STATE OF MAHARASHTRA ETC. ETC. A

v.

MRS. KAMAL SUKUMAR DURGULE AND ORS. ETC.

[Y.V. CHANDRACHUD, C.J. S. MURTAZA FAZAL ALI, B
V.D. TULZAPURKAR, O. CHINNAPPA REDDY AND
A. VARADARAJAN, JJ.]

November 28, 1984

Constitution of India, 1950 : C

(i) *Articles 14, 19 (1) (f) and 31—Act passed by a State Legislature—No guidelines for exercise of discretion provided—Neither proper classification nor provision for notice to affected persons made—Constitutional validity of.*

(ii) *Entries 18, 64 and 65 of List II—Whether State Legislature competent to pass the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975.* D

Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation & Summary Eviction) Act 1975, ss. 2(f), 3, 4, 4A, 4B read with Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation & Summary Eviction) (Service of Notice) Rules 1975—Constitutional validity of—Whether guidelines for exercise of discretion & Proper classification and provision for notice to affected persons provided in the Act—Rules framed subsequently regarding provision of notice to affected persons—Whether cures the unconstitutionality of the Act. E

The Maharashta Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, LXVI of 1975 passed by the State of Maharashtra was amended twice—first by Act No. XXXVII of 1976 and later by Act No. VII of 1977. Section 2 (f) as amended retrospectively by the First Amendment Act divides "Vacant land" into four categories : (1) lands which are in fact vacant, that is to say, not built upon ; (2) lands on which structures have been or are being constructed otherwise than in accordance with any law regulating the construction of such structures and which the Competent Authority may specify and declare to be vacant lands by announcing by beat of drum or other suitable means ; (3) lands specified in the Schedule to the Act, and (4) lands included in the Schedule by the State Government by an order amending the Schedule. Section 3 provides that no person shall occupy or enect any shelter enclosure or other structure on such land for the purposes of residence or otherwise without the express permission of the Municipal Corporation and also prohibits any person to collect from the occupier of such vacant land any amount by way H

A of rent or compensation in relation to the unauthorised occupation of such vacant land while it empowers the government to collect or receive from the occupier of such vacant land such reasonable amount by way of penal charges as may be determined till such time as the structure erected in contravention of the provisions of s. 3 is removed from the land. Section 4 empowers the government to evict a person occupying any vacant land in an urban area in contravention of the provisions of s. 3. Section 4A deals with B permission for renovation of structures on vacant lands as a temporary measure in certaian circumstances. Section 4B lays down mode of recovery of dues of financial institutions which render assistance for renovation of structures.

The respondents were owners of some plots of land in Bombay. The C plots were assessed to non-agricultural assessment and to Property tax by the Bombay Municipal Corporation. The respondents had constructed buildings of a permanent nature on the plots and the same had been provided with essential civic amenities like water and electricity. The appellants-State Government & Municipal Corporation of Bombay called upon the respondents to demolish the buildings, since they were constructed without the requisite permission of the Bombay Municipal Corporation. The D respondent's request to regularise the unauthorised construction was also rejected because the Government was considering a proposal for acquisition of the said land for the purpose of an industrial estate. The respondents then approached the Special Land Acquisition Officer requesting that the land be released from acquisition. The Land Acquisition Officer informed the respondents that the said plots of land had been released from acquisition by a notification dated September 14, 1964. But, later on, the E said plots of land were declared by the Competent Authority as "vacant land" in exercise of the powers conferred upon it by Section 2 (f) (b) of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act LXVI of 1975.

The respondents challenged before the High Court the constitutional validity of the Act and the legality of orders passed thereunder. The High F Court declared the Act as violative of the provisions of the Constitution and allowed their writ petitions.

In the appeals to this Court, the appellants contended that the infirmity, if any, from which the Act suffered in its inception has been cured by the passing of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) (Service of Notice) Rules, 1979 inasmuch as the affected person is given a notice before passing an G order under section 2 (f) (b) or under section 4(1) of the Act and that the Competent Authority is further required to consider any objections submitted to it by the affected person. On behalf of the respondents it was argued (I) that the Act violates the fundamental rights conferred upon them by Art. 14, 19 (1) (f) and 51 of the Constitution; (II) that the State Legislature lacked the Legislative competence to pass the Act and (III) that the Act delegated excessive and uncanalised powers to the Executive to pass H orders.

Dismissing the appeals, A

HELD : 1.1 It is evident that the expression 'land' in Section 2 (f) of the Act means plots of land with defined boundaries which are generally recogn d for revenue and survey puposes. Section 2 (f) (b) requires two conditi s to be satisfied in order that a land can be described as a vacant land ; Firstly, there has to be an unauthorised structure on the land and secondly, the Competent Authority has, by an order in writing, to specify B and declare that land to be a vacant land. [143 D-E]

1.2. Section 2 (f) (b) suffers from the vice in that, it treats all persons alike irrespective of how they are situated in the matter of their involvement in the construction of unauthorised structures and their interest therein. Classification requires division into classes which are marked by common characteristics. Such division has to be founded upon a rational basis and it must be directing at subserving the purposes of the statute. Section 2 (f) C (b) and the other cognate provisions of the Act make no distinction at all between owners of the lands who have themselves constructed unauthorised structures and those others on whose lands unauthorised structures have been constructed by trespassers. The latter class of owners who are silent spectators to the forcible and lawless deprivation of their title to their property have been put by the Act on par with tresspassers who, taking law into their own hands, defy not merely private owners but public D authorities. [146 G-H ; 1 47 A]

1.3. Section 2 (f) (b), also, suffers from the infirmity of according equal treatment to unequals. Take a simple example : A plot of land may be vacant in the true sense of the term, that is to say, wholly unbuilt upon. Another, plot of land may have a small structure built upon it in accordance with the Municipal rules and regulations. The first plot of land attracts E drastic provisions of the Act merely by reason of the fact that nothing has been built upon it at all, while the second plot of land is entirely outside the scope of the Act for the reason that some tiny structure is standing thereon. Such a classification betrays lack of rationale.[147 B-C]

2.1. The Act confers upon the Competent Authority the discretion to declare a land as a vacant land without laying down any guidelines to F control that discretion. Competent Authority has the freedom to pick and choose lands on which there are unauthorised structures and declare some of them as vacant lands and leave other lands similarly situated untouched. [143 E]

2.2. The Act does not also provide for any safeguard against the arbitrary exercise of the discretion conferred upon the Competent Authority to declare a land as a vacant land. It does not contain any provision whatso- G ever which is directed at ensuring the public health and sanitation or the peaceful life of the inhabitants of the concerned locality. Indeed, nothing is farther removed from the true purpose and object of the Act than these considerations. The last item in the Schedule to the Act includes all public roads and highways in Greater Bombay. These, surely, cannot be regarded as constituting a grave danger to public health, sanitation or peaceful life of the citizens. It is clear from the Statement of Objects and Reasons that H

A the evil which was sought to be remeded by the Ordinance, which was later replaced by the Act, was not danger to public health or sanitation or to the peaceful life of the inhabitants of the Metropolis of Bombay, but, the danger posed by the construction of unanthorised structures, is the evil which the Act seeks to remedy. [144 H ; 143 H ; 144 A-B ; G]

B 2.3. The Act does not prescribe any procedure which the Competent Authority is required to adopt before declaring a land as vacant land. There is no provision in the Act requiring the Competent Authority to observe even the rudimentary norms of natural justice before making the statutory declaration. The Authority is not obliged to give notice to anyone and it need not hear any person who is likely to be affected by the declaration. The State Government too, is under no obligation to follow any set procedure prior to amending the Schedule so as to include new lands therein. The pewer conferred by Sections 3(1) and 4(1) of the Act is similarly uncontrolled C and arbitrary. [145 B-D]

2.4. In the instant case, massive encroachments on private properties have led to the virtual deprivation of the title of rightful owners of those properties. The Act penalises such owners for no fault of theirs and, that too, without giving them an opportunity to be heard. The fact that the power to make the requisite declaration under the Act is vested in officers D of the higher echelons makes no difference to this position and is not a palliative to the prejudice which is inherent in the situation. [145 F-G]

3.1. It is impossible to understand the scheme of the Schedule to the Act or to discover any rational basis behind it is difficult to understand as to why certain lands which are under acquisition for the purposes of the Maharashtra Housing Board and the Bombay Municipal Corporation have E been included in the Schedule and other lands similarly situated have not been so included. Some of the entries in the Schedule show that unauthorised structures could not have been possibly constructed on the lands mentioned therein. By and large, the Schedule is divorced from the true object of the Act. [147 E-F]

F 3.2. No criterion or standard is laid down in order to enable the State Government to determine objectively as to which lands can be added to the Schedule. The power to add to the Schedule is in the nature or a legislative power which, in the very nature of things cannot stipulate for service of notice to the persons affected by the amendment. This power of amendment of the Schedule is not even conditioned by the fact that the lands added to the Schedule must have unauthorised structures standing thereon. The State G Government is free to pick and choose any land and put it in the Schedule. This kind of conferment of uncanalised discretion is strawn all over the Act. [147 G-H ; 148 A]

3.3. It is therefore clear that each part of the definition of 'vacant land' in section 2(f) of the Act is violative of the provisions of Articles 14 and 19 (1) (f) of the Constitution. The Act had to satisfy the requirements H of Art. 19 (1) (f) so long as it was a part of the Constitution. [148 B-C]

(4) It may be noted that until the Competent Authority passes an order under section 4(1) calling upon an occupier to vacate a land, even a trespasser or an unauthorised occupier can continue to be in possession of th e land. If he is granted permission to occupy the land under section 3(1), he cannot be evicted at all, for the simple reason that the order of eviction under section 4(1) can be passed only if a person is in occupation of a land contrary to the provisions of section 3. Even the eviction of a trespasser from the land can afford no solace to its rightful owner because, the Act does not contain any provision whereby the land can be returned to him after it is freed from unauthorised occupation. If the owner himself has erected an unauthorised structure, the Act does not provide as to what is to happen to the land after he is evicted therefrom. [148 D-F]

(5) The Statement of Objects and Reasons of the First Amendment Act shows that the provision for levying penalty was introduced into the Act in order that occupants of lands on which there were unauthorised structures and, who are allowed to continue in possession of the structures do not continue to occupy those lands without payment of any amount at all to public authorities. It appears that even after forfeiting the structures consequent upon the passing of an order under section 4(1), the State Government has been recovering compensation from unauthorised occupants. It seems quite incongruous that while the true owner is prevented from taking legal proceedings to recover any rent or compensation from persons who had trespassed upon his land, the State Government can recover penal charges from the trespassers. Moreover, the Statement of Objects and Reasons of the Second Amendment Act shows that the Government had carried out substantial environmental improvements on vacant lands and had sponsored a scheme for building semi-permanent houses thereon. They intended to give to the occupants of such structures security of tenure subjuct only to the condition of regular repayment by them of the loans given by the financial institutions. The true owners of lands are totally ignored in this scheme of things, even if they are victims and not the authors of unauthorised constructions. [148H ; 149A-B ; F-G]

(6) The unconstitutionality of the Act cannot be cured by the framing of the Rules made three and a half years after the Act was passed. Besides, the Rules only provide for a notice to be given and objections to be considered before the passing of an order under sections 2 (f) (b) and 4(1). They do not make a similar provision before permission is granted or refused under section 3(1) of the Act. But, even, the Rules do not lay down any guidelines for the exercise of the discretition which is conferred upon the Competent Authority by section 2 (f) (b) or section 4(1) of the Act. [146E-F]

(7) The Act does not violate the provisions of Art. 31(1) of the Constitution as it then stood. It does not provide for transfer of ownership of vacant lands to the State or to a corporation owned or controlled by the State ; nor does it vest in the State the right of the owner or occupier of vacant lands to recover rent or compensation for use and occupation of such lands. [150A-B]

(8) The Act does not amount to a measure of requisition and is not

A bad for the reason that it provides for requisition without payment of compensation. It is straining the language of the Act to hold that it provides, directly or indirectly, for requisition of private property. The Act does not transfer the right to possession of vacant lands to the State, its agents or its instrumentalities. Therefore the Act does not offend against the provisions of Article 31(2) of the Constitution as it then stood. Since that Article is not attracted, no question can arise of the invalidity of the B Act on the ground mentioned in Article 31(5), namely that the Act had not received the assent of the President. [150C-D]

(9) In so far as the question of legislative competence is concerned, the High Court was right in holding that the State Legislature had the competence to pass the Act under Entries 18, 64 and 65 of List II. [150E]

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 386, 529 & 532 of 1980.

From the Judgment and Order dated the 8th Fobruary, 1980 of the Bombay High Court in Miscellaneous Petitions Nos. 1340 of 1977, 141 of 1977 and 1535 of 1976.

D IN C.A. 386 OF 1980.

Dr. L.M. Singhvi, O.P. Rana, R.P. Vyas, M.N. Shroff and *Abhishek Manu Singhvi* for the Appellant.

K.K. Singhvi, Anil Gupta and *Brij Bhushan*, for Respondent.

E IN CIVIL APPEAL NO. 529 AND 532 OF 1980.

Harish Salve, J.B. Dadachanji and *D.N. Mishra* for the Appellants in C.A. 529.

S.B. Bhasme, S.S. Khanduja and *A.K. Galati* for the Respondent in C.A. 529 of 1980.

F *Y.H. Mocdala, B.P. Singh* and *Ranjit Kumar* for the Respondent in CA. 532 of 1980.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. These appeals by the State of Maharashtra arise out of a judgment dated Fabruary 8, 1980 of the High G Court of Bombay in a group of writ petitions which were filed under Article 226 of the Constitution. By those writ petitions, the petitioners, who are respondents herein, challenged the validity of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, LXVI of 1975 and the legality H of certain orders passed thereunder. We will refer to the aforesaid

Act as "the Act". The Act replaced an ordinance, bearing a similar title, which was promulgated by the Governor of Maharashtra on November 11, 1975. The Act was amended twice, first by Act No. XXXVII of 1976 and then by Act No. VII of 1977. We will refer to these two these two Acts as 'the First Amendment Act' and 'the Second Amendment Act'.

Several writ petitions were filed in the Bombay High Court to challenge the validity of the Act and the orders passed under it, the facts being broadly of the same pattern. In order to understand the nature of the controversy in these appeals, it would be sufficient for our purpose to set out the facts in one of those petitions, namely Writ Petition No. 1340 of 1977. The petitioners in that petition are the owners of a plot of land which is part of survey No. 154, Bandra, Greater Bombay, admeasuring about 1100 square meters. Though the petitioners had obtained possession of the plot in about 1964 under an agreement of sale, they became owners thereof under a deed of sale dated September 20, 1974. The plot is assessed to non-agricultural assessment and to property tax by the Bombay Municipal Corporation. There are four chawls consisting of 31 one-room tenements and a two-storeyed building having four rooms on each floor on the plot. These buildings were constructed by the petitioners between 1964 and 1970. The two-storeyed structure is in the occupation of the petitioners while the one-room tenements have been let out by them. These structures having been put up by the petitioners without the requisite permission, the Bombay Municipal Corporation called up them to demolish the same. Thereupon, the owners of various plots of land comprised in Survery No. 154 formed an Association through, which they requested the Standing Committee of the Bombay Municipal Corporation to regularise the constructions. The Association was, however, informed that its request could not be granted because, the Government was considering a proposal for the acquisition of the land for the purpose of an industrial estate. The Association then approached the Special Land Acquisition Officer requesting that the land be released from acquisition. The Land Acqusition Officer informed the Association that Survey No 154 had been released from acquisistion by a notification dated September 14, 1964.

It would appear from the contentions of the petitioners in the aforesaid writ petition that there are two main tarred roads, two tarred by-lanes, two Municipal Primary Schools, one High School

A and one Municipal dispensary in the area comprised in Plot No. 154. Besides, the head office of the Central Consumer Co-operative Society is also situated in one of the buildings situated on that plot of land. The structure standing on the plot are alleged to be of a permanent nature. In any event, it seems clear that they are provided with essential civic amenities like water and electricity. The B land belonging to the petitioners was declared by the Competent Authority as "Vacant Land" in exercise of the powers conferred upon it by section 2 (f) (b) of the Act.

The constitutionality of the Act was challenged by the respon- C dents on the ground that it violates the fundamenial rights conferred upon them by Articles 14, 19(1) (f) and 51 of the Constitution, that the Legislature lacked the legislative competence to pass the Act and that, the Act delegated excessive and uncanalised powers to the Executive to pass orders under its provisions.

D The long title of the Act shows that it was passed in order to prohibit unauthorised occupation of vacant lands in urban areas in the State of Maharashtra and to provide for summary eviction of persons from such lands and for matters connected therewith. According to the preamble of the Act, it had become necessary to take certain measures because the number of unauthorised occupants on E vacant lands in urban areas was increasing rapidly and was causing grave danger to public health and sanitation and to the peaceful life of the inhabitants of these areas.

The Act was applicable to the entire State of Maharashtra but, in the first instance, it was brought into force in the Bombay Metro- F politan Region on November 11, 1975 which was the date on which the Ordinance was promulgated. The Act confers power on the State Government to bring its provistons into force in such other urban areas as may be specified by a notification. Later, the Act was brought into force in the urban areas of Solapur, Aurangabad, Nagpur and Kolhapur.

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Sections 3 and 4 of the Act around which a large part of the argument revolves read thus :

"3. *Prohibition against unauthorised Occupation of vacant land.*

(1) No person shall, on or after the appointed date, occupy H any vacant land or continue in occupation of any vacant land

in any urban area or erect any shelter or enclosure or other structure on such land for the purposes of residence or otherwise without the express permission in writing of the Municipal Commissioner in a corporation area, of the Chief Officer in a muncipal area and elsewhere, of the Collector, or except in accordance with any law for the time being in force in such urban area.

(2) No person shall on or after the appointed date abet any person in occupying any vacant land or in continuing to occupy such land in any urban area, or in erecting any shelter, enclosure or other structure on such land for the purposes of residence or otherwise in contravention of the provisions of sub-section (1), or shall receive or collect from the occupier of such vacant land any amount whether by way of rent compensation or otherwise or shall in any manner whatsoever operate in relation to the unauthorised occupation of such vacant land.

Provided that, the State Governmnnt or any Officer or authority specified by it in this behalf, shall have a right to receive or collect from the occupier of such vacant land such reasonable amount by way of penal charges as may be determined, by general or special order, by the State Government, till such time as the structure erected in contravention of the provisions of sub-section (1) is removed from the land. Payment of any such amount shall not create or confer on the unauthorised occupant any right of occupation of such land or structure. Such amount if not paid on demand shall be recoverable as an arrear of land revenue. The amount so collected shall, as far as possible, be utilised for purposes connected with the eviction, rehabilitation and improvement of conditions of unauthorised occupants of vacant lands."

"4. *Power of Competent Authority to evict persons from unauthorised occupation of vacant lands.*

(1) Notwithstanding anything contained in any law for time being in force, if the Competent Authority, either on application or *suo motu*, has reason to believe that any person is occupying any vacant land in an urban area in contravention of the provisions of section 3, it may by

A order require such person to vacate the land forthwith or by certain time intimated to such person, and to remove all property therefrom, and if such person fails to comply with the order to vacate the land and to remove all property therefrom, he may be summarily evicted from such land by the Competent Authority, and any property
B which may be found thereon may be ordered by the Competent Authority to be forfeited to such authority as State Government may by general or special order specify and be removed from the vacent land. For the purposes of eviction and removal of any such property, the Competent Authority may take, or cause to be taken such steps
C and use, or cause to be used, such force, and may take such assistance of the Police Officers as the circumstance of the case may require.

Explanation—For the avoidance of doubt, it is hereby declared that the power to take steps under this sub-sec-
D tion includes the power to enter upon any land or other property whatsoever.

(2) The order of eviction of any person from any vacant land or forfeiture of any property therein or any proparty therefrom under sub-section (1) shall be final and conclu-
E sive, and shall not be called in question in any Court.

(3) A person who is found to be on any vacant land belonging to, or vesting in, another person shall, unless the contrary is proved by him to the satisfaction of the Competent Authority, be deemed to be in occupation of such va-
F cant land in contravention of the provisions of section 3."

Sections 4—A, 4—B and 4—C were inserted into the Act by the Secand Amendment Act. Those sections read thus :—

"4—A. *Permision for renovation of structures on vacant lands*
G *as a temporary measurse in certain circumstances.*

(1) Notwithastanding anything contained in sections 3 and 4, where any occupier of a structure on a vacant land, in respect of which penal charges are collected from him under section 3, or any occupier is by an order made under
H sub-section (1) of section 4 required to vacate any vacant

land and to remove all property (including any structures) therefrom, desires to renovate the structure at his risk and expense as a temporary measure, he may seek the previous permission of the Controller of Slums to do so. On receipt of any application for such permission, if the Controller of Slums is, after such inquiry as he deems fit to make, satisfied that the structure is not fit for human habitation and the proposed renovation is necessary to make it so fit temporarily, he may, subject to such conditions as he may impose grant the required permission.

(2) Where any structure is renovated in accordance with the permission granted under sub-section (1), the Competent Authority shall not evict the occupier of the structure so renovated, till such time as the Controller of Slums may specify :

Provided that if, in the opinion of the Controller of Slums, occupier has at any time committed a breach of any of the conditions subject to which the permission was granted, he may cancel the permission granted and direct the Competent Authority to take necessary action against the occupier under section 4 forthwith for his eviction and forfeiture and removal of his property.

4—B. *Recovery of dues of financing institutions, which render assistance for renovation of structures.*

(1) Where an occupier of any structure referred to in section 4A has availed of any financial assistance for renovation of the structure from any financing institution recognised by the State Government in this behalf, the Controller of Slums may, at the request of the financing institution, collect on behalf of that institution the amount of loan advanced to the occupier by that institution in such instalments and at such intervals, and remit the amount so collected to the institution in such manner, as may be directed by the State Government.

(2) If any such occupier fails to pay any amount due to the financing institution on or before the due date, the Controller of Slums may send to the Collector, a certificate under his hand indicating therein the amount which is due

A to the financing institution. Thereupon, the Collector or any officer authorised by him shall recover the amount due as an arrear of land revenue :

Provided that no such certificate shall be sent to the Controller, unless the occupier bas been served with a B notice by the Controller of slums calling upon him to pay the amount due by a specified date.

4-C. Powers of Controller of Slums under sections 4A and 4B exercisable by authorised officer also.

C For the purposes of section 4A and section 4B, "Controller of Slums" includes any officer subordinate to him, who is authorised by him in writing in that behalf."

Section 5 of the Act prescribes the penalty for contravention of the provisions of Section 3(1) or for failure to comply with an D order made by the Competent Authority under section 4 or for obstructing the Competent Authority in the exercise of any power conferred upon it by the Act. The penalty extends to imprisonment for a period of three years and fine. Section 8 of the Act provides that no court shall have jurisdiction to entertain any proceeding, civil or criminal, in respect of the eviction of any person E from any vacant land under the Act or in respect of any order made or action taken by the Competent Authority in the exercise of the powers conferred by the Act or to grant any stay or injunction in respect of such order or action. This section further provides if any suit or other proceeding in respect of the eviction of any person from any vacant land is pending on the appointed date in any court, F it shall abate.

The expression "Vacant Land" is defined in section 2 (f) of the Act. The original definition was replaced by the First Amendment Act after which the section reads as follows :

G "2 (f)—'vacant land', in relation to any urban area, means ——

(a) all lands in such area, whether agricultural or non-agricultural, which are vacant and are not built upon H on the appointed date ;

(b) all lands in such area on which any structure has been or is being constructed otherwise than in accordance with any law regulating the construction of such structure and which the Competent Authority may, from time to time, by an order in writing, specify and declare to be vacant lands by announcing by beat of drum or other suitable means on or in the vicinity of such lands, and the declaration so made shall be deemed to be notice to all those who are occupying such lands that all such lands shall be vacant lands for the purposes of this Act ;

and includes, in particular, all lands specified in the Schedule to this Act.

The State Government may, from time to time, by an order, published in the *Official Gazette* amend that Schedule by adding thereto any land or lands specified in that order or by modifying or transferring any entry in that Schedule."

On December 3, 1971 a Proclamation of Emergency was issued by the President of India under Article 352 of the Constitution on the ground that a grave emergency existed whereby the security of India was threatened by external aggression. Another proclamation of Emergency was issued under the same Article on June 25, 1975 on the ground that the security of India wa sthreatened by internal disturbance. On June 27, 1975, the President issued an order under Article 359 (1) suspending the right to move any Court for the enforcemeut of the fundamental rights conferred by Articles 14, 21, and 22 of the Constitution for the period during which the above two Proclamations of Emergency were in force. On August 1, 1965, the Constitution (Thirity-eighth Amendment) Act, 1977 was passed whereby, clause 1A was inserted in Article 359 with retrospective effect. The ordinance which preceded the Act in the instant case was passed on November 11, 1975 while the Act was passed on December 24, 1975. As stated earlier, the Act came into force in the Bombay Metropolitan Region with retrospective effect from November 11, 1975.

On January 8, 1975, the President of India issued another order under Article 359(1) of the Constitution suspending the right of any person to move any Court for the enforcement of any of the fundamental rights conferred by Article 19 of the Constitution for the period during which the said two proclamations of emergency

were in force. The First Amendment Act was passed on August 3, 1976 while the Second Amendment Act was passed on January 25, 1977.

The Proclamation of Internal Emergency was revoked by the President of India on March 21, 1977 while the proclamation of External Emergency was revoked on March 27, 1977.

On April 30, 1979, the Constitution (Forty-Fourth Amendment) Act, 1978 was passed. By section 2 (a) (ii) of the said Act. sub-clause (f) of clause (i) of Article 19 was omitted from the Constitution and, by section 2(b), consequential amendments were made in clause (5) of Article 19. By section 8 of the said Act, Article 31 was omitted from the Constitution. By section 34, a new chapter, namely, Chapter IV, headed "Right to Property", was inserted in Part XII of the Constitution, containing Article 300-A.

As a result of these constitutional provisions, the Act would be void and would cease to have effect from March 27, 1977 if it infringes the fundamental rights conferred by Articles 14 and 19 of the Constitution. If it infringed Article 31 (1) of the Constitution on the ground that the provisions of Article 19 (1) (f) were violated, the Act would be void and would cease to have effect from March 27, 1977. If the State Legislature had no legislative competence to pass the Act or the Act infringed the provisions of clauses 2 or 3 of Article 31, the Act would be void from its inception. Putting it briefly, the Act or any of its provisions would be void or would cease to have effect, as the case may be, from diverse dates depending upon the violation of the particular Article or Articles of the Constitution involved herein.

Since the statutory concept of 'vacant land' as defined in Section 2 (f) of the Act permeates the entire Act and is, as it were, the quintessence of the Act, respondents concentrated their attention in the High Court on challenging the vires and legality of that definition. They succeeded in that challenge for the wighty reasons given by the High Court, which we adopt, except with some minor variations. Indeed, if the draftsman were to give to the framing of the Act even a part of the care and concern bestowed upon it by the High Court, though not at the same length, many an impediment in upholding the validity of the Act could have been cleared without much difficulty. If we were to deal again with the manifold challenges made to the validity of the Act, we will be repeating, more

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or less what the High Court has said. Therefore, we propose to dwell upon some of the fundamental objections to which the Act is open and some of the more serious infirmities from which its provisions suffer.

B

Coming first to the definition of 'vacant land', Section 2 (f) as amended retrospectively by the first Amendment Act divides vacant lands into four categories : (1) lands which are in fact vacant, that is to say, not built upon ; (2) lands on which structures have been or are being constructed otherwise than in accordance with any law regulating the construction of such structures and which the Competent Authority may specify and declare to be vacant lands by announcing by beat of drum or other suitable means ; (3) lands

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specified in the Schedule to the Act ; and (4) lands included in the Schedule by the State Government by an order amending the Schedule. It is evident, despite some needless controversy upon that question in the High Court, that the expression 'land' in Section 2 (f) of the Act means plots of land with defined boundaries which are generally recognised for revenue and survey purposes. Section

D

2(f) (b) requires two conditions to be satisfied in order that a land can be described as a vacant land ; Firstly, there has to be an unauthorised structure on the land and secondly, the Competent Authority has, by an order in writing, to specify and declare that land to be a vacant land.

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The Act confers upon the Competent Authority the discretion to declare a land as a vacant land without laying down any guidelines to control that discretion. The Competent Authority has the freedom to pick and choose lands on which there are unauthorised structures and declare some of them as vacant lands and leave other similarly situated untouched. The second recital in the preamble to

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the Act on which reliance is placed by the State Government as affording a guideline to the Competent Authority for making a declaration that a certain land is a vacant land cannot serve that purpose. That recital reads thus :

> "AND WHEREAS the number of unauthorised occupants on vacant lands in the urban areas in the State was rapidly increasing and was causing grave danger to the public health and sanitation and peaceful life of inhabitants of such areas."

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The Act does not contain any provision whatsoever which is

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directed at ensuring the public health and sanitation or the peaceful life of the inhabitants of the concerned locality. Indeed, nothing is farther removed from the true purpose and object of the Act than these considerations. The last item in the Schedule to the Act includes all public roads and highways in Greater Bombay. These, surely, cannot be regarded as constituting a grave danger to public health, sanitation or peaceful life of the citizens.

The circumstances which led to the passing of the Act are mentioned in the Statement of Objects and Reasons to the Ordinance which are as follows ;

> "It was found that the vacant lands in Greater Bombay and similar other urban areas were rapidly being unauthorisedly occupied by squatters and traffickers in lands. The different laws and various authorities constituted under these laws, as well as different procedures laid down by these laws, did not permit immediate demolition of unauthorised huts or prevent the growth of unauthorised structures. The lengthy procedure laid in the laws also prevented the authorities from taking immediate preventive action. A law which would simplify the procedure and reduce possibilities of litigation, and adequately arm the law enforcing authorities such as Municipal Officers, Police Officers, Revenue Officers and other officers of Government Department to demolish the unauthorised huts and houses was found immediately necessary. Further, it was also necessary to take drastic penal action against those who construct unauthorised hutments or colonies of temporary sheds, and traffic in lands and such structures or recover rents by letting out such structures."

It is clear from this Statement that the evil which was sought to be remedied by the Ordinance, which was later replaced by the Act, was not danger to public health or sanitation or to the peaceful life of the inhabitants of the Metropolis of Bombay. The danger posed by the construction of unauthorised structures is the evil which the Act seeks to remedy.

The Act does not also provide for any safeguard againt the arbitrary exercise of the discretion conferred upon the Competent Authority to declare a land as a vacant land. It is true that abuse of

power is not to be assumed lightly but, experience belies the expectation that discretionary powers are always exercised fairly and objectively. In fact, instances of discriminatory declarations made by the Competent Authority were cited in the High Court to which according to the High Court, no satisfactory answer was given in, the return filed on behalf of the State Government. The Act does not prescribe any procedure which the Competent Authority is required to adopt before declaring a land as a vacant land. There is no provision in the Act requiring the Competent Authority to observe even the rudimentary norms of natural justice before making the statutory declaration. The Authority is not obliged to give notice to anyone and it need not hear any person who is likely to be affected by the declaration. The State Government, too, is under no obligation to follow any set procedure prior to amending the Schedule so as to include new lands therein. The power conferred by Sections 3(1) and 4(1) of the Act is similarly uncontrolled and arbitrary. Indeed, the hall-mark of this ill-conceived legislation is ; "No notice and no hearing". There can be cases, though their category ought not be enlarged by Courts, wherein failure to afford to hearing before an adverse decision is rendered may not necessarily vitiate that decision. But, in cases like those before us, a hearing preceding a decison is of the essence of the matter. It is notorious as the Statement of Objects and Reasons of the Ordinance shows, that, in Bombay, open lands have been trespassed upon by professional slumlords who have become a law into themselves. Perhaps, they rise to the occasion by pandering to political needs and pressures but that is beside the point. Massive encroachments on private properties have led to the virtual deprivation of the title of rightful owners of these properties. The Act penalises such owner for no fault of theirs and, that too, without giving them an opportunity to be heard. The fact that the power to make the requisite declaration under the Act is vested in officers of the higher echelons makes no difference to this position and is not a palliative to the prejudice which is inherent in the situation.

The judgment of the High Court cites a glaring instance of the arbitrary and undesirable consequences which follow upon orders which are passed unilaterally, that is, without hearing the parties affected by these orders. One of the petitioners before the High Court was the owner of a hotel called Nakesh Punjab Hotel. He held various licences which authorised him to run the hotel. There was a dispute between him and the Revenue Authorities as to the

A increase in the quantum of assessment, whereupon he obtained an interim injunction from the City Civil Court, Bombay. In the meanwhile, the Competent Authority issued a Declaration under Section 2(f)(b) of the Act declaring the plot of land on which the hotel stood as a vacant land. Within a short time thereafter, the hotel was demolished.

B It was urged on behalf of the State Government that the infirmity, if any, from which the Act suffered in its inception has been cured by the passing of the Maharastra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) (Service of Notice) Rules, 1979. By these Rules, before issuing any order under Section 2(f)(b) or under Section 4(1) of the Act, the Competent Authority is required to serve a written notice upon any person C likely to be affected by such order, calling upon him to show cause within such period as may be specified in the notice why the proposed order should not be issued. The Competent Authority is further required to consider any objections submitted to it by any D such person within the period specified in the notice. Rule 3(2) provides for service of such notices. We are unable to accept that the unconstitutionality of the Act is cured by the framing of the Rules made three and a half years after the Act was passed. Besides, the Rules only provide for a notice to be given and objections to be considered before the passing of an order under sections 2(f)(b) and 4(1). They do not make a similar provision E before permission is granted or refused under section 3(1) of the Act. But, what is of greater importance is that, even the Rules do not lay down any guidelines for the exercise of the discretion which is conferred upon the Competent Authority by section 2(f)(b) or section 4(1) of the Act.

F Section 2(f)(b) suffers from yet another vice in that, it treats all persons alike irrespective of how they are situated in the matter of their involvement in the construction of unauthorised structures and their interest therein. Classification requires division into classes which are marked by common characteristics. Such division G has to be founded upon a rational basis and it must be directed at subserving the purposes of the statute. Section 2(f)(b) and the other cognate provisions of the Act make no distinction at all between owners of lands who have themselves constructed unauthorised structures and those others on whose lands unauthorised structures have been constructed by trespassers. The latter class of owners

their title to their property have been put by the Act on par with trespassers who, taking law into their own hand, defy not merely private owners but public authorities. A

Section 2(f)(b), also, suffers from the infirmity of according equal treatment to unequals. Take a simple example : A plot of land may be vacant in the true sense of the term, that is to say, wholly unbuilt upon. Another plot of land may have a small structure built upon it in accordance with the Municipal rules and regulations. The first plot of land attracts drastic provisions of the Act merely by reason of the fact that nothing has been built upon it at all, while the second plot of land is entirely outside the scope of the Act for the reason that some tiny structure is standing thereon. Such a classification betrays lack of rationale. B C

By the second part of the definition of 'vacant land' in section 2(f) of the Act, vacant land "includes, in particular, all lands specified in the Sehedule to the Act". The Schedule includes various 'lands' which are built upon, like the B.E.S.T. Depot (Entry 73), the Health Centre at Nawabwadi (Entry 75), the Pumping Station at Vallabhbhai Patel Nagar (Entry 82), the School in Mulund Village (Entry 130) and, last but not the least, all land occupied by public roads and highways in Greater Bombay (Entry 1555). It is impossible to understand the scheme of the Schedule or to discover any rational basis behind it. It is also difficult to understand as to why certain lands which are under acquisition for the purposes of the Maharashtra Housing Board and the Bombay Municipal Corporation have been included in the Schedule and other lands similarly situated have not been so included. Some of the Entries in the Schedule show that unauthorised structures could not have been possibly constructed on the lands mentioned therein. By and large, the Schedule is divorced from the true object of the Act. D E F

The concluding part of section 2(f) of the Act confers power upon the State Government to amend the Schedule from time to time by an order published in the Official Gazette. This power includes, *inter alia*, the power to add 'any land or lands' to the Schedule. No criterion or standard is laid down in order to enable the State Government to determine objectively as to which lands can be added to the Schedule. The power to add to the Schedule is in the nature of a legislative power which, in the very nature of things, cannot stipulate for service of notice to the persons affected by the amendment. This power of amendment of the Schedule is G H

not even conditioned by the fact that the lands added to the Schedule must have unauthorised structures standing thereon. The State Government is free to pick and choose any land and put it in the Schedule. This kind of conferment of uncanalised discretion is strawn all over the Act.

Thus, each part of the definition of 'vacant land' in section 2(f) of the Act is violative of the provisions of Articles 14 and 19(1)(f) of the Constitution. Article 19(1)(f) has now lost its relevance after the passing of the Constitution (Forty-fourth Amendment) Act, 1978 by which clause (f) was deleted. But the Act had to satisfy the requirements of that clause so long as it was a part of the Constitution.

It may be relevant at this stage to consider as to what is the ultimate fate of lands which are declared as vacant lands under section 2(f). Until the Competent Authority passes an order under section 4(1) calling upon an occupier to vacate a land, even a trespasser or an unauthorised occupier can continue to be in possession of the land. If he is granted permission to occupy the land under section 3(1), he cannot be evicted at all, for the simple reason that the order of eviction under section 4(1) can be passed only if a person is in occupation of a land contrary to the provisions of section 3. Even the eviction of a trespasser from the land can afford no solace to its rightful owner because, the Act does not contain any provision whereby the land can be returned to him after it is freed from unauthorised occupation. If the owner himself has erected an unauthorised structure, the Act does not provide as to what is to happen to the land after he is evicted therefrom.

By the provisio to section 3(2) which was inserted by the First Amendment Act, power is conferred upon the State Government or, an authority specified in that behalf, to receive and collect from the occupiers of vacant lands a reasonable amout by way of penal charges as may be determined by the State Government. Such penal charges can be recovered until such time as the structure erected on the land on contravention of section 3(1) of the Act is removed. The Statement of Objects and Reasons of the First Amendment Act shows that the provision for levying penalty was introduced into the Act in order that occupants of lands on which there were unauthorised structures and. who are allowed to continue in possession of the structures, do not continue to occupy

those lands without payment of any amount at all to public authorities. It appears that even after forfeiting the structures consequent upon the passing of an order under section 4(1), the State Government has been recovering compensation from unauthorised occupants. It seems to us quite incongruous that while the true owner is prevented from taking legal proceedings to recover any rent or compensation from persons who had trespassed upon his land, the State Government can recover penal charges from the trespassers.

By the Second Amendment Act, a new section 4-A was inserted in the Act. That section provides that if any occupier of a structure on a vacant land from whom penal charges are collected under section 3, or if any occupier who is required by an order made under section 4(1) to vacate any vacant land, desires to renovate the structure at his risk as a temporary measure, he may apply to to the Controller of Slums for the requisite permission. The Controller is empowered to grant the permission after making such inquiry as he deems fit, if he is satisfied that the structure is not fit for human habitation and the proposed renovation is necessary to make the structure temporarily fit. Once such permission is granted and the structnre is renovated, the Competent Authority is powerless to evict the occupier of the structure until such time as the Controller of Slums may specify. By section 4-B, which was also inserted by the Second Amendment Act, financial assistance for renovating structures can be made availahle by financial institutions recognised by the State Government. In cases where such financial assistance is availed of, the financial institutions can request the Controller of Slums to collect, on their behalf, the amounts of loans advanced to the occupiers. The Statement of Objects and Reasons of the Second Amendment Act shows that the Government had carried out substantial environment improvements on vacant lands and had sponsored a scheme for building semi-permanent houses thereon. They intended to give to the occupants of such structures security of tenure subject only to the condition of regular repayment by them of the loans given by the financial institutions. The true owner of lands are totally ignored in this scheme of things, even if they are victims and not the authors of unauthorised constructions. It was not disputed in the High Court, nor before us, that for a period of more than four years that the Act has been in force, not a single unauthorised and forcible occupier of a vacant land owned by a private person was evicted, nor was a singie plot of land encroached upon restored to its rightful owner.

A We are in agreement with the High Court that the Act does not violate the provisions of Art. 31(1) of the Constitution. It does not provide for transfer of ownership of vacant lands to the State or to a corporation owned or controlled by the State ; nor does it vest in the State the right of the owner or occupier of vacant lands to recover rent or compensation for use and occupation of such lands.

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We are, however, unable to accept the view of the High Court that the Act amounts to a measure of requisition and is bad for the reason that it provides for requisition without payment of compensation. It is straining the language of the Act to hold that it provides, directly or indirectly, for requisition of private property. The C Act does not transfer the right to possession of vacant lands to the State, its agents or its instrumentalities. Therefore, the Act does not offend against the provisions of Article 31(2) of the Constitution. Since that Article is not attracted, no question can arise of D the invalidity of the Act on the ground mentioned in Article 31(5), namely, that the Act had not received the assent of the President.

In so far as the question of legislative competence is concerned we uphold the finding of the High Court to the extent that the State Legislature had the competence to pass the Act under Entries E 18, 64 and 65 of List II.

Since the Act is, in any event, violative of Article 14 of the Constitution, it is unnecessary to consider the question whether, in so far as it violated Article 19 (1) (f), it revived on the deletion of that Article by the Constitution (Forty-fourth Amendment) Act, F 1978. We express no opinion on the question whether the doctrine of 'eclipse' applies both the pre-Constitution and post-Constitution laws or whether that doctrine applies to pre-Constitution laws only.

For these reasons, which are substantially similar to the reasons given by the High Court, we affirm the judgment of the High Court and dismiss these appeals with costs. We quantify the G costs in each appeal at rupees two thousand.

We would like to point out before we close that the object of the state legislature in passing the Act was unquestionably laudable. It is unfortunate that the legislation has travelled far beyond that object. The State Government has failed in these proceedings not because the legislature lacks the legislative competence to pass the H Act mainly because the provisions of the Act are discriminatory.

The Act was passed during the period of Emergency when some of the safeguards available under Chapter III of the Constitution were suspended. On the revocation of the Emergency, the Act ought to have been amended or, better still, a new legislation ought to have been introduced so as to comply with the provisions of the Constitution. We trust that, in the light of our judgment and the judgment of the High Court, the State Legislature will introduce a carefully conceived legislation on the subject at an early date. The slumlords, who have trespassed on public and private properties, must be evicted and expeditious steps taken to prevent them exploiting any further the helpless member of the community who are virtually at their mercy. Not only have these defiant law-breakers constructed unauthorised structures on private and public properties but, as stated in the Objects and Reasons of the Act, they have been collecting extortionate rents from the tenants of such properties. Earlier the State Government acts the better .

M.L.A. *Appeals dismissed.*