

Raja Harmahendra Singh Vs. the Punjab State and anr.

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Court : Punjab and Haryana

Decided On : Aug-04-1952

Reported in : AIR1953P& H30

Judge : Falshaw and; Kapur, JJ.

Acts : [Constitution of India](#) - Articles 13, 14, 15, 19(1) and 226; Punjab Courts of Wards Act, 1903 - Sections 5, 5(2), 13, 15, 17 and 25

Appeal No. : Civil Writ No. 252 of 1951

Appellant : Raja Harmahendra Singh

Respondent : The Punjab State and anr.

Advocate for Def. : S.M. Sikri, Adv. General

Advocate for Pet/Ap. : I.D. Dua and; D.K. Khanna, Advs.

Disposition : Petition dismissed

Judgement :

Kapur, J.

1. Counsel moves that this Court should declare Section 5(2)(d) of the Puniab Court of Wards Act (II of 1903), hereinafter referred to as the Act, void and 'ultra vires' of the [Constitution of India](#) and the continuance of the Superintendence of the estate of, the petitioner Raja Harmahendra Singh of Dada Siba by the Court of Wards as malicious, illegal and without jurisdiction. He also prays for the issue of a writ of 'certiorari' or any other appropriate writ of cancelling the notification issued on 31st August 1949, as a result of which the Court of Wards assumed superintendence of the estate of the petitioner and for a mandamus directing the restoration to the petitioner of the estate. Rule was issued on 9th November 1951 by my Lord the Chief Justice.

2. The petitioner is the owner of the estate of Dada Siba in the district of Kangra, In 1933 the estate was taken over by the Court of Wards during the minority of the petitioner and was managed and administered by them. In 1945 the petitioner attained majority and the estate was released from the superintendence of the Court of Wards. The petition alleges that after the estate was restored to the petitioner he effected substantial improvements, that in April 1945 he was 'roped in and persuaded' by the late . Maharaja of Kapurthala to go into a marriage ceremony with Usha his granddaughter', that the lady whom the petitioner was to marry was unwilling to marry him and the marriage was forced on her, that in 1946 the wife Usha

'set up the birth of a son and in 1947 she began to carry on intrigues with the help of the district officials of Kangra to foist the aforesaid child on the petitioner and his estate,'

that it was as a result of these intrigues that the Deputy Commissioner recommended to Government to take

over superintendence of the estate but this was not agreed to by Government, that in January 1949 the petitioner was implicated in a murder case although there was no evidence against him, that the petitioner was discharged on 6th December 1949, that during the time that the case was going on against him and he was in custody certain reports were made to the Government with regard to illegal felling of trees from the petitioner's forests, that the petitioner was asked by the district officials to apply for his estate being brought under the Court of Wards but he refused to do so, and that on 31 August 1949, the Court of Wards illegally assumed superintendence of the entire estate of the petitioner.

The petitioner goes on to allege that this action was malicious which is apparent from the letters of the Tahsildar of Dehra dated 7th July 1950 and 19th July 1950. The Tahsildar called upon him to state whether he was prepared to make a compromise with his wife Usha Devi and also whether he was agreeable to pay her suitable allowance and not to banish Tikka Barjindar Singh, son of Usha Devi. It is further alleged in the petition that the assumption of superintendence by, the Court of Wards under Section 5(2) (d) of the Act was illegal as the section' had no application to the facts and circumstances of the case, that the clause is repugnant to the fundamental rights of the petitioner as guaranteed under Article 19(1)(f) of the [Constitution of India](#) and is void under Article 13(1) of the [Constitution of India](#). He goes on to make other allegations which are not relevant to this case.

3. The allegations of 'mala fides' are denied by the opposite party. They state that the Deputy Commissioner recommended the assumption of the estate of the petitioner under the superintendence of the Court of Wards as he was unable to manage his estate and was likely to dissipate his property and had entered upon a course of wasteful extravagance, that the petitioner was accused of abetment of murder and during his detention in Jail people were felling timber on his land and removing the same. The respondents deny that any pressure was brought on the petitioner but give as the reasons for taking over the estate that he purchased property in the name of his second wife Suraj Devi who is described as 'his cousin sister', that he was neglecting his property and making undue exactions from his tenants, that he was not paying allowances to his dependents and had even refused to perform the last rites of his real mother. As I have said allegations of malice, illegality, want of jurisdiction, of justification and of 'bona fides' on the part of the executive are denied by the respondents.

4. The petitioner has amongst others placed the following two orders on the file and they may usefully be referred to. The first one is of the Deputy Commissioner, Dharamsala, dated 24th January 1949, which shows that the petitioner has been arrested and that the Deputy Commissioner had been informed that 'illicit fellings' were taking place in his Jagir forests and that he (the Deputy Commissioner) was asking the Divisional Forest Officer to take, action immediately in regard to 'illicit fellings.'

5. The notification dated 31st August 1949, is as follows :

'No. 4920-Agr.--Whereas in exercise of the powers conferred by Section 5(2)(d) of the Punjab Court of Wards Act II of 1903, the East Punjab Government made an order, dated the 20th August, 1949, directing that, the property of Raja Hannehindar Singh of Dada Siba in the Kangra District, be Placed under the superintendence of the Court of Wards, the said Raja Harmehindar Singh being a landholder within the meaning of Section 3 (b) of the said Act, it is hereby notified under Section 9 of the said Act, that the Court of Wards assumed superintendence of the property owned by Raja Harmehindar Singh, with effect from 31st September 1949.

2. The Court of Wards further specifies Kangra as the district, the Deputy Commissioner of which is put in charge of the property of the said Raja Harmehindar Singh on behalf of the Court of Wards.'

6. It is in these circumstances that we are asked to interfere under Article 226 of the [Constitution of India](#). As far as the prayer to give the declaration is concerned, I do not think that arises. If there is any judicial or quasi-judicial order which has been passed and which is illegal, this court would certainly call for the record and quash that order and if the case calls for a writ of prohibition this Court would also issue that.

7. The first question, therefore, to be decided in this case is the nature of the order of the Government. In order to determine this it is necessary to refer to certain provisions of the Court of Wards Act. The Act is a consolidating and amending Act. In the statement of objects and reasons it is stated in paragraph 3 that the chief objects of the Bill were to enlarge and at the same time clearly define the powers of the Court of Wards and to improve-existing procedure. In particular it is intended :

(1) To give power to Government to disqualify persons owing to habits of wasteful extravagance. * * * * *

By Section 4 the Financial Commissioner is made the Court of Wards for the Punjab. Section 4(4) is as follows:

'4(4) The Powers and authority by this Act vested in the Court of Wards shall be exercised by it, subject to the control of the Provincial Government.'

Section 5 provides:

5(1) Any land-holder may apply to the Provincial Government to make an order directing that his property be placed under the superintendence of the Court of Wards, and, upon receiving any such application, the Provincial Government, may, if it considers expedient in the public interest so to do, make an order accordingly.

(2) When it appears to the Provincial Government that any land-holder is-

(a) by reason of being a female; or

(b) owing to any physical or mental defect or infirmity; or

(c) owing to his having been convicted of a non-bailable offence and to his vicious habits or bad character; or

(d) owing to his having entered upon a course of wasteful extravagance likely to dissipate his property;

incapable of managing or unfitted to manage his affairs, the Provincial Government may make an order directing that the property of such land-holder be placed under the superintendence of the Court of Wards,

Provided that such an order shall not be made on the ground stated in Clause (e) or on the ground stated in Clause (d) unless such land-holder belongs to a family of political Or social importance and the Provincial Government is satisfied that it is desirable, on grounds of public policy or general interest, to make such order.

(3) Every order made by the Provincial Government under Sub-section (1) or Sub-section (2) shall be final and shall not be called in question in any Court of Law.'

8. Section 6 gives to the Court of Wards the power to assume superintendence on its own motion.

9. By Section 7 the Court of Wards can assume superintendence of the person of a landholder also.

10. Section 9 provides that the order of assumption by the Court of Wards shall be notified in the Official Gazette.

11. Chapter IV of the Act deals with Wardship and its consequences. Under Section 13 the whole of the property of the ward vests in the Court of Wards but it is open to the Court of Wards in its discretion to assume superintendence of any property which the ward may acquire or inherit after the date of the notification. Under Section 14, when the land of a land-holder comes under the Court of Wards it is not liable to be sold for arrears of land revenue. Section 15 gives disabilities of the ward which prevent his entering into any contract which may involve him in pecuniary liability. Section 17 gives to the Court of Wards the power to act on behalf of the ward and to deal with his property. Section 19 requires a notice of two months to be given before a suit can be brought against the Court of Wards in regard to the property under its superintendence.

12. Chapter V deals with general provisions as to the superintendence of the persons and properties of the wards. Section 21 gives the power to the Court of Wards of taking possession of the property. Section 22 deals with the superintendence and control and audit of accounts. Section 24 deals with residence and education of wards and Section 25 with allowances' for the ward and his family.

13. Chapter VI provides for ascertainment and liquidation of liabilities of wards.

14. Chapter VII deals with guardians and managers of the person and property of the ward.

15. Chapter VIII provides for the release of persons and properties from superintendence.

16. Chapter IX contains miscellaneous provisions in regard to bar of suits and in regard to discretion conferred by the Act. Section 54 gives the power to make rules.

17. Rules have been made which are contained in Appendix A--Standing Order No. 33 --under the heading 'Court of Wards'. Rule 2 which deals with the considerations which have to be kept in mind for the purposes of bringing an estate under the Court of Wards is as follows :

'2. In considering whether to recommend that an estate should be brought under the Court of Wards, Deputy Commissioners should refer to paragraphs 672, 673 and 677 to 680 of the Land Administration Manual, and should bear in mind the following principles :

(1) Resort should not be had to the provisions of the Act unless there is some important interest, revenue, political or other, to be served in the particular case. These interests will need to be specially strong if the estate concerned is heavily in debt; when the debts owed by an estate are such that they cannot be cleared off in a reasonable time, assumption of superintendence will, as a rule, be inadvisable. Similarly petty estates with an annual income of under Rs. 2,000/- are not usually fit subjects for superintendence by the Court of Wards. In deciding whether there is an important political interest to be served, regard should be had, not to the character and personality of the individual concerned, but to the potential importance and influence of the family. * * * * *

18. Rule 3 deals with preliminary proceedings and provides that the Deputy Commissioners should freely utilize the powers, for the purpose of providing for the intermediate protection of property which may have to be taken under the Court of Wards and for the purpose of acquiring the requisite information to support an application to Government or to the Financial Commissioner for action under the Act.

Rule 4 gives the points on which information is to be given to Government and is as follows :

'4. In ordinary cases a preliminary report should be made containing information upon the following points :

(i) Name, parentage, date of birth and residence of the person in respect of whom action is recommended.

(ii) Reasons for the proposal with reference to the social position, political importance of the family, amount of revenue-paying land and absence of any private person ready and fit to undertake the management of the estate of the person concerned. '

(iii) assets.

(iv) Average income.

(v) Average expenditure.

(vi) Debts secured and unsecured as far as ascertainable.

(vii) Any other details suggested by the particular case, including a detailed account of the shares owned by the various proprietors, if more than one, in the estate, with special reference to Section 8 of the Act.'

The other rules deal with matters which are not relevant for the purposes of this case.

19. There is no provision in the Act or in the rules requiring any detailed statement of grounds on which action is proposed to be taken to be furnished to the proposed ward or to give him an opportunity for showing cause why superintendence should not be assumed. All that the Act provides is that when it appears to the Provincial Government that any land holder is incapable of managing or unfitted to manage his affairs an order can be made for purposes of assuming superintendence, 'vide' Section 5(2) of the Act. It cannot be said that this is a judicial or a quasi-judicial act which the Government has to perform.

20. In -- 'Nakkuda Ali v. M. F. De S. Jayaratne', 54 C. W. N. 883 (PC), the Controller of Textiles was acting under Regulation 62 of the Defence (Control of Textiles) Regulations, 1945, and cancelled the license of the appellant. The relevant words of the regulation were:

'Where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer, the Controller may cancel the textile license * * *'

In regard to this Lord Radcliffe said at p. 889 :

'It is that characteristic 'to act judicially' that the Controller lacks in acting under Regulation 62. In truth when he cancels a license he is not determining a question; he is taking executive action to withdraw a privilege because he believes and has reasonable grounds to believe that the holder is unfit to retain it. But, that apart, no procedure is laid down by the Regulation for securing that the license-holder is to have notice of the Controller's intention to revoke the license, or that there must be any inquiry, public or private, before the Controller acts. The license-holder has no right to appeal to the Controller or from the Controller. In brief, the power conferred upon the Controller by Regulation 62 stands by itself upon the bare words of the Regulation and, if the mere requirement that the Controller must have reasonable grounds of belief is insufficient to oblige him to act judicially, there is nothing else in the context or conditions of his jurisdiction that suggests that he must regulate his action by analogy to judicial rules.'

It was held by their Lordships that the Controller was not amenable to a mandate in the nature of 'certiorari' in respect of action under Regulation 62.

21. In another case also from Ceylon -- 'M. F. De S. Jayaratne v. Babu Miya Mohamed Mtya'. 54 C. W. N. 893 (PC), it was held that the Controller in arriving at his conclusion may have been right or wrong, or may have acted not on mere suspicion but on suspicion which arose reasonably out of the facts that were before him, and, therefore, the Court refused to interfere because the Controller's jurisdiction to exercise his power being only that he should have reasonable grounds of belief and, therefore, the decision is not a judicial or quasi-judicial act and hence not amenable to the writ of 'certiorari'.

22. In another case -- 'Franklin v. Minister of Town and Country Planning', popularly known as -- 'Stevenage case', (1943) A. C. 87, it was held by the House of Lords that under the New Towns Act, 1946, it was not the duty of the Minister to call evidence in support of the order, since the object of the inquiry is to inform his mind and not to consider any issue between him and the objectors. Lord Thankerton at p. 102 said :

'In my opinion, no judicial, or quasi-judicial, duty was imposed on the respondent, and any reference to judicial duty, or bias, is irrelevant in the present case.'

It was held in this case that the duties of the Minister were purely administrative and that the Act prescribed certain methods or steps in discharging that duty.

23. No 'certiorari' would, therefore, lie in the present case nor can a writ of mandamus lie because nothing has been shown as to what duty the Government was bound to perform which has not been performed by it.

24. There is another objection to the issuing of a writ of mandamus. There is no evidence to show that there

has been a demand for that, which the party is seeking the mandamus desired to enforce, and that such a demand had been met by a refusal and, in the absence of any such proof, a writ of mandamus will not lie. (See- 'Surenbra Nath v. The State of West Bengal', 55 C. W. N. 255).

25. Another objection taken is that the order complained against was passed before the Constitution came into force. At that time there were no fundamental rights guaranteed to the petitioner. These came into existence on the 26th of January 1950, when the Constitution was enforced. It has been held in -- 'Keshavan Madhava Menon v. The State of Bombay', (1951) S. C. R. 228, that the Constitution is wholly prospective in its operation and the voidance of existing law was limited to future exercise of fundamental rights. It was observed by Das J.:

'Article 13(1) cannot be read as obliterating the entire operation of the inconsistent laws, or to wipe them out altogether from the statute book, for to do so will be to give them retrospective effect which, we have said, they do not possess. Such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution.'

At p. 235 his Lordship added:

'As explained above, Article 13(1) is entirely prospective in its operation and as it was not intended to have any retrospective effect there was no necessity at all for inserting in that article any such saving clause. The effect of Article 13(1) is quite different from the effect of the expiry of a temporary statute or the repeal of a statute by a subsequent statute. As already explained, Article 13(1) only has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. It has no retrospective effect and if, therefore, an act was done before the commencement of the Constitution in contravention of the provisions of any law which, after the Constitution, becomes void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out so far as the past act is concerned, for, to say that it is, will be to give the law retrospective effect.'

26. No doubt, in the -- 'State of Seraikella v. Union of India', (1951) S. C. R. 474, Mahajan J. referring to -- 'Menon's case' said that

'the idea of the preservation of past inchoate rights or liabilities and pending proceedings to enforce the same is not foreign or abhorrent to the [Constitution of India](#)'

and in a very recent case -- 'Lachmandas Ker walram Ahuja v. The State of Bombay', (1952) S. C. A. 352, it was held that

'the principles laid down in -- 'Keshavan Madhva Menon's case', (1951) S. C. R. 228, related to substantive right acquired or liabilities incurred under the Indian Press (Emergency Powers) Act before the Constitution. Under what procedure the rights and liabilities would be enforced did not come up for consideration in that case.....In the absence of any special provision to the contrary, no person has a vested right in procedure, nor has anybody any vested liability in matters of procedure in the absence of any special provision to the contrary.'

It was held, therefore, that in a case which was commenced before the Constitution the procedure which was of a discriminate nature would be illegal and would be a breach of fundamental rights guaranteed by Article 14 of the Constitution.

27. In--'Mahammad Peary v. Hasan Kutty', '(1950) 2 M. L. J. 623, it was held that an order which had become final could not be interfered with after the Constitution came into force under Article 226 of the Constitution, which could not Operate to take away a vested right which had accrued to a party prior to coming into force of the Constitution. In this case a writ of 'certiorari' had been applied for to quash the order of a Subordinate Judge under Section 12 (1) of the Madras Buildings Lease and Rent Control Act. It was held that the order had

become final which could not be interfered with.

28. A Division Bench of the Calcutta High Court in -- 'Rishindra Nath v. Saki Bhushan', 54 C. W. N. 793, held that Article 227 of the Constitution does not empower the High Court to interfere with an order which was a final order passed at a time before the Constitution came into force. In this case the Court followed the decision in the Privy Council case -- 'Delhi Cloth and General Mills Company Limited v. Income-tax Commissioner, Delhi', 9 Lah. 284, where Lord Blanesburg said at p. 290:

'The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the -- 'Colonial Sugar Refining Company v. Irving', (1905) A. C. 369, where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.'

29. In -- 'Bimala Prosad v. State of West Bengal', 55 C. W. N. 87, decided by a Special Bench of the Calcutta High Court it was similarly held that under Article 227 the High Court could not interfere in cases where the order was passed before the Constitution came into force. In this case the order which was sought to be revised was passed by a Land Acquisition Collector.

30. On principle I do not see how this Court can interfere with a valid order passed by Government under Section 5(2)(d) of the Court of Wards Act merely on the ground that by subsequent enactment or by the Constitution some rights have been conferred on the petitioner which, according to him, have made the Act 'ultra vires'. The same view was taken by a Full Bench of the Nagpur High Court in -- 'Rajaram Dadu v. The State', AIR 1951 Nag 443.

31. The petitioner's case now also is, though it is not so stated in his petition, that the Constitution contains provision for judicial review of statutes as to their constitutionality (see -- 'Row's case', AIR 1952 SC 196, at 199) and that the impugned Act has become void because it interferes with Article 14 of the Constitution. It has been said by the Supreme Court in -- 'Chiranjitlal Chowdhuri v. The Union of India and Ors.', (1950) S.C.R. 369, that it is an accepted doctrine of the American Courts which seems to be well founded on principle, that the presumption is in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a transgression of constitutional principles. Reference is there made to -- 'Middleton v. Texas Power and Light Company', 249 U S 152. where at p. 157 Pitney J. delivering the judgment of the Court said as follows: 'There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that state laws shall cover the entire field of proper legislation in a single enactment.' (32) At page 879 of (1950) SCR 869 Fazl Ali J. said :

'The onus is therefore on the petitioner to show that the legislation which is impugned is arbitrary and unreasonable and there are other companies in the country which should have been subjected to the same disabilities, because the reasons which led the Legislature to impose State control upon the Sholapur Company are equally applicable, to them. So far as Article 14 is concerned the case of the shareholders is dependent upon the case of the company and if it could be held that the company has been legitimately subjected to such control as the Act provides without violation of the article, that would be a complete answer to the petitioner's complaint.'

33. Mukherjea J. said at p. 913:

'This being the position, it is for the petitioner to establish facts which would prove that the selection of this particular subject by the Legislature is unreasonable and based upon arbitrary grounds.'

34. His Lordship went on to say:

'The Courts should 'prima facie' lean in favour of constitutionality and should support the legislation if it is possible to do so on any reasonable ground, and it is for the party who attacks the validity of the legislation to place all materials before the Court which would go to show that the selection is arbitrary and unsupportable.'

35. Counsel next submits that in this case there is discrimination because under the proviso to Section 5 (2) of the Act, an order cannot be passed unless the land-holder in regard to whom the order is to be passed belongs to a family of political or social importance. Howsoever undesirable it may be to pass a law of this kind it is not hit by Article 15 which prohibits discrimination on grounds of religion, race, caste, sex, place of birth or any of them.

36. The meaning and scope of Article 14 of the Constitution have been elaborately considered by the Supreme Court in four decisions. -- 'Chiranjitlal's case', (1950) SCR 869, was explained in -- 'Balsara's case', (1951) SCR 682. -- 'Anwar Ali's case', (1952) SCA 148, was the third in the series which was completed by the -- 'Saurashtra Ordinance case', (1952) S. C. A. 245.

37. As was observed by Fazl Ali J. in --'Sholapur Mill's case' which I have referred to above, (1950) SCR 869, the expression 'police power' is a familiar expression. It denotes that in special cases the State can step in where its intervention seems necessary and can impose special burdens for general benefit. Dealing with Article 14 of the Constitution it has been held in this 'Sholapur case' that Article 14 guarantees to all persons equality before the law or the equal protection of the laws and its entire object is to prevent any person or class of persons from being singled out as a special subject of discriminatory legislation. It is not suggested in the present case that the petitioner has been singled out as one particular person for any special discriminatory act. Article 14 of the [Constitution of India](#) corresponds to a similar provision in the American Constitution and the Supreme Court of America has said 'equal protection of laws is a pledge of the protection of equal laws' (see -- 'Vick Wo v. Hopkins', 118 US at p. 369), and this means 'subjection to equal laws applying alike to all in the same situation.'

Commenting on this Mukherjea J. said at P. 911 of the -- 'Sholapur Mill's case' that

'there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same..... There can certainly be a law applying to one person or to one group of persons and it cannot be held to be unconstitutional if it is not discriminatory in its character. It would be bad law 'if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations and visits a penalty upon them, which is not imposed upon others guilty of like delinquency (see -- 'Gulf C. & S. F. R. Co. v. Ellis', 163 U S 150 at p. 159)'. The Legislature undoubtedly has a wide field of choice in determining and classifying the subject -of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid (see--Southern Railway Co. v. Greene', 216 U S 400 at 412).'

38. Das J. has dealt with this point at page 932 of the report where he said--'The inhibition of the article that the State shall not deny to any person equality before the law or the equal protection of the laws was designed to protect all persons against legislative discrimination amongst equals and to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. It does not, however, mean that every law must have universal application, for all persons are not, by nature, attainment or circumstances, in the same position. The varying needs of different classes of persons often require separate treatment and it is, therefore, established by judicial decisions that the equal protection clause of the Fourteenth Amendment of the American Constitution does not take away from the State the power to classify persons for legislative purposes.

This classification may be on different bases. It may be geographical or according to objects or occupations or the like. If law deals equally with all of a certain well-defined class it is not obnoxious and it is not open to the charge of a denial of equal protection on the ground that it has not application to other persons, for the class for whom the law has been made is different from other persons and, therefore, there is no discrimination amongst equals. It is plain that every classification is in some degree likely to produce some inequality, but mere production of inequality is not by itself enough.'

In -- 'Southern Railway Company v. Greene', 216 U S 400, Day J. said:

'While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and the classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification.'

In regard to this matter Das J. has said at the bottom of p. 932 :

'Quite conceivably there may be a law relating to a single individual if it is made apparent that, on account of some special reasons applicable only to him and inapplicable to anyone else, that single individual is a class by himself.'

39. On this subject Professor Willis in his Constitutional Law has said at page 579 as follows :

'Meaning and effect of the guaranty: The guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed. The inhibition of the amendment..... was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation'. It does not take from the states the power to classify either in the adoption of police laws, or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain in classification the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis. The guaranty protects both civil rights and political rights. At first it seemed to be assumed that the protection of guaranty extended only to civil rights, but more recent cases have extended the protection of the guaranty to political rights. The right of voting must be regarded as a political right.'

40. Classification is allowed under the principle of 'police power' in America. I have already referred to the opinion of Fazl Ali J. in -- 'Sholapur Mills case'. The Classification for 'police power' has been given by Professor Willis at page 580 of his book on the 'Constitutional Law' in the following words:

'There is no rule for determining when classification for the police power is reasonable. It is a matter for judicial determination, but in determining the question of reasonableness the Courts must find some economic, political, or other social interest to be secured, and some relation of the classification to the objects sought to be accomplished. In doing this the courts may consider matters of common knowledge, matters of common report, the history of the times, and to sustain it they will assume every state of facts which can be conceived of as existing at the time of legislation. The fact that only one person or one object or one business or one locality is affected is not proof of denial of the equal protection of the laws. For such proof it must be shown that there is no reasonable basis for the classification.'

41. That classification is allowed, has been accepted by the Supreme Court of India in --'Chiranjit Lal Choudhuri v. The Union of India and Ors.', (1950) SCR 869, in -- 'Anwar Ali's case', (1952) SCA 148 in the -- 'Saurashtra Ordinance case', (1952) SCA 245, to -- 'Lachmandas Kewalram Ahuja v. The State of Bombay', (1952) SCA 352, and in -- 'Balsara's case', (1951) SCR 682. -- 'Chiranjit Lal Chowdhuri's case' was explained by Fazl Ali J. in -- 'Balsara's case', (1951) SCR 682, at p. 708, where the learned Judge laid down the following seven principles:

- '1. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.
2. The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.
3. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.
4. The principle does not take away from the State the power of classifying persons for legitimate purposes.
5. Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.
6. If a law deals equally with members of of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.
7. While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis.'

42. The opinion of various learned Judges in -- the Saurashtra Ordinance case' has been summarised by counsel as follows :

43. According to Sastri C. J. all legislative differentiation is not necessarily discriminatory. Equal protection claims under Article 14 of the Constitution are to be examined with the presumption that the State action is reasonable and justified. Fazl Ali J. was of the opinion that a distinction should be drawn between 'discrimination without reason' and 'discrimination with reason'. The whole doctrine of classification is based on this distinction. According to Mahajan J. Section 11 of the Saurashtra Ordinance, like Section 5(1) of the West Bengal Special Courts Act, suggests no reasonable basis of classification either in respect of offences or in respect of cases. Section 11 of the Ordinance is accordingly unconstitutional. According to Mukherjea J. a legislature for the purpose of dealing with the complex problems that arise out of an infinite variety, of human relations, cannot but proceed upon some sort of selection or classification of persons upon whom legislation is to operate. The consequences of such classification would undoubtedly be to differentiate the persons belonging to that class from others, but that by itself would not make the legislation obnoxious to the equal protection clause.

The legislature is given the utmost latitude in making the classification but it is only when there is palpable abuse of power and the differences made have no rational relation to the objectives of the regulations, that the necessity of judicial interference arises. A statute will not necessarily be condemned as discriminatory, because it does not make the classification itself, but as an effective way of parrying out the policy, vests the authority to do it in certain officers or administrative bodies. If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the

statute itself cannot be condemned as a piece of discriminatory legislation. The discretion that is conferred on official agencies in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy, to effectuate which the discretion is given and it is in relation to that objective that the propriety of the classification would have to be tested. If the administrative body proceeds to classify persons or things on a basis which has no relation to the objective of the legislature, its action can certainly be annulled as offending against the equal protection clause.

44. The object of disqualification under the impugned Act seems to be what was given by their Lordships of the Privy Council in --'Bhagwan Baksh Singh v. Secretary of State for India', ILR 1940 All 432 at p. 439 (this was a case under the U. P. Court of Wards Act) : 'The object of disqualification under Section 8 is no doubt threefold -- it will protect persons incapable of managing their own affairs, it will prevent the splitting up or as the Act itself says 'the dissipation of the property', and in either event it will enable land revenue to be more easily and more certainly collected. That the collection of land revenue is an important consideration is apparent both from the objects aimed at and from the fact that by Section 4 of the Act the Board of Revenue is made the Court of Wards for the United Provinces. Indeed in earlier schemes in respect of the disqualification of proprietors, the necessary provisions were contained in the Land Revenue Acts themselves, and even in the present Act the definition of Proprietor is only reached by reference to 'mahal' and its meaning in the Land Revenue Act from time to time in force.

45. The question then to be decided is whether this is a reasonable classification. In my opinion it cannot be said that classification for the purposes of protection of land revenue or the protection of persons incapable of managing the estates, levying illegal exactions on the tenantry or land owners having habits of wasteful extravagance is not a reasonable classification.

46. In the -- 'Sholapur case', (1950) S C R 869, the ground on which attack was directed against the Act impugned in that case that there was interference of three fundamental rights : (1) right to property secured by Article 31 of the Constitution, (2) right to acquire, hold and dispose of property guaranteed by Article 19 (1) (f) and (3) right to equal protection of law.

I have dealt with Article 14 already. I shall now try to examine how far the petitioner's rights under Article 19 (1) (f) have been infringed. His submission is that Sections 13, 15, 17 and 25 of the Act interfere with his rights because under Section 13, the property vests in the Court of Wards; Section 15 imposes disabilities in regard to transfer and creating of charges; Section 17, also prevents the selling of the properties of the petitioner. Similar disabilities were imposed by the impugned Act in the -- 'Sholapur case', the provisions of which were described by Mukherjea J. as most drastic and against the general law of the land as laid down in the Indian Companies Act in regard to the administration and management of the affairs of a company. That Act had been passed because there were allegations of mismanagement and neglect and a situation had arisen by which the affairs of the company prejudicially affected the production of essential commodities and caused unemployment amongst a certain section of the community. There was no proof given in that case that any other company similarly placed had been differently treated.

At p. 914 Mukherjea J. said:

'We should bear in mind that a corporation, which is engaged in production of a commodity vitally essential to the community, has a social character of its own, and it must not be regarded as the concern primarily or only of those who invest their money in it. If it is about to collapse not for any economic reason but through sheer perversity of the controlling authority, one cannot say that the legislature has no authority to treat it as a class by itself and make special legislation applicable to it alone in the interests of the community at large. * * * All these are matters which require investigation on proper materials which we have not got before us in the present case. In these circumstances I am constrained to hold that the present application must fail on the simple ground that the petitioner made no attempt to discharge the 'prima facie' burden that lay upon him.'

47. In the present case, no facts have been stated by the petitioner which would show that the equal

protection of laws has been infringed or that there is anything in the action of the Government which singles him out for action under the Act. On the other hand, in its reply the opposite party has stated that the petitioner has purchased immovable property in the name of his second wife out of the cash which was given to him. He has been neglecting his property and making undue exactions from his tenants, and he has not been paying allowances to his dependants. In reply to paragraph 15 of the written statement in which several allegations were made the petitioner has stated that 'para No. 15 is not admitted' and then he has gone to other facts in regard to his marriage, but has not denied the statement of the Government with regard to his mismanagement. As I have said one of the reasons that action was taken by the Union of India in the -- 'Sholapur case' was mismanagement. It was not held in that case that the classification or the action taken was in any way unreasonable.

48. In--'the State of Madras v. V.G. Row', AIR 1952 (SC) 196, the test of reasonableness of restrictions was laid down by the Supreme Court which under the headnote (b) is as follows :

'The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.'

49. Restrictions similar to those which are imposed by the impugned Act are provided for by Bankruptcy Laws and to a lesser degree by Guardianship Laws and laws governing persons of weak mind. It has not been suggested that these acts are a violation of the fundamental rights.

50. Considering the case in the light of the various cases that have been decided by the Supreme Court and the tests that have been laid down by their Lordships, it appears to me that there is nothing shown by the petitioner in this case that the Act is in any way unconstitutional. To classify a class which owns large areas of land for which large amount of revenue would be payable to Government does not in my opinion seem to be unreasonable. It is the duty of the Government to see that its revenues are collected smoothly and in time and that those who are liable for the payment of the revenue pay it when it becomes due. It is also the duty of the State to see that estates are not mismanaged and exactions are not made from the tenants because otherwise it would cause a great deal of discontentment among the peasantry and would lower production of food which is so essential at this or at any time. If for the purposes of protection of the revenues of the State and for seeing that there is no discontentment amongst the tenants, laws of the kind one of which is being impugned before us are passed by the Government, it cannot be said that they are unreasonable interference with the fundamental rights of persons, like the petitioner. As I have said it has not been shown that the petitioner has been singled out for action under the Act.

51. I am, therefore, of the opinion that this petition must fail and I would dismiss it and discharge the rule with costs.

Falshaw, J.

52. I agree.

