared

only because of the constitutional challenge to the State legislation. The State is not a party to any of these petitions. Therefore it is no longer interested in appearing in those petitions after the decision on this preliminary point. We must, therefore finally make our order as to costs in each of the three petitions as between the State on the one hand and the petitioner in each of the cases on the other. Bearing in mind the importance of the point involved, the duration of the hearing of the preliminary point which we are informed has lasted for about thirty - one hours, and the fact that our decision as to guiding principles is against the State we quantify the costs of the hearing of this preliminary point payable to the State at Rs. 2,400/-. We order that each of the petitioners in the three petition do pay to the State a one - third of the said amount of Rs. 2,400/-, i.e. Rs. 800/- by way of its contribution to the said costs awarded to the State.

47. Order accordingly.

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