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MAGANLAL CHHAGGANLAL (P) LTD.

v.

MUNICIPAL CORPORATION OF GREATER BOMBAY & ORS.

April 11, 1974

B [A. N. RAY, C.J., D. G. PALEKAR, H. R. KHANNA, K. K. MATHEW, A. ALAGIRISWAMI, P. N. BHAGWATI AND V. R. KRISHNA IYER, JJ.]

Constitution of India, 1950, Art. 14—Provision in the Bombay Municipal Corporation Act, 1888 and the Bombay Government Premises (Eviction) Act, 1955, for a speedy procedure of eviction in addition to procedure in a civil suit—Special procedure, if discriminatory.

C Chapter VA was introduced in the Bombay Municipal Corporation Act, 1888, by Maharashtra Act 14 of 1961. It consists of ss. 105A to 105H. Section 105A (d) defines unauthorised occupation. Under s. 105B (p) the Commissioner, by notice served on the person in unauthorised occupation could order him to vacate within one month of the date of service of the notice, on any of the grounds mentioned in clauses (a), (b) and (c) of that sub-section. Under sub-s. (2), before making such an order, the Commissioner shall issue a notice to the persons concerned specifying the grounds on which the order of eviction is proposed to be made and to show cause against the proposed order of eviction. The person concerned can file a written statement, produce documents and is D entitled to appear before the Commissioner by a lawyer. If, after hearing the person concerned the Commissioner is satisfied that the case falls under clauses (a), (b) or (c) of sub-s. (1) he issues a notice of eviction, and, if the person so ordered to vacate fails to comply with the order he, as well as any other person who obstructs eviction, can be evicted by force under sub-s. (3). Under sub-s. (6) the Commissioner may, in certain cases, in lieu of evicting the person cancel the order under sub-s. (1) and such person may continue in occupation. Under s. 105E the Commissioner, for the purpose of holding any inquiry under E the Act, has the same powers as are vested in a civil court under the C.P.C. in respect of, (i) summoning and enforcing the attendance of any person and examining him on oath, (ii) requiring the discovery and production of documents, and (iii) any other matter which may be prescribed by regulations under s. 105H. Under s. 105F every order of eviction is appealable to the Principal Judge of the City Civil Court of Bombay or such other judicial officer of not less than 10 years standing as the Principal Judge may designate. The appellate Judge is given power to stay the enforcement of the order of Commissioner on conditions and is required to dispose of the appeal expeditiously. Section F 105G provides that, subject to the result of the appeal, every order of the Commissioner or of the appellate Judge is final. Under s. 105H regulations may be made, *inter alia*, in respect of holding of inquiries and the procedure to be followed in appeals.

The Bombay Government Premises (Eviction) Act, 1955, also lays down special procedure for eviction of persons from government premises which is more or less similar to Chapter V of the Municipal Act. The power to order the eviction is given to an authority not lower in rank than a Deputy Collector G or an Executive Engineer, Section 8A of the Act provides that no civil court shall have jurisdiction to entertain any suit or proceedings in respect of eviction. There is no such provision in the Municipal Act but the proceedings in the instant cases arose before s. 8A was introduced in the 1955-Act by Maharashtra Act of 1969.

The constitutional validity of Chapter VA of the Municipal Act and the provisions of the Government Premises (Eviction) Act, as it stood prior to its H amendment by Maharashtra Act of 1969, was challenged on the ground that they contravene Art. 14 on the basis of the decision of this Court in *Northern India Caterers* [1967] 3 S.C.R. 399, wherein it was held, by the majority of judges, that amongst occupants of public premises *inter se* there was discrimination in as much as the special procedure in the Punjab Public Premises and Land

(Eviction and Rent Recovery) Act, 1959, was more drastic and prejudicial than the ordinary procedure of a civil suit and that it was left to the arbitrary and unfettered discretion of the Government to adopt such special procedure against some and not against the others. A

HELD (By Full Court) : The impugned provisions of the two Acts are not violative of Art. 14.

(*Per* A. N. Ray, C.J., Palekar, Mathew and Alagiriswami, JJ.) :

(1) It could not be contended that the special provisions of law applying to government and public bodies are not based upon reasonable classification or that they offend Art. 14. [10 F-G] B

(2) The mere availability of two procedures will not vitiate one of them, namely, the special procedure. [23 B]

Where a statute providing for more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure as in *Anwarali Sarkar's Case* [1952] S.C.R. 284 and *Surajmal Mohta's case* [1965] 1 S.C.R. 448, without any guidelines as to the class of cases in which either procedure to is be resorted to, the statute will be hit by Art. 14. But a provision for appeal may cure the defect. Also in such cases, if from the preamble and surrounding circumstances as well as the provisions of the statutes themselves, explained and amplified by affidavits, necessary guidelines could be inferred as in the *Saurashtra Case* [1952] S.C.R. 435 and *Jyoti Pershads'* case [1962] 2 S.C.R. 125, the statute will not be hit by the Article. Where the statute itself covers only a class of cases as in *Haldar's* case [1960] 2 S.C.R. 946 and *Bajoria's* case [1954] S.C.R. 30 the statute will not be bad. The fact that in such cases executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute. [22 G—23 B] C D

(3) In the present cases, the statutes themselves, in the two classes of cases, that is, premises belonging to the Corporation and the Government, clearly lay down the purpose behind them; namely that they should be subject to speedy procedure in the matter of evicting unauthorised persons occupying them. The fact that the legislature considered that the ordinary procedure is insufficient or ineffective for evicting the unauthorised occupants and provided a special speedy procedure therefor, is a clear and sufficient guidance for the authorities on whom the duty of evicting such occupants and the power to do so has been conferred. [23 B-G] E

(4) Further, it would be extremely unreal to hold that an administrative officer would, in taking proceedings for eviction of unauthorised occupants of government and municipal property, resort to the procedure prescribed in the two Acts in some cases and to the ordinary civil court in others. In considering whether the officers would be discriminating between one set of persons and another, one has to take into account normal human behaviour. It is not every fancied possibility of discrimination but real risk that must be taken into account. Discrimination is not writ large on the face of the statute; it may be possible but highly improbable, and, if there is discrimination in actual practice the power of this Court can be invoked. [23 D-G] F

(5) Moreover, considering the object with which the special procedure has been enacted the procedures laid down by the two Acts are not so harsh or unconscionable as to suggest that a discrimination would result if resort to them is had in some cases and to the ordinary civil court in others. Even though the officers deciding the question are administrative officers there is ample provision in the Acts for notice of the grounds of eviction and opportunity to the person affected to file a written statement and produce documents. He can also be represented by a lawyer and the officer himself has power to enforce attendance of witnesses, to examine them on oath, and to order discovery and production of documents. There is also provision for appeal to the Principal Judge of the City Civil Court or a District Judge. It may be that a second appeal is not available to the affected person as when procedure before an ordinary civil court is followed, but the aggrieved party may resort to the High Court under either Art. 226 or 227 and this is not less effective than a second appeal. [24 D-H] G H

A *Lachmandas Kewalram Ahuja* v. *Bombay* [1952] S.C.R. 710; *Shree Meenakshi Mills Ltd.* v. *Sri A. V. Viswanatha Sastri* [1955] 1 S.C.R. 787; *Muthiah* v. *C.I.T. Madras* [1955] 2 S.C.R. 1247; *Thangal Kunju Musaliar* v. *M. Venkitachalam Potti & Anr.* [1955] 2 S.C.R. 1196 and *Ramkrishna Dalmia* v. *Justice Tendolkar* [1959] S.C.R. 279, referred to.

(6) The majority of the Court in the *Northern India Caterers' case* in ignoring the obligatory nature of the notice under s. 4 of the Punjab Act and the discretionary power under s. 5 which was to be exercised after hearing the party, were in error in proceeding on the basis of s. 5 alone and holding that it conferred arbitrary power on the Collector to resort to the power under the Act in the case of some and to a suit in the case of others. Under s. 4, if the Collector is of opinion that a person is in unauthorised occupation and has to be evicted he *shall* issue a notice to him to show cause why an order of eviction should not be passed. But after considering the cause shown, evidence produced and after giving the person a reasonable opportunity of being heard the Collector *may* order eviction. Therefore, if he is of opinion that it is a case where a suit is more appropriate he may not order eviction, and then, it would be for the Government to institute the suit. The Collector has no discretion either to file a suit or to take proceedings under the Act. Nor can the Government order the Collector to pass an order of eviction in every case under s. 5 as the power under that section is the Collectors' statutory power. [23 H—24 D]

Northern India Caterers Ltd. v. *Punjab* [1967] 3 S.C.R. 399, overruled.

(*Per* Khanna J) : (1) The simple fact that there are two forums with different procedures would not justify the quashing of the impugned provisions as being violative of Art. 14 especially when both procedures are fair and in consonance with the principles of natural justice. What is necessary to attract the inhibition of the Article is that there must be substantial and qualitative differences between the two procedures so that one is really and substantially more drastic and prejudicial than the other. A dogmatic and finical approach in applying the Article should be avoided. [26 C-D]

The impugned provisions provided for the giving of notice to the party affected; he has to be informed of the grounds on which the order for eviction is proposed to be made; he has to be afforded an opportunity to file a written statement and produce documents; and he can be represented by lawyers. The provisions of the C.P.C. regarding summoning and enforcing attendance of persons and examining them on oath as also those relating to discovery and production of documents which are made applicable, provide a valuable safeguard. The aggrieved party has a right of appeal and the appeal lies not to an administrative officer but to a judicial officer of the status of a Principal Judge of the City Civil Court or a District Judge. If the appellate officer concerned acts beyond his jurisdiction his order would be liable to be assailed under Arts. 226 and 227 of the Constitution. Therefore, the procedure envisaged in the impugned provisions is not so onerous and drastic as would justify an inference of discrimination. [25 H—26 C]

(2) It would thus appear that some of the infirmities from which the Punjab Act, which was struck down in the *Northern India Caterers'* Case [1967] 3 S.C.R. 399, suffered, are not present in the impugned enactments. Hence there are no sufficient grounds for overruling the view expressed by the majority in the *Northern India Caterers* Case. [25 D, 29E-F]

This Court may, no doubt, in appropriate cases overrule the view previously taken by it but that should only be for compelling reasons. Necessity may sometimes be felt of ridding *stare decisis* of its petrifying rigidity. Some new aspects may come to light and it may become essential to cover fresh grounds to meet the new situations or to overcome difficulties which did not manifest themselves or were not taken into account when the earlier view was propounded. Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations. It has to be recognised that there is a continuous process of growth of law and one can retard it only at the risk of alienating law from life itself. There should not be much hesitation to abandon an untenable position when the rule to be discarded was, in its origin, the product

of institutions or conditions which have gained a new significance or development with the progress of years. It sometimes happen that the rule of law which grew up in remote generations may, in the fulness of experience, be found to serve another generation badly. The Court cannot allow itself to be tied down and become captive of a view which, in the light of the subsequent experience, has been found to be patently erroneous, manifestly unreasonable or to cause hardship or to result in plain iniquity or public inconvenience. [27 B-G]

In *Bengal Immunity Co. Ltd.* v. *State of Bihar,* [1955] 2 S.C.R. 603 although this Court affirmed its power to overrule and depart from the view expressed in its previous judgments, it also stressed the importance of not lightly dissenting from previous pronouncements of this Court. A view which has been accepted for a long period of time should not be disturbed unless the court can say positively that it was wrong, or unreasonable, or that it was productive of public hardship or inconvenience. It has to be borne in mind that certainty and continuity are essential ingredients of rule of law, and certainty in law would be considerably eroded and suffer a serious set back if the highest court of the land readily overrules the view expressed by it in earlier cases even though that view has held the field for a number of years. In many cases which come up before this Court two views are possible and simply because the Court considers that the view not taken by the Court in an earlier case was a better view would not justify the overruling of the view taken in the earlier case. The law laid down by this Court is binding upon all courts in the country under Art. 141 and numerous cases all over the country are decided in accordance with the view taken by this Court. Many people arrange their affairs and large number of transactions also take place on the faith of the correctness of the view taken by this Court. It would create uncertainty, instability and confusion if such a view is held to be not the correct law. [26 F—27 B; 28 E-G; 27 E-F]

The Court has thus to keep the balance between the need of certainty and continuity and the desirability of growth and development of law. On the one hand the need is to ensure that the judicial inventiveness shall not be desiccated or stunted and on the other it is essential to curb the temptation to lay down new and novel principles in substitution of well-established principles in the ordinary run of cases and the readiness to canonise the new principles too quickly before their saintliness has been affirmed by the passage of time. [27 F-H]

It may be that the view expressed by the minority in the *Northern India Caterers case* appears to be preferable but that by itself would not show that a decision arrived at by the majority was plainly erroneous requiring to be overruled. It also cannot be said that the decision had given rise to public inconvenience and hardship. The legislature, in view of the majority decision in the case, made necessary amendments in many of the enactments so as to bar the jurisdiction of the civil court in matters dealt with by those enactments, and no constitutional amendment was required to set right the difficulty experienced as a result of the majority decision. [29 F-H]

(*Per* Bhagwati and Krishna Iyer, JJ) : (1) It is not uncommon to find legislation according special treatment to Government or other public bodies, and such legislation has been upheld by this Court in numerous decided cases. But from that it does not follow that every law which gives differential treatment to government or other public bodies is necessarily immune from challenge on the ground of discrimination. To get out of the reach of the equality clause in Art. 14 it must appear that not only a classification has been made but also that it is one based on some real distinction bearing a just and reasonable relation to the object of the legislation and is not a mere arbitrary selection. [34 C-D, G-H, 35 A-B]

In the present case, the speedy machinery for eviction of unauthorised occupants of public premises is justified in that it is in the interest of public that speedy and expeditious recovery of such premises from unauthorised occupiers is made possible through the instrumentality of a speedier procedure instead of the elaborate procedure by way of civil suit involving both expense and delay. There is thus a valid basis of differentiation and the constitutional validity of the impugned provisions in the two statutes cannot, in the circumstances, be assailed on the ground that they make unjust discrimination between occupiers of government or municipal premises and occupiers of other premises. [35 G—36 C]

A

(2) Unlike the decision in *Arizona Copper Co.* v. *Hammer* (63 Law. Ed. 1058; 250 U.S. 400) which was concerned with a party having several rights to relief arising out of the same act, the present case is concerned with the existence of several remedies in enforcement of a single right to relief. The only right which is sought to be enforced by the Municipal Corporation and the Government is a right based on title given by the general law of the land and it is for the enforcement of this right that two alternative procedures are available to the Municipal Corporation or the Government. Therefore, it could not be urged by the respondents, on the basis of the *Hammer* case, that the constitutional guarantee under Art. 14 is not violated where the law gives a free choice of remedies to a person entitled to relief even if one remedy is more drastic and prejudicial than the other. If for determination and enforcement of a liability two alternative procedures are available, one more drastic and prejudicial than the other and no guiding policy or principle is laid down by the legislature as to when one or the other procedure shall be followed, so that, either procedure may be indiscriminately adopted against persons similarly situated, the law providing for the more drastic and prejudicial procedure would be violative of the equal protection clause. [40 A-C, E]

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Arizona Copper Co. v. *Hammer*, 63 Law. Ed. 1058; 250 U.S. 400, explained.

State of West Bengal v. *Anwar Ali*, [1952] S.C.R. 284, *Shri Meenakshi Mills Ltd., Madurai* v. *A. V. Visvanatha Sastri*, [1955] 1 S.C.R. 787, *Suraj Mull Mohta* v. *A. V. Vishvanatha Sastri*, [1955] 1 S.C.R. 448, *Kathi Raning Rawat* v. *The State of Saurashtra*, [1952] S.C.R. 435, *Kedar Nath Bajoria* v. *State of West Bengal*, [1954] S.C.R. 30, and *M. Ct. Muthiah & Ors.* v. *The Commissioner of Income-tax, Madras & Anr.* [1955] 2 S.C.R. 1247, referred to.

D

(3) The initiation of the special procedure provided in Chapter VA of the Municipal Act is with the Municipal Commissioner as he is to issue a notice under s. 105-B(3) but, so far as the ordinary procedure of a civil suit is concerned, it can only be filed by the Municipal Corporation with the previous approval of the Standing Committee. It could not however be contended, on this basis that the choice between the two alternative procedures is not vested in the same authority and that therefore there is no violation of Art. 14. [45 E-G]

E

It is not necessary in order to incur the condemnation of the equality clause that the initiation of both procedures should be left to the arbitrary discretion of one and the same authority. What the equality clause strikes at is discrimination howsoever it results. To the person subjected to the more drastic and onerous procedure it is immaterial whether such procedure is put into operation by one or the other agency of the government or the public authority. It would be nothing short of hypertechnicality to say that action against him is not initiated by the Municipal Commissioner or the Collector. The constitutionality of a statutory provision cannot turn on mere difference of the hands that harm, though

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both belong to the Government or the Corporation for otherwise, it would be easy to circumvent the guarantee of equality and to rob it of its substance by a subtle and well manipulated statutory provision vesting the more drastic and prejudicial procedure in a different organ of the government or public authority than the one in whose hands lies the power to initiate the ordinary procedure. One must look at the substance and not the form. [46 A-H]

(4) Moreover, it is not correct to say that it is the Municipal Commissioner who initiates the special procedure set out in Chapter VA of the Municipal Act. When he issues notice under s. 105B (2) against an occupant he really acts on

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behalf of and for the benefit of the Municipal Corporation, whose right he seeks to enforce. Similarly the Dy. Collector or Executive Engineer acts on behalf of the Government. Therefore, it is really the Municipal Corporation and the Government that avail themselves of the special procedure. [47 B-D]

(5) It could not also be contended on behalf of the respondents that even where two procedures are available against a person, one substantially more drastic and prejudicial than the other and there is no guiding principle or policy laid down by the legislature as to when one or the other shall be adopted, there

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would still be no violation of the equality clause if both procedures are fair. Such a contention may be relevant where the question is as regards a reasonableness of the restriction under Art. 19, But when the question is under Art. 14, mere fairness of the special procedure which is impugned as discriminatory is

not enough to take it out of its inhibition. What has to be considered is whether there is equality before law; and therefore the question whether the two procedures are so disparate substantially and qualitatively as to lead to unequal treatment, has to be asked and answered. [47 E—48 C]

(6) The challenge against the constitutional validity of Chapter V-A of the Municipal Act and Government Premises Eviction Act must, however, be rejected. [53 G-H]

No classification can be logically complete or precise. Life is not capable of being divided into water-tight divisions and categories. The legislature can therefore do not more than define broad categories and indicate the policy and purpose underlying the legislation and leave it to a stated authority to make selective application of the law in accordance with such policy and purpose. It is inevitable that when a special procedure is being prescribed for a defined class of persons such as occupiers of municipal or government premises, discretion—of course guided and controlled by the underlying policy and purpose of the legislature—must necessarily be left in the administrative authority to select occupiers of municipal or government premises to be brought within the operation of the special procedure. That would not be obnoxious to Art. 14 because, in such a case, the discretion to make the selection would be a guided and controlled discretion and not an absolute and unfettered one. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. The discretion has to be exercised in conformity with the policy to effectuate which the direction is given and it is in relation to that objective that the properiety of the classification would have to be tested. It is, therefore, not correct to say that merely because the Municipal Corporation or Government is not compellable to adopt the special procedure set out in the impugned provisions against all occupiers of municipal or government premises, but is vested with the discretion in the matter, the impugned provisions offend against Art. 14. It would indeed to be odd and certainly harsh and oppressive to the occupiers of municipal or government premises if the Municipal Corporation or Municipal Commissioner or Government were to be compelled to adopt the special procedure in all cases. The nature of the dispute, the complexity of the issue arising for consideration and the legal competence of the adjudicatng authority to decide such questions will have to be weighed alongside with the need for speedy and expeditious recovery of municipal or government premises for public uses which is the basic policy and purpose underlying the legislation, and, the Municipal Corporation or Municipal Commissioner or Government would have to decide in accordance with the guidance furnished by these considerations, whether, in a given case, the special procedure should be adopted or the occupier of the municipal or government premises should be proceeded against under the ordinary procedure. There is thus clear guidance provided by the legislature as to when the special procedure should be adopted and when the case should be left to be dealt with under the ordinary procedure and the impugned provisions do not suffer from the vice of discrimination. [49 C—50 F]

Kathti Raning Rawat v. *The State of Saurashtra*, [1952] S.C.R. 435, *Kedar Nath Bajoria* v. *State of West Bengal*, [1954] S.C.R. 30, and *A. Thangal Kunju Musaliar* v. *M. Venkitachalam Potti*, [1955] 2 S.C.R. 1196, referred to.

Northern India Caterers Ltd. v. *State of Punjab*, [1967] 3 S.C.R. 399, overruled.

(7) It must also be constantly borne in mind, for otherwise it is likely to distort the proper perspective of Art. 14, that mere minor differences between the two procedures would not be enough to invoke the inhibition of the equality clause. What the equality clause is intended to strike at are real and substantial disparities, substantive or processual, and arbitrary or capricious actions of the executive, and, it would be contrary to the object and intendment of the equality clause to exalt delicate distinctions, shades of harshness and theoretical possibilities of, prejudice into legislative inequality or executive discrimination. [54 B-D]

There is no formula by which it can be said that one procedure is substantially more drastic and onerous than the other. It does not follow that

merely because one procedure provides the forum of a civil court while the other provides the forum of an administrative tribunal that the latter is necessarily more drastic and onerous than the former. It is well konwn that a regular suit in the civil court has a long drawn out, expensive and escalating litigative system which often spells ruin to the ordinary man, and consequently, by contrast, a prompt and inexpensive instrument, though manned by administrative personnel untrained in the sophisticated court methodology and unaided by long and intricate arguments of counsel engaged on onerous terms, may be preferred by many in this country. The procedure of the civil court also suffers from many technicalities. It functions on the basis of adversary system of administration of justice which may bring about inequality where the opposing adversaries are not evenly balanced. It is quite possible that in certain types of cases people may receive better justice where judicial formalism is kept out and the procedure is made informal. The many-tiered system of appeals built into the judicial pyramid often results in a pyrrhic victory and leads to disenchantment with the end product of delayed justice. Therefore, whenever a special machinery is devised by the legislature entrusting the power of determination of disputes to another authority set up by the legislature in substitution of courts of law one should not react adversely against the establishment of such an authority merely because of a certain predilection for the prevailing system of administration of justice by courts of law. [54 F—55 G]

In the present case, it is apparent that the special procedure set out in Chapter V-A of the Municipal Act is not substantially more drastic and prejudicial than the ordinary procedure of civil suit. The initial authority to determine the liability to eviction is no doubt the Municipal Commissioner who is the Chief Executive Officer of the Municipal Corporation and who may not be possessed of any legal training but s. 68 of the Municipal Act provides that this function may be discharged by any Municipal Officer whom the Municipal Commissioner may generally or specially empower and the Municipal Commissioner can authorise a Deputy Municipal Commissioner attached to the legal department of the Municipal Corporation to discharge this function. The determination of liability to eviction is therefore really, in practice, made by an officer having proper and adequate legal training. Then again, the occupant against whom the special procedure is set in motion would have a right to file his written statement and produce documents and he would also be entitled to examine and cross-examine witnesses. The officer holding the inquiry is given the power to summon and enforce the attendance of witnesses, examine them on oath and also require the discovery and production of documents. The occupant is entitled to appear at the inquiry by an Advocate. Thus, in effect and substance the same procedure which is followed in a civil court is made available in the proceeding before the officer holding the inquiry. There is also a right of appeal against the decision of such officer to a senior and highly experienced judicial officer and not to a mere executive authority, namely, the Principal Judge of the City Civil Court or any other judicial officer of not less than 10 years standing. It is also open to the aggrieved party to bring up the matter before the High Court for examination under Art. 226 and 227 even though a revision application against the appellate order is not provided for. The ultimate decision is, thus, by a judicial officer trained in the art and skill of law and not by an executive officer. Therefore, in the context of need for speedy and expeditious recovery of public premises for utilisation for important public uses, where dilatoriness of the procedure may defeat the very object of recovery, the special procedure set out in the two Acts cannot be regarded as really and substantially more drastic and prejudicial than the ordinary procedure of a civil court. The two procedures are not so substantially and qualitatively disparate as to attract the vice of discrimination. [55 G—56]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 680 of 1968.

From the judgment and order dated the 21/23rd day of August, 1967 of the Bombay High Court in Misc. Petition No. 478 of 1966.

Civil Appeals Nos. 2076-2080 *of* 1969 *&* 2093-2103 *of* 1969.

From the judgment and order dated the 14/17th March, 1969 of the Bombay High Court in Special Civil Application Nos. 676, 837, 838, 840 and 841 of 1967 and 827 to 836 and 839 of 1969.

Civil Appeal No. 2527 *of* 1969.

From the judgment and order dated the 21st/24th August, 1967 of the Bombay High Court in Special Civil Application No. 1116 of 1966.

Civil Appeal No. 249 *of* 1970.

From the judgment and order dated the 25th August, 1967 of the Bombay High Court in Special Civil Appeal No. 1138 of 1966.

Writ Petitions Nos. 333-348 *of* 1970.

Under Art. 32 of the Constitution of India.

A. K. Sen, S. C. Mazumdar and *S. K. Basu,* for the appellant (in C.A. 680/68).

G. L. Sanghi, A. D. Merchant and *B. R. Agarwala,* for the appellant (in C.As. 2076-2080/69 and 2093-2103/69).

S. J. Sorabjee and *B. R. Agarwala,* for the appellant (in C.A. 2527/69).

S. J. Sorabjee, A. D. Merchant and *B. R. Agarwala,* for the petitioner (in W.P. 333-348/70).

B. R. Agarwala, K. L. Hathi and *P. C. Kapoor,* for the appellant (in C.A. 249/70).

R. J. Joshi, M. N. Kothari, K. S. Kadam, P. C. Bhartari, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for respondents Nos. 1 & 2 (in C.A. 680/68).

M. C. Bhandare, K. S. Kadam, P. C. Bhartari, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for respondents Nos. 2 and 3 (in C.A. Nos. 2527/69).

M. C. Setalvad, Y. S. Chitale, K. S. Kadam, P. C. Bhartari, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain* for respondent Nos. 1 and 2 (in CA No. 249/70).

M. C. Bhandare and *M. N. Shroff,* for respondent Nos. 7 (in C.A. 2527/69) and for respondent no. 3 (in C.A. 249/70).

V. S. Desai and *M. N. Shroff,* for respondent No. 3 (in C.A. 680/68 and respondent no 2 in (in C.As. 2076-2080/68, 2093-2103) and for respondent nos. 2 & 3 (in all the W.Ps.).

The Judgment of A. N. Ray, C.J., D. G. Palekar, K. K. Mathew and A. Alagiriswami, JJ., was delivered by A. Alagiriswami J., H. R. Khanna, J. gave a separate opinion. P. N. Bhagwati, J. also gave a separate opinion on behalf of himself and V. R. Krishna Iyer, J.

ALAGIRISWAMI, J.—These appeals and writ petitions relate to the legality of certain proceedings taken under Chapter V-A of the Bombay Municipal Corporation Act and the Bombay Government Premises (Eviction) Act, 1955. Chapter V-A was introduced in the Bombay Municipal Act, 1888 by Maharashtra Act 14 of 1961. That chapter contains sections 105A and 105B. According to the provisions of those sections the Commissioner in relation to premises belonging to or vesting in, or taken on lease by the corporation and the General

A Manager (also defined as the Commissioner) of the Bombay Electric Supply and Transport Undertaking in relation to premises of the corporation which vest in it for the purposes of that undertaking were granted certain powers of eviction in respect of unauthorised occupation of any corporation premises. Unauthorised occupation is defined as occupation by any person of corporation premises without authority for such occupation and includes the continuance in occupation by any B person of the premises after the authority under which he was allowed to occupy the premises has expired, or has been duly determined. Under section 105B the Commissioner, by notice served on the person in unauthorised occupation, could ask him to vacate if he had not paid for a period of more than two months the rent or taxes lawfully due from him in respect of such premises; or sub-let, contrary to the terms or conditions of his occupation, the whole or any part of such premises; C or committed, or is committing, such acts of waste as are likely to diminish materially the value, or impair substantially the utility, of the premises, or otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises; or if any person is in unauthorised occupation of any corporation premises; or any corporation premises in the occupation of any person are required by the corporation in the public interest. Before D making such an order the Commissioner should issue a notice calling upon the person concerned to show cause why an order of eviction should not be made and specify the grounds on which the order of eviction is proposed to be made. The person concerned can file a written statement and produce documents and is entitled to appear before the Commissioner by advocate, attorney or pleader. Persons failing to comply with the order of eviction as well as any other person who E obstructs eviction can be evicted by force. Under section 105C there is power to recover rent or damages as arrears of property taxes. A person ordered to vacate on the grounds of being in arrears of rent or acting in contravention of the terms under which he is authorised to occupy the premises could be allowed to continue if he satisfies the Commissioner. The Commissioner has, for the purpose of holding any F inquiry, the same powers as are vested in a civil court under the Code of Civil Procedure, when trying a suit, in respect of (a) summoning and enforcing the presence of any person and examining him on oath, (b) requiring the discovery and production of documents, and (c) any other matter which may be prescribed by regulations. An appeal from every order of the Commissioner lies to the principal Judge of the City Civil Court or such other judicial officer as the principal Judge may G designate. The appeal is to be disposed of as expeditiously as possible. Subject to the results of the appeal every order of the Commissioner or the appellate officer is final. The power to make regulations includes the power to make regulations in respect of holding of inquiries and the procedure to be followed in such appeals.

The provisions of the Bombay Government Premises (Eviction) H Act are more or less similar except that they relate to Government premises and the power to order eviction is given to the competent authority not lower in rank than that of a Deputy Collector or an Executive Engineer appointed by the State Government. The only other matter

in respect of which the provisions of this Act differ from the provisions of the Bombay Municipal Corporation Act, just now referred to, is that section 8A of this Act provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Government premises on any of the grounds specified in section 4 or the recovery of the arrears of rent or the damages payable for use or occupation of such premises. This amendment was made as a consequence of the decision of this Court in *Northern India Caterers* v. *Punjab* (1967 3 SCR 399). But the matters arising under this Act and now before this Court were in respect of proceedings taken before section 8A was introduced in the Act by Maharashtra Act 12 of 1969 and this section has, therefore, no relevance for the purposes of these cases.

It was not and could not be argued that the Acts in so far as they provided for special procedures applying to the State and the Municipal Corporation were invalid. The decisions in *Baburao Shantaram More* v. *The Bombay Housing Board* (1954 SCR 572) upholding the exemption of premises belonging to the Government or a local authority from the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947; *The Collector of Malabar* v. *Erimal Ebrahim Hajee* (1957 SCR 970) upholding the provision for special modes of recovery for income-tax; *Asgarali Nazarali Singaporawalla* v. *The State of Bombay* (1957 SCR 678) upholding the validity of Criminal Law Amendment Act, 1952 providing for the trial of all offences punishable under ss. 161, 165 or 165-A of the Indian Penal Code, or sub-s. (2) of s. 5 of the Prevention of Corruption Act, 1947 exclusively by Special Judges; *Shri Munna Lal & Anr.* v. *Collector of Jhalawar & Ors.* (1961 2 SCR 962) upholding the provision of the Rajasthan Public Demands Recovery Act, 1952 for recovering moneys due to a State Bank; *Nav Rattanmal* v. *State of Rajasthan* (1962 2 SCR 324) upholding a special period of limitation for the Government; *Lachhman Das on behalf of Firm Tilak Ram Ram Bux* v. *State of Punjab* (1963 2 SCR 353) upholding the provisions of an Act setting up separate authorities for determination of disputes and prescribing a special procedure to be followed by them for the recovery of the dues of a State Bank; and *Builders Corp.* v. *Union* (1965 2 SCR 289) upholding the Doctrine of priority of Crown Debts, are all instances where special provisions applicable to the State were upheld. It cannot now be contended that special provision of law applying to Government and public bodies is not based upon reasonable classification or that it offends Art. 14.

The submission was a much more limited one and that is that as there are two procedures available to the Corporation and the State Government, one by way of a suit under the ordinary law and the other under either of the two Acts, which is harsher and more onerous than the procedure under the ordinary law, the latter is hit by Article 14 of the Constitution in the absence of any guidelines as to which procedure may be adopted. For this reliance was wholly placed on the decision in the *Northern India Caterers' case*. In that case the question arose under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act of 1959. The majority consisting of Subba Rao, C.J. and Shelat and Vaidialingam, JJ. accepted that there is an intelligible

differentia between the two classes of occupiers, namely, occupiers of public property and premises and occupiers of private property and that it is in the interest of public that speedy recovery of rents and speedy eviction of unauthorised occupiers is made possible through the instrumentality of a speedier procedure. However, they referred to the decisions of this Court in *State of West Bengal* v. *Anwar Ali Sarkar* (1952 SCR 284), *Suraj Mall Mohta* v. *A. V. Visvanatha Sastri* (1965 1 SCR 448), *Shree Meenakshi Mills Ltd. Madurai* v. *A. V. Visvanatha Sastri* (1955 1 SCR 787) and *Banarsi Das* v. *Cane Commissioner, U.P.* (1963 Supp. 2 SCR 760 : AIR 1963 SC 1417) and concluded that the principle which emerged from these decisions was that discrimination would result if there are two available procedures, one more drastic or prejudicial to the party concerned than the other which can be applied at the arbitrary will of the authority. They thought that as s. 5 conferred an additional remedy over and above the remedy by way of suit leaving it to the unguided discretion of the Collector to resort to one or the other by picking and choosing some only of those in occupation of public properties and premises for the application of the more drastic procedure under s. 5 that section laid itself open to the charge of discrimination and as being violative of Art. 14, and in that view held that section void. The minority consisting of Hidayatullah and Bachawat, JJ. held that the impugned Act made no unjust discrimination among the occupants of government properties *inter se,* that it promoted public welfare and was a beneficial measure of legislation, that it was not unfair or oppressive and that the unauthorised occupant was not denied equal protection of the laws merely because the Government had the option of proceeding against him either by way of a suit or under the Act. They further held that "an authorised occupant has no constitutional right to dictate that the Government should have no choice of proceedings, and that the argument based upon the option of the Government to file a suit is unreal because in practice the Government is not likely to institute a suit in a case when it can seek relief under the Act".

The decision in *Northern India Caterers' case* led to the Public Premises (Eviction of Unauthorised Occupation) Act, 1958 being replaced by Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which was given retrospective operation from the date of the 1958 Act and barred the jurisdiction of the Court to entertain a suit or proceeding in respect of eviction of any person in unauthorised occupation of public premises. It also led to the amendment of one of the Acts now under consideration, the Bombay Government Premises (Eviction) Act introducing therein section 8A, already referred to, barring resort to the Civil Court. In *Hari Singh* v. *Military Estate Officer* (1973 1 SCR 515) this Court referred to the decision in *Northern India Caterers' case* and upheld the validity of the 1971 Act on the ground that there was only one procedure for ejectment of persons in unauthorised occupation of public premises under the 1971 Act and that there was no vice of discrimination under it.

The argument based on the availability of two procedures, one more onerous and harsher than the other and, therefore, discriminatory has led some High Courts to resort to various reasoning in order to get

round the effect of the decision in the *Northern India Caterers' case.* This has happened in the case of Madras High Court in *Abdul Rashid* v. *Asst. Engineer* (*Highways*) (AIR 1970 Mad. 387), the Andhra Pradesh High Court in *M. Begum* v. *State* (AIR 1971 AP 382) and *Meharunnissa Begum* v. *State of Andhra Pradesh* (1970-1 Andh. LT 88) and the Patna High Court in *Bhartiya Hotel* v. *Union of India* (AIR 1968 Pat. 476). The decision of the Patna High Court is one of the cases which was considered along with *Hari Singh's case.* It is rather interesting that this attack based on Art. 14 of the Constitution should have led to the apparently more onerous and harsher procedure becoming the rule, the resort to the ordinary Civil Court being taken away altogether. It is difficult to imagine who benefits by resort to the ordinary Civil Courts being barred. One finds it difficult to reconcile oneself to the position that the mere possibility of resort to the Civil Court should make invalid a procedure which would otherwise be valid. It can very well be argued that as long as a procedure does not by itself violate either Art. 19 or Art. 14 and is thus constitutionally valid, the fact that that procedure is more onerous and harsher than the procedure in the ordinary civil courts, should not make that procedure void merely because the authority competent to take action can resort to that procedure in the case of some and ordinary civil court procedure in the case of others. That a constitutionally valid provision of law should be held to be void because there is a possibility of its being resorted to in the case of some and the ordinary civil court procedure in the case of others somehow makes one feel uneasy and that has been responsible for the attempts to get round the reasoning which is the basis in the decision in *Northern India Caterers' case.*

Let us now, therefore, see whether the decisions of this Court necessarily lead to the conclusion reached by the majority in *Northern India Caterers' case.* In doing so we shall take the various decisions of this Court in their chronological order. The first of these is *Anwar Ali Sarkar's case* (supra). In that case under s. 5(1) of the West Bengal Special Courts Act, 1950, which read as follows:

> "5(1). A Special Court shall try such offences or classes of offences or cases or classes of cases, as the State Government may by general or special order in writing, direct."

a number of persons were tried by the Special Courts constituted under s. 3 of that Act. The Act was entitled "An Act to provide for the speedier trial of certain offences" and the preamble declared that "it is expedient to provide for the speedier trial of certain offences." The majority came to the conclusion that the necessity for speedier trial of offences did not provide a reasonable basis of classification and the procedure laid down by the Act for trial by Special Courts varied substantially from that laid down for the trial of offences generally by the Code of Criminal Procedure and as it left it to the uncontrolled discretion of the State Government to direct any case which it liked to be tried by the Special Court, it was void. Das J. (as he then was), who agreed with the majority's conclusion, however, referred to the circumstances which may legitimately call for a speedier trial and swift retribution by way of punishment to check the commission of such offences, in these words :

A "On the other hand, it is easy to visualise a situation when certain offences, *e.g.* theft in a dwelling house, by reason of the frequency of their perpetration or other attending circumstances, may legitimately call for a speedier trial and swift retribution by way of punishment to check the commission of such offences. Are we not familiar with gruesome crimes of murder, arson, loot and rape committed on a large scale B during communal riots in particular localities and are they not really different from a case of a stray murder, arson, loot or rape in another district which may not be affected by any communal upheaval? Do not the existence of the communal riots and the concomitant crimes committed on a large scale call for prompt and speedier trial in the very interest and safety of the community? May not political murders C or crimes against the State or a class of the community, *e.g.*, women, assume such proportions as would be sufficient to constitute them into a special class of offences requiring special treatment? Do not these special circumstances add a peculiar quality to these offences or classes of offences or classes of cases which distinguish them from stray cases of similar crimes and is it not reasonable and even necessary to D arm the State with power to classify them into a separate group and deal with them promptly? I have no doubt in my mind that the surrounding circumstances and the special features I have mentioned above will furnish a very cogent and reasonable basis of classification, for it is obvious that they do clearly distinguish these offences from similar or even same species of offences committed elsewhere and under ordi- E nary circumstances. This differentia quite clearly has a reasonable relation to the object sought to be achieved by the Act, namely, the speedier trial of certain offences. Such a classification will not be repugnant to the equal protection clause of our Constitution for there will be no discrimination, for whoever may commit the specified offence in the specified area in the specified circumstances will be treated alike and F sent up before a Special Court for trial under the special procedure. Persons thus sent up for trial by a Special Court cannot point their fingers to the other persons who may be charged before an ordinary Court with similar or even same species of offences in a different place and in different circumstances and complain of unequal treatment, for those G other persons are of a different category and are not their equals."

He, therefore, held that :

"Section 5(1). in so far as it empowers that State Government to direct 'offences' or 'classes of offences' or 'classes H of cases' to be tried by a Special Court, also, by necessary implication and intendment, empowers the State Government to classify the 'offences' or 'classes of offences' or 'classes of cases', that is to say, to make a proper classifi-

cation in the sense I have explained. *In my judgment, this part of the section, properly construed and understood, does not confer an uncontrolled and unguided power on the state Government.* On the contrary, this power is controlled by the necessity for making a proper classification which is guided by the preamble in the sense that the classification must have a rational relation to the object of the Act as recited in the preamble. It is, therefore, not an arbitrary power."

It is interesting to compare this decision with the decision of this Court in the next case, *Kathi Raning Rawat* v. *The State of Saurashtra* (1952 SCR 435) which was heard in part alongwith it (*Anwar Ali Sarkar's case*) but was adjourned to enable the respondent state to file an affidavit explaining the circumstances which led to the enactment of the Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949. It was heard by the same Bench which decided *Anwar Ali Sarkar's case*. Section 11 of the Ordinance there under consideration was exactly in the same terms as s. 5(1) of the West Bengal Special Court Act. The only diffrence between the two was that the Saurashtra Ordinance was purported to have been passed to provide "for public safety, maintenance of public order and preservation of peace and tranquillity in the State of Saurashtra. However, an affidavit was filed on behalf of the state giving facts and figures relating to an increasing number of incidents of looting, robbery, dacoity, nose-cutting and murder by marauding gangs of dacoits in certain areas of the state and these details were held to support the claim that the security of the state and public peace were jeopardised and that it became impossible to deal with the offences that were committed in different places expeditiously. The affidavit also stated that the areas specified in the notification were the main zones of the activities of the dacoits. The impugned Ordinance having thus been passed to combat the increasing tempo of certain types of regional crime, the two-fold classification on the lines of type and territory adopted in the impugned Ordinance was held reasonable and valid and the degree of disparity of treatment involved as in no way in excess of what the situation demanded. It was held that "the reference to public safety, maintenance of public order and preservation of peace and tranquillity in the preamble shows a definite objective and furnishes a tangible and rational basis of classification to the State Government for the purpose of applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and preservation of peace and tranquillity." It would be noticed thus that *Anwar Ali Sarkar's case* was concerned with a piece of legislation which covered the whole field of criminal law without any basis for classification except speedier trial which was held not to be a good ground for classification, while in *Kathi Raning Rawat* v. *The State of Saurashtra* the preamble as well as the notification issued under the Act specified certain types of offences in certain areas alone as being those which were to be tried by the Special Judge and were held to validate an exactly similar provision.

A In *Lachmandas Kewalram Ahuja & Anr.* v. *The State of Bombay* (1952 SCR 710) section 12 of the Bombay Public Safety Measures Act, 1947 empowered Government to refer cases for trial by a Special Judge and was, therefore, held void as it did not purport to proceed on any classification. This would belong to the same category as *Anwar Ali Sarkar's case*. The next case in chronological order is of *Suraj Mall Mohta & Co.* v. *A. V. Visvanatha Sastri & Anr.* (1955 B 1 SCR 448). In that case section 5(4) of the Taxation on Income Investigation Commission) Act, 1947 was held as "dealing with the same class of persons who fall within the ambit of section 34 of the Indian Income-tax Act, and as both these sections dealt with all persons who have similar characteristics and similar properties, the common characteristics being that they are persons who have not truly disclosed their income and have evaded payment of taxation on in- C come, and the procedure prescribed by the Taxation on Income (Investigation Commission) Act is substantially prejudical and more drastic to the assessee than the procedure under the Indian Income-tax Act, and therefore, s. 5(4) being a piece of discriminatory legislation offends against the provisions of article 14 of the Constitution and is thus void." It would be noticed that as in *Anwar Ali Sarkar's case* in this case also the ordinary law under the Indian Income-tax D Act and the extraordinary procedure under the Taxation of Income (Investigation Commission) Act covered the same class of people and there is no indication as to why certain cases should be sent to the Commission and certain cases be dealt with by the regular Income-tax authorities. But here again it is interesting to note the observation :

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> "... but the overall picture is that though under the Indian Income-tax Act the same officer who first arrives at a tentative conclusion hears and decides the case, his decision is not final but is subject to appeal, while under the provisions of sub-section (4) of section 5 of the decision of the Commission tentatively arrived at in the absence of F the assessee becomes final when taken in his presence, and that makes all the difference between the two procedures. *If there was a provision for reviewing the conclusions of the Investigation Commission when acting both as investigators and judges, there might not have been such substantial discrimination in the two procedures as would bring the case within article* 14; but as pointed out above, there G is no provision of that kind in the impugned Act."

It would, thus appear that if there had been a provision for appeal against the decision of the Investigation Commission the reference to that Commission would have been held valid. We are referring particularly to this aspect because in both the statutes now under consideration there is a provision for appeal to the Civil Court which H is safer and more liberal than the provision of appeal under the Income-tax Act to the Appellate Assistant Commissioner and the Appellate Tribunal. Mr. Sen appearing for the appellants, however, tried to argue that the reference to the appeal in this decision was

only a reference to the appeal against the orders of the Income-tax Officer to the Appellate Assistant Commissioner. We do not see how that makes any difference. As already pointed out, the fact that under the statutes under consideration the appeal lies to the ordinary Civil Court is a point in their favour. The common feature between this case and *Anwar Ali Sarkar's case* is that the special procedure covers the whole field covered by the ordinary procedure and it was held that there was no rational basis of classification of cases which could be sent to the Investigation Commission. The decisions in *Shree Meenakshi Mills Ltd.* v. *Sri A. V. Visvantha Sastri & Anr.* (1955 1 SCR 767) and *M. Ct. Muthiah & Ors.* v. *The Commissioner of Income-Tax, Madras & Anr.* (1955 2 SCR 1247) are on the same lines as in *Suraj Mall Mohta's case* and do not call for any discussion.

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It is interesting to pass on next to *A. Thangal Kunju Musaliar* v. *M. Venkitachalam Potti & Anr.* (1955 2 SCR 1196) a case referred by the Government of the United State of Travancore and Cochin under s. 5(1) of the Travancore Taxation on Income (Investigation Commission) Act, 1124 modelled on the Indian Taxation on Income (Investigation Commission) Act, 1947, for investigation by the Travancore Income-tax Investigation Commission in 1949. In 1950 the Indian Act was extended to Travancore and Cochin and the Travancore Act was allowed to continue to be in force with certain modifications. It was held that s. 5(1) of the Travancore Act XIV of 1124 read in Juxta-position with s. 47 of the Travancore Income-tax Act, 1121 (XXIII of 1121) was not discriminatory because s. 47(1) of the Travancore Act XXIII of 1121 was directed only against those persons concerning whom definite information came into the possession of the Income-tax Officer and in consequence of which the Income-tax Officer discovered that the income of those persons had escaped or been under-assessed or assessed at too low a rate or had been the subject of excessive relief, and the class of persons envisaged by s. 47(1) was a definite class about which there was definite information leading to discovery within 8 years or 4 years as the case may be of definite item or items of income which had escaped assessment. On the other hand under s. 5(1) of the Travancore Act XIV of 1124 the class of persons sought to be reached comprised only those persons about whom there was no definite information and no discovery of any definite item or items of income which escaped taxation but about whom the Government had only *prima facie* reason to believe that they had evaded payment of tax to a substantial amount. Further, it was definitely limited to the evasion of payment of taxation on income made during the war period, whereas s. 47(1) of the Travancore Act XXIII of 1121 was not confined to escapement from assessment of income-tax made during the war period." It was, therefore, held that there was no discrimination. It would be noticed how thin is the line of distinction between the two lines of classification. But that was held as justifying the different treatment between the two classes of cases. It is interesting to note that in *Suraj Mall Mohta's case* the provision of s.5(1) of the Taxation on income (Investigation Commission) Act

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(Act XXX of 1947) referring to the class of "substantial evaders of Income-tax" who required to be specially treated under the drastic procedure provided in that Act was held not to provide a valid classification. But in this case the word "substantial" was, by reference to Stroud's Judicial Dictionary and the statement of law by Viscount Simon in *Palsor* v. *Grinling* (1948 AC 291, 317) taken along with an affidavit filed in the case, held to mean "class of persons who are intended to be subjected to this drastic procedure". It was also held that "the possibility of such discriminatory treatment of persons falling within the same group or category, however, cannot necessarily invalidate this piece of legislation and that it was to be presumed, unless the contrary were shown, that the administration of a particular law would be done 'not with an evil eye and unequal hand' and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory." Reference was made to the judgment of Mukherjea, J. in the *Saurashtra case* to the effect :

> "... In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. 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 direction 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 rational relation to the objective of the legislature, its action can certainly be annulled* offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied."

In *Kedar Nath Bajoria* v. *The State of West Bengal* (1954 SCR 30) the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 was under consideration. The Act provided for special procedure for the trial of certain offences. It was entitled an Act to provide for the more speedy trial and more effective punishment of certain offences. These offences were set out in the Schedule to the Act. The Act empowered the Provincial Government to constitute Special Courts of criminal jurisdiction for specified areas and to appoint Special Judges to preside over such courts. It was observed that :

> "... The vice of discrimination, it is said, consists in the unguided and unrestricted power of singling out for different treatment one among a class of persons all of whom are similarly situated and circumstanced, be that class large or small. The argument overlooks the distinction

between those cases where the legislature itself makes a complete classification of persons or things and applies to them the law which it enacts, and others where the legislature merely lays down the law to be applied to persons or things answering to a given description or exhibiting certain common characteristics, but being unable to make a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to persons or things within the defined group, while laying down the standards or at least indicating in clear terms the underlying policy and purpose, in accordance with, and in fulfilment of, which the administrative authority is expected to select the persons or things to be brought under the operation of the law. A familiar example of this type of legislation is the Preventive Detention Act, 1950, which, having indicated in what classes of cases and for what purposes preventive detention can be ordered, vests in the executive authority a discretionary power to select particular persons to be brought under the law. Another instance in point is furnished by those provisions of the Criminal Procedure Code which provide immunity from prosecution without sanction of the Government for offences by public servants in relation to their official acts, the policy of the law being that public officials should not be unduly harassed by private prosecution unless in the opinion of the Government, there were reasonable grounds for prosecuting the public servant which accordingly should condition the grant of sanction. It is not, therefore, correct to say that section 4 of the Act offends against article 14 of the Constitution merely because the Government is not compellable to allot *all* cases of offences set out in the schedule to Special Judges but is vested with a discretion in the matter."

Later, reference was made to *Anwar Ali Sarkar's case* and it was pointed out that the observations made therein were not applicable to the statute under consideration in *Bajoria's case* which was based on a classification which, in the context of the abnormal post-war economic and social conditions was readily intelligible and obviously calculated to subserve the legislative purpose. Reference was also made to the statement by Mukherjea, J. in the *Saurashtra case* that :

"... The object of passing this new Ordinance is identically the same for which the earlier Ordinance was passed, and the preamble to the latter, taken along with the surrounding circumstances, discloses a definite legislative policy which has been sought to be effectuated by the different provisions contained in the enactment. *If special courts were considered necessary to cope with an abnormal situation, it cannot be said that the vesting of Authority in the State Government to select offences for trial by such courts is in any way unreasonable.*"

A We may now refer to the decision in *Kangsari Haldar & Anr.* v. *The State of West Bengal* (1960 2 SCR 646). There the appellants were prosecuted for having committed offences under s. 120B read with ss. 302 and 438 of the Indian Penal Code before the tribunal constituted under the West Bengal Tribunals of Criminal Jurisdiction Act, 1952. A notification issued under that Act declared certain areas to be a disturbed area within a specified period, and the B case against the appellants was in respect of their activities in that area and during that period. It was held that the "classification made by the impugned Act is rational and the differentia by which offenders are classified has a rational relation with the object of the Act to provide for the speedy trial of the offences specified in the Schedule to the Act." It also dealt with certain other offences not specified in the Schedule to the Act. In dealing with this case the C Court observed :

> "This question necessarily leads us to inquire whether the discriminatory provisions of the Act are based on any rational classification, and whether the differentiation of the offenders brought within the mischief of the Act has a rational nexus with the policy of the Act and the object which D it intends to achieve. The preamble shows that the Legislature was dealing with the problem raised by disturbances which had thrown a challenge to the security of the State and raised a grave issue about the maintenance of public peace and tranquillity and the safeguarding of industry and business. It, therefore, decided to meet the situation by providing for speedy trial of the scheduled offences. Thus the object of E the Act and the principles underlying it are not in doubt. It is true that speedy trial of all criminal offences is desirable; but there would be no difficulty in appreciating the anxiety of the Legislature to provide for a special procedure for trying the scheduled offences so as to avoid all possible delay which may be involved if the normal procedure of the Code was adopted. If the disturbances facing the areas in the State F had to be controlled and the mischief apprehended had to be checked and rooted out a very speedy trial of the offences committed was obviously indicated.
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> The classification of offenders who are reached by the Act is obviously reasonable. The offences specified in the four items in the schedule are clearly of such a character as led to G the disturbance and it is these offences which were intended to be speedily punished in order to put an end to the threat to the security of the State and the maintenance of public peace and tranquillity. It would be idle to contend that if the offences of the type mentioned in the schedule were committed and the Legislature thought that they led to the disruption of public peace and tranquillity and caused jeopardy H to the security of the State they could not be dealt with as a class by themselves. Other offences committed by individuals under the same categories of offences specified by the Code could be rationally excluded from the classification

adopted by the Act because they did not have the tendency to create the problem which the Act intended to meet. We are, therefore, satisfied that the classification made by the Act is rational and the differentiation on which the offenders included within the Act are treated as a class as distinguished from other offenders has a rational nexus or relation with the object of the Act and the policy underlying it. Therefore, it would be difficult to accede to the argument that the Act violates Art. 14 of the Constitution."

The Court pointed out that the majority decision in *Anwar Ali Sarkar's case* was based on two principal considerations that, having regard to the bald statement made in the preamble about the need of speedier trials, it was difficult to sustain the classification made by s. 5(1), and that the discretion left to the executive was unfettered and for its exercise no guidance was given by the statute. It was pointed out that in the *Saurashtra case* the majority took the view that the preamble to the Act gave a clear indication about the policy underlying the Act and the object which it intended to achieve, that the classification on which the impugned provisions were based was a rational classification, and that the differentia on which the classification was made had a rational nexus with the object and policy of the Act. They then referred to *Lachmandas Kewalram Ahuja's case* and pointed out that it merely followed *Anwar Ali Sarkars' case*. Reference was then made to the decision in *Kedar Nath Bajoria's* case and to Chief Justice Patanjali Sastri's statement that "the *Saurashtra case* would seem to lay down the principle that if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the executive authority in accordance with the standard indicated or the underlying policy and object disclosed, is not a sufficient ground for condemning it as arbitrary and, therefore, obnoxious to Art. 14". The result of the earlier decisions was summed up thus :

"The result of these decisions appears to be this. In considering the validity of the impugned statute on the ground that it violates Art. 14 it would first be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. In this process the preamble to the Act and its material provisions can and must be considered. Having thus ascertained the policy and the object of the Act and court should apply the dual test in examining its validity : Is the classification rational and based on intelligible differentia; and has the basis of differentiation any rational nexus with its avowed policy and object ? If both these tests are satisfied the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not satisfied the statute must be struck

A down as violative of Art. 14. Applying this test it seems to us that the impugned provisions contained in s. 2(b) and the proviso to s. 4(1) cannot be said to contravene Art. 14. As we have indicated earlier, if in issuing the notification authorised by s. 2(b) the State Government acts *mala fide* or exercises its power in a colourable way, that can always be effectively challenged; but, in the absence of any such plea B and without adequate material in that behalf this aspect of the matter does not fall to be considered in the present appeal."

In *Jyoti Pershad* v. *Administrator for the Union Territory of Delhi* (1962 2 SCR 125) section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, which provided that any decree obC tained for the eviction of a tenant in respect of buildings in areas declared "slum areas" could not be executed without the permission of the "competent authority", was held not obnoxious to the equal protection of law on the ground that there was enough guidance to the competent authority in the use of his discretion under s. 19(1) of the Act. It was urged before this Court that s. 19(3) of the Slum Areas Act vested an unguided, unfettered, and uncontrolled power in an D executive officer to withhold permission to execute a decree which the petitioner had obtained after satisfying the reasonable requirements of the law as enacted in the Rent Control Act and thus offends Art. 14. In considering this argument the Court referred to the summary of the decisions of this Court laying down the proper construction of Art. 14 rendered up to 1959, made by Das, C.J., in *Ramakrishna Dalmia* v. *Justice Tendolkar* (1959 SCR 279), and made its own summary on E slightly different lines. Of them 2 and 4 are important :

1. . . . . .

2. The enactment or the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the legislature F vests a discretion in an authority, be it the Government or an administrative official acting either as an executive officer or even in a quasi-judicial capacity by a legislation which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary power enabling it to discriminate.

G In such circumstances the very provision of the law which enables or permits the authority to discriminate, offends the guarantee of equal protection afforded by Art. 14.

3. . . . . .

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

(Then a reference was made to the statement of law in *Bajoria's case,* which is already extracted.)

Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits, *Kathi Raning Rawat* v. *The State* of *Saurashtra* being an instance where the guidance was gathered in the manner above indicated, (b) *or even from the policy and purpose of the enactment which may be gathered* from other operative provisions applicable to analogous or comparable situations *or generally* from the object sought to be achieved by the enactment."

The Court then went on to observe :

"In the circumstances indicated under the fourth head, just as in the third, the law enacted would be valid being neither a case of excessive delegation or abdication of legislative authority viewed from one aspect, nor open to objection on the ground of violation of Art. 14 as authorising or permitting discriminatory treatment of persons similarly situated. The particular executive or quasi-judicial act would, however, be open to challenge as already stated on the ground not so much that it is in violation of the equal protection of the laws guaranteed by Art. 14, because *ex concessis* that was not permitted by the statute but on the ground of the same being ultra vires as not being sanctioned or authorized by the enactment itself."

Though the Court then went into the question whether there was any guidance found or principles laid for the authorities' guidance in the Act, and upheld its validity, the fourth proposition is very important. In the present cases also affidavits have been filed by the officers stating the purposes for which those provisions were enacted. The very policy and the purpose of the enactments clearly make it apparent that the legislature intended to make them applicable to a special class (1) the property belonging to the Government, and (2) property belonging to the Bombay Municipal Corporation and provide for a speedy method of recovering those properties.

To summarise:

Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in *Anwar Ali Sarkar's case* and *Suraj Mall Mehta's case* without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14. Even there, as mentioned in *Suraj Mall Mehta's case,* a provision for appeal may cure the defect. Further, in such cases if from the preamble and surrounding circumstances, as well as the provisions of

A the statute themselves explained and amplified by affidavits, necessary guidelines could be inferred as in *Saurashtra case* and *Jyoti Pershad's case* the statute will not be hit by Art. 14. Then again where the statute itself covers only a class of cases as in *Haldar's case* and *Bajoria's case* the statute will not be bad. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute. Therefore, the
B contention that the mere availability of two procedures will vitiate one of them, that is the special procedure, is not supported by reason or authority.

The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is premises belonging to the Corporation and the Government should be subject to speedy procedure
C in the matter of evicting unauthorized persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary Civil Court. Even normally one cannot imagine an officer
D having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. Administrative officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two
E Acts in one case and to the ordinary Civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimi-
F nation that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice this Court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants
G of Government and Corporation property and provided a special speedy procedure therefor is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the *Northern India Caterers' case.*

We should add that the basis of that decision is that section 5 of
H the Act enables the Collector to discriminate against some by exercising his power under section 5 and take proceedings by way of suit against others. In proceeding on that basis the majority made an obvious mistake. Under section 4 of the Act 'if the Collector is of

opinion that any person is in unauthorised occupation of any public premises and that he has to be evicted *he shall* issue a notice in writing calling upon such person to show cause why an order of eviction should not be passed'. Thus the Collector has no option at all but to issue a notice. But after considering the cause and the evidence produced by such person and after giving him a reasonable opportunity of being heard.... *he may* make an order of eviction. Therefore, if he is of opinion that it is a case where a suit is a more proper remedy because of the circumstances of the case or its complicated nature he may not order eviction. Then it would be for the Government to institute a suit. It is not for the Collector to do so. The Collector has no discretion either to file a suit or to take proceedings under the Act. Nor can the Government order the Collector to pass an order of eviction in every case under section 5 as the power under that section is the Collector's statutory power. Thus, the majority, in ignoring the obligatory nature of the notice under section 4 and the discretionary power under section 5 which has to be exercised after hearing the party was in error in proceeding on the basis of section 5 alone and holding that it conferred arbitrary power on the Collector to resort to the power under the Act in the case of some and a suit in the case of some others.

It is also necessary to point out that the procedures laid down by the two Acts now under consideration are not so harsh or onerous as to suggest that a discrimination would result if resort is made to the provisions of these two Acts in some cases and to the ordinary Civil Court in other cases. Even though the officers deciding these questions would be administrative officers there is provision in these Acts for giving notice to the party affected, to inform him of the grounds on which the order of eviction is proposed to be made, for the party affected to file a written statement and produce documents and be represented by lawyers. The provisions of the Civil Procedure Code regarding summoning and enforcing attendance of persons and examining them on oath, and requiring the discovery and production of documents are a valuable safeguard for the person affected. So is the provision for appeal to the Principal Judge of the City Civil Court in the city of Bombay, or to a District Judge in the districts who has got to deal with the matter as expeditiously as possible, also a sufficient safeguard as was recognised in *Suraj Mall Mehta's case*. The main difference between the procedure before an ordinary Civil Court and the executive authorities under these two Acts is that in one case it will be decided by a judicial officer trained in law and it might also be that more than one appeal is available. As against that there is only one appeal available in the other but it is also open to the aggrieved party to resort to the High Court under the provisions of Art. 226 and Art. 227 of the Constitution. This is no less effective than the provision for a second appeal. On the whole, considering the object with which these special procedures were enacted by the legislature we would not be prepared to hold that the difference between the two procedures is so unconscionable as to attract the vice of discrimination. After all, Art. 14 does not demand a fanatical approach. We, therefore, hold

A that neither the provisions of Chapter V-A of the Bombay Municipal Corporation Act nor the provisions of the Bombay Government Premises (Eviction) Act, 1955 are hit by Art. 14 of the Constitution.

In the result all the appeals and writ petitions are dismissed. The Petitioners will pay one set of costs. The Appeals will be posted for B disposal before a division Bench.

KHANNA, J. I agree that the writ petitions be dismissed, but I would base my conclusion on the ground that the procedure prescribed by the impugned provisions is not onerous or drastic when compared with that contained in the Civil Procedure Code. My learned brother Alagiriswami J. has analysed the impugned provisions contained in the C Bombay Municipal Corporation Act as well as those contained in the Bombay Government Premises (Eviction) Act. It would appear therefrom that some of infirmities from which the Punjab Public Premises and Land (Eviction and Rent Recovery) Act of 1959 suffered are not present in the impugned enactments. The impugned provisions provide for the giving of notice to the party affected. Such a party has D to be informed of the grounds on which the order for eviction is proposed to be made and has to be afforded an opportunity to file a written statement and produce documents. The party can also be represented by lawyers. The provisions of the Code of Civil Procedure regarding summoning and enforcing attendance of persons and examining them E on oath as also those relating to discovery and production of documents provide a valuable safeguard. The aggrieved party has a right of appeal, and the appeal lies not to an administrative officer but to a judicial officer of the status of a Principal Judge of the City Civil Court or a District Judge. It is also apparent that if the officer concerned acts beyond his jurisdiction, his order would be liable to assailed under arti- F cles 226 and 227 of the Constitution. I would, therefore, hold that the procedure envisaged in the impugned provisions is not onerous and drastic as would justify an inference of discrimination. The simple fact that there are two forums with different procedures would not justify the quashing of the impugned provisions as being violative of article 14, especially when both procedures are fair and in consonance with the G principles of natural justice. I agree with my learned brother Bhagwati J. that what is necessary to attract the inhibition of article 14 is that there must be substantial and qualitative differences between the two procedures so that one is really and substantially more drastic and prejudicial than the other and that we should avoid dogmatic and finical approach when dealing with life's manifold realities.

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I must also utter a note of caution against the tendency to lightly overrule the view expressed in previous decisions of the Court. It may

be that there is a feeling entertained by certain schools of thought, to quote the words of Cardozo, that "the precedents have turned upon us and are engulfing and annihilating us—engulfing and annihilating the very devotees that worshipped at their shrine. So the air is full of new cults that disavow the ancient faiths. Some of them tell us that instead of seeking certainty in the word, the outward sign, we are to seek for something deeper, a certainty relative and temporary, a writing on the sands to be effaced by the advancing tides. Some of them even go so far as to adjure us to give over the vain quest, to purge ourselves of those yearnings for the unattainable ideal, and to be content with an empiricism that is untroubled by strivings for the absolute.". (see page 9 Selected Writings of Benjamin Nathan Cardozo by Margaret E. Hall). At the same time, it has to be borne in mind that certainty and continuity are essential ingredients of rule of law. Certainty in law would be considerably eroded and suffer a serious set back if the highest court of the land readily overrules the view expressed by it in earlier cases, even though that view has held the field for a number of years. In quite a number of cases which come up before this Court, two views are possible, and simply because the Court considers that the view not taken by the Court in the earlier case was a better view of the matter would not justify the overruling of the view. The law laid down by this Court is binding upon all courts in the country under article 141 of the Constitution, and numerous cases all over the country are decided in accordance with the view taken by this Court. Many people arrange their affairs and large number of transactions also take place on the faith of the correctness of the view taken by this Court. It would create uncertainty, instability and confusion if the law propounded by this Court on the basis of which numerous cases have been decided and many transactions have taken place is held to be not the correct law. This Court may, no doubt, in appropriate cases overrule the view previously taken by it but that should only be for compelling reasons. Necessity may sometimes be felt of ridding *stare decisis* of its petrifying rigidity. As observed by Brandeis, "stare decisis is always a desideratum, even in these constitutional cases. But in them, it is never a command" (see The Unpublished Opinions, page 152). Some new aspects may come to light and it may become essential to cover fresh grounds to meet the new situations or to overcome difficulties which did not manifest themselves or were not taken into account when the earlier view was propounded. Precedents have a value and the ratio decidendi of a case can no doubt be of assistance in the decision of future cases. At the same time we have to, as observed by Cardozo, guard against the notion that because a principle has been formulated as the ratio decidendi of a given problem, it is therefore to be applied

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A as a solvent of other problems, regardless of consequences, regardless of deflecting factors, inflexibly and automatically, in all its pristine generality (*see* Selected Writings, page 31). As in life so in law things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems B of life, must adapt itself to cope with new situations. Nobody is so gifted with foresight that he can divine all possible human events in advance and prescribe proper rules for each of them. There are, however, certain verities which are of the essence of the rule of law and no law can afford to do away with them. At the same time it C has to be recognized that there is a continuing process of the growth of law and one can retard it only at the risk of alienating law from life itself. There should not be much hesitation to abandon an untenable position when the rule to be discarded was in its origin the product of institutions or conditions which have gained a new significance or development with the progress of years. It sometimes happens that D the rule of law which grew up in remote generations may in the fulness of experience be found to serve another generation badly. The Court cannot allow itself to be tied down by and become captive of a view which in the light of the subsequent experience has been found to be patently erroneous, manifestly unreasonable or to cause hardship or to result in plain iniquity or public inconvenience. The Court has to keep E the balance between the need of certainty and continuity and the desirability of growth and development of law. It can neither by judicial pronouncements allow law to petrify into fossilised rigidity nor can it allow revolutionary iconoclasm to sweep away established principles. On the one hand the need is to ensure that judicial inventiveness shall not be desiccated or stunted, on the other it is essential to curb the F temptation to lay down new and novel principles in substitution of well established principles in the ordinary run of cases and the readiness to canonise the new principles too quickly before their saintliness has been affirmed by the passage of time. The votaries of the pragmatic idea that principles and rules should be accommodated to ends must also take into account the truth that of the ends to be achieved defineness G and order are themselves amongst the greatest and the most obvious. The distinction between evolution of law which is permissible by process of judicial pronouncements and radical changes in law which can only be brought about as a result of legislation cannot also be lost sight of. As observed by Cardozo J. :

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> "I think adherence to precedent should be the rule and not the exception. I have already had occasion to dwell upon some of the considerations that sustain it. To these

I may add that the labour of judges would be increased almost to the breaking point if every past decision could be reopened in every case, and one could not lay one's own course of bricks on the secure foundation of the courses laid down by others who had gone before him..... The situation would, however, be intolerable if the weekly changes in the composition of the Court were accompanied by changes in its rulings. In such circumstances there is nothing to do except to stand by the errors of our brethren of the week before, whether we relish them or not. But I am ready to concede that the rule of adherence to precedent, though it ought not to be abandoned, ought to be in some degree relaxed. I think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment. We have had to do this sometimes in the field of constitutional law." (*see* page 170 and 171 Selected Writings of Benjamin Nathan Cardozo by Margaret E. Hall).

So far as the question is concerned about the reversal of the previous view of this Court, such reversal should be resorted to only in specified contingencies. It may perhaps be laid down as a broad proposition that a view which has been accepted for a long period of time should not be disturbed unless the Court can say positively that it was wrong or unreasonable or that it is productive of public hardship or inconvenience. Question about the overruling of its previous decisions was considered by this Court in the case of *Bengal Immunity Co. Ltd.* v. *The State of Bihar & Ors.*(1) Das Acting CJ. after quoting from American, Australian and Privy Council decisions observed as under :

"Reference is made to the doctrine of finality of judicial decisions and it is pressed upon us that we should not reverse our previous decision except in cases where a material provision of law has been overlooked or where the decision has proceeded upon the mistaken assumption of the continuance of a repealed or expired statute and that we should not differ from a previous decision merely because a contrary view appears to us to be preferable. It is needless for us to say that we should not lightly dissent from a previous pronouncement of this Court. Our power of review, which undoubtedly exists, must be exercised with due care and caution and only for advancing the public well being in the light of the surrounding circumstances of each case brought to our notice but we do not consider it right to continue out power within

(1) [1955] 2 S.C.R. 603.

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rigidly fixed limits as suggested before us. If on a re-examination of the question we come to the conclusion, as indeed we have, that the previous majority decision was plainly erroneous then it will be our duty to say so and not to perpetuate our mistake even when one learned Judge who was party to the previous decision considers it incorrect on further reflection. We should do so all the more readily as our decision is on a constitutional question and our erroneous decision has imposed illegal tax burden on the consuming public and has otherwise given rise to public inconvenience or hardship, for it is by no means easy to amend the Constitution. Sometimes frivolous attempts may be made to question our previous decisions but if the reasons on which our decisions are founded are sound they will by themselves be sufficient safeguard against such frivolous attempts. Further, the doctrine of *stare decisis* has hardly any application to an isolated and stray decision of the Court very recently made and not followed by a series of decisions based thereon. The problem before us does not involve overruling a series of decisions but only involves the question as to whether we should approve or disapprove follow or overrule, a very recent previous decision as a precedent. In any case, the doctrine of *stare decisis* is not an inflexible rule of law and cannot be permitted to perpetuate our errors to the detriment to the general welfare of the public or a considerable section thereof."

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It would follow from the above that although this Court affirmed its power to overrule and depart from the view expressed in its previous judgments, it also stressed the importance of not lightly dissenting from previous pronouncements of this Court.

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Applying the principle enunciated above also, I am of the view that no sufficient ground has been shown for overruling the view expressed by the majority in *Northern India Caterers* case(1). It may be that the view expressed by the minority in that case appears to be preferable, but that by itself would not show that the decision arrived at in the Northern India Caterers case was plainly erroneous and as such requires overruling. It also cannot be said that aforesaid decision has given rise to public inconvenience and hardship. The legislature has in view of the decision in Northern India Caterers case made necessary amendments in many of the enactments so as to bar the jurisdiction of the civil courts in matters dealt with by those enactments. No consti-

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(1) (1967) 3 S.C.R. 399.

tutional amendment was required to set right the difficulty experienced as a result of the decision of this Court in Northern India Caterers case.

I am, therefore, of the view that it is not necessary for the purpose of this case to overrule the majority decision in the case of Northern India Caterers.

BHAGWATI, J., These appeals and writ petitions challenge the constitutional validity of Ch. VA of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as the Municipal Act) and the Bombay Government Premises (Eviction) Act, 1955 (hereinafter referred to as the Government Premises Eviction Act) as it stood prior to its amendment by Maharashtra Act 12 of 1969, on the ground that they contravene Art. 14 of the Constitution. The challenge is based mainly on the decision of this Court in *Northern India Caterers Ltd.* v. *State of Punjab*(1) where this Court held s. 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 to be void as being in conflict with Art. 14 of the Constitution. The question is whether the ratio of this decision is applicable to the provisions contained in Ch. VA of the Municipal Act and the Government Premises Eviction Act, and if it is, whether this decision requires to be reconsidered by us.

The Municipal Act is an old statute enacted for the purpose of providing for the municipal administration of the city of Bombay. Ch. VA was introduced in the Municipal Act by Maharashtra Act 14 of 1961. It consists of a fasciculus of sections commencing from s. 105A and ending with s. 105H. Section 105A is the definition section which gives definitions of various terms used in Ch. VA and one of those terms is "unauthorised occupation" which is defined by cl. (d) to mean occupation by any person of Corporation premises without authority for such occupation and includes continuance in occupation by any person of the premises after the authority under which he was allowed to occupy the premises has expired or has been duly determined. Sub-s. (1) of s. 105B provides *inter alia* as follows :

"105B. (1) Where the Commissioner is satisfied.—

(a) that the person authorised to occupy any corporation premises has, whether before or after the com-

(1)) [1967] 3 S.C.R. 399.

A mencement of the Bombay Municipal Corporation (Amendment) Act, 1960.—

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

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

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

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

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

(c) that any corporation premises in the occupation of E any person are required by the corporation in the public interest.

the Commissioner may notwithstanding anything contained in any law for the time being in force, by notice—order that that person, as well as any other person who may be in F occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice."

Before, however, an order can be made by the Municipal Commissioner against any person under sub-s. (1) of s. 105B, sub-s. (2) of G that section says that the Municipal Commissioner shall issue a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made. This notice is required to specify the grounds on which the order of eviction is proposed to be made H and it is intended to give an opportunity to all persons who are or may be in occupation of or claim interest in the Corporation premises to show cause against the proposed order of eviction. Sub-s. (2) of s.

105B then proceeds to say that the person concerned may file a written statement and produce documents in support of his case and at the inquiry before the Municipal Commissioner, he is entitled to appear by advocate, attorney or pleader. This procedure is intended to give effect to the principle of natural justice embodied in the maxim *audi alterm partem* and it is as it should be, for the Municipal Commissioner is given power to determine whether a person is liable to be evicted from any Corporation premises under cl. (a), or cl. (b) or cl. (c) of sub-s. (1), and before any determination adverse to him is made affecting his right to hold the said premises, he must be given a reasonable opportunity of being heard. If after hearing the person concerned, the Municipal Commissioner is satisfied that the case falls within cl. (a), cl. (b) or cl. (c), and such person is liable to be evicted under any of these three clauses, he may by notice order such person to vacate the Corporation premises within one month of the date of the service of the notice. If the person ordered to vacate the Corporation premises does not comply with the order of eviction, the Municipal Commissioner can under sub-s. (3) of s. 105B evict that person and any other person who obstructs him and take possession of the Corporation premises, if necessary, by use of force. Sub-s. (6) of s. 105B provides that if a person, who has been ordered to vacate any Corporation premises under sub-cl. (i) or sub-cl. (iv) of cl. (a) sub-s. (1), within one month of the date of service of the notice, or such longer time as the Municipal Commissioner may allow, pays to the Municipal Commissioner the rent and taxes in arrears, or as the case may be, carries out or otherwise complies with the terms contravened by him to the satisfaction of the Municipal Commissioner, the Municipal Commissioner shall on such terms as he thinks fit, in lieu of evicting such person under sub-s. (2), cancel the order made by him under sub-s. (1), and thereupon such person may continue to hold the Corporation premises on the same terms as before. Then follows s. 105C which *inter alia* confers power on the Municipal Commissioner to assess damages on account of use and occupation of the Corporation premises in cases where any person is found to be in unauthorised occupation of the same. Sec. 105D is not material for our purpose and we may omit it from consideration. Sec. 105E is the next section and that says that the Municipal Commissioner shall, for the purpose of holding any inquiry under the Act, have the same powers as are vested in the civil Court under the Code of Civil Procedure, when trying a suit, in respect of (a) summoning and enforcing attendance of any person and examining him on oath, (b) requiring the discovery and production of documents and (c) any other matter which may be prescribed by Regulations made under

A s. 105H. This section clearly contemplates that the Municipal Commissioner, while holding an inquiry, can order discovery and production of documents and also examine witness on oath in the same manner as a civil court. Every order of the Municipal Commissioner under s. 105B or s. 105C is made appealable under s. 105F and the appeal lies to the Principal Judge of the City Civil Court of Bombay or such of their judicial officer in Greater Bombay of not less B than ten years standing as the Principal Judge may designate in that behalf. The appellate officer is given power to stay the enforcement of the order of the Municipal Commissioner which is impugned in the appeal, for such period and on such conditions as he deems fit and the appeal is to be disposed of by him as expeditiously as possible. Sec. 105G gives finality to the order made by the Municipal Commissioner or the appellate officer and provides that it shall C not be called in question in any original suit, application or execution proceedings. There is lastly s. 105H which confers power on the Municipal Commissioner, with the approval of the Standing Committee, to make Regulations for all or any of the matters set out in that section, which include *inter alia* the holding of enquiries, the principles which may be taken into account in assessing damages under s. 105C and the procedure to be followed in appeals preferred D under s. 105F. It would thus be seen that a special procedure is enacted under these sections for eviction of any person from Corporation premises on any of the grounds set out in cl. (a), cl. (b) or cl. (c) of sub-s. (1) of s. 105B.

The Government Premises Eviction Act also lays down a special procedure for eviction of any person from government premises E which is more or less identical with that set out in Ch. VA of the Municipal Act. The only difference is that whereas under Ch. VA of the Municipal Act the power to determine the liability and make an order of eviction is given to the Municipal Commissioner, the Government Premises Eviction Act gives this power to the Competent Authority, who would be an officer not lower in rank than that of a Deputy Collector or an executive engineer appointed by the State F Government. There is also one other difference between the provisions of Ch. VA of the Municipal Act and the provisions of the Government Premises Eviction Act and that arises because section 8A has been introduced in the Government Premises Eviction Act by an amendment made by Maharashtra Act 12 of 1969 whereas no such amendment has been made in Ch. VA of the Municipal Act. This amendment was made in the Government Premises Eviction Act G in consequence of the decision of this Court in *Northern India Caterers Ltd.* v. *State of Punjab,*(1) but that is not material because, so far as the present cases arising under the Government Premises Eviction Act are concerned, the proceedings for eviction were taken and the order of eviction was made before section 8A was introduced in the Government Premises Eviction Act and the provisions of the Government Premises Eviction Act with which we are concerned H are, therefore, the provisions as they stood prior to their amendment by the introduction of section 8A.

(1) [1967] 3 S. C. R. 399.

Having set out the relevant provisions of the two statutes impugned in these cases, we may now turn to examine the grounds on which they are challenged. But before we do so, we may clear the ground by pointing out—and this is important to remember in the context of an argument advanced on behalf of the respondents which we shall have occasion to examine a little later—that the special procedure for determining the liability to eviction and securing eviction of persons found liable to be so evicted laid down in the two statutes has not been assailed before us on the ground that it is unreasonable and imposes unjustified restriction on the fundamental right to hold property guaranteed under Art. 19(1) (f). It was faintly argued before us that the impugned provisions of these two statutes by providing special procedure for eviction of occupants of Municipal or Government premises have made unjust discrimination between occupants of other premises and are on that account violative of Art. 14. But there is no substance in this challenge. It is not uncommon to find legislation according special treatment to Government or other public bodies and such legislation has been upheld by this Court in numerous decided cases. Bachawat, J., in his minority judgment in *Northern India Caterers Ltd.* v. *State of Punjab* (1) has referred to several such decisions and there are many more. We may mention a few of them. The decision in *Baburao Shantarm More* v. *The Bombay Housing Board and Anr.*(2) upheld the validity of the exemption of premises belonging to the Government or a local authority from the provisions of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947. The decision in *Shri Munnalal & Anr.* v. *Collector of Jhalawar & Ors.*(3) held that the Rajasthan Public Demands Recovery Act, 1952 was not unconstitutional as giving special facility to the Government as a banker for recovery of its dues. It was decided in *Nav Rattanmal & Ors.* v. *The State of Rajasthan*(4) that the legislature may reasonably provide a longer period of limitation for suits by the Government and in *Lachhman Das* v. *State of Punjab & Ors.*(5) it was held that the Patiala Recovery of States Dues Act, IV of 2002K, in setting up separate authorities for determination of disputes and prescribing a special procedure to be followed by them for recovery of dues of the Patiala State Bank by summary process, was not discriminatory and void. Now, in all these decisions the law providing for special treatment to Government or other public bodies was held not to be discriminatory, but from that it does not follow that every law which gives differential treatment to Government or other public bodies is necessarily immune from challenge on the ground of discrimination. There is no *talisman* or charm protecting a law from the vice of unconstitutional discrimination, when the discrimination is in favour of the Government or other public bodies. The law is now well settled that the legislature has power of making special laws to attain particular ends, and for that purpose it may select or classify persons

(1) [1967] 3 S.C.R. 399.
(2) [1954] S.C.R. 572.
(3) [1961] 2 S.C.R. 962.
(4) [1962] 2. S.C.R. 324
(5) [1963] S.C.R. 353.

A and things upon which such laws are to operate. But the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause contained in Art. 14. To get out of its reach it must appear that not only a classification has been made but also that it is one based on some real distinction, bearing a just and reasonable relation to the object of the Legislation, and is not a mere arbitrary selection. The classification to be valid and permissible must B satisfy a double test; it must be founded on an intelligible differentia. which distinguishes those who are grouped together from others, and that differentia must have a rational relation to the object sought to be achieved by the statute. It was on application of this double test that in the above-mentioned decision that the law making special provision for Government or other public bodies was held to be constitutionally valid. The application of the same double test, however, C resulted in the invalidation of the exemption of debts due to the Central Government or the Government of any State or a local authority from the operation of the Rajasthan Jagirdar's Debt Reduction Act which provided for scaling down of debts of Jagirdars whose Jagir lands had been resumed by the Government. Vide *State of Rajasthan* v. *Mukanchand & Ors.*(1) It will thus be seen that where a statute, according special treatment to Government or other D public bodies, is challenged on the ground of discrimination, the validity of the statute has to be judged by applying this double test, and it is this double test which we must, therefore, proceed to apply in determining the validity of the impugned provision contained in the two statutes.

E So far as Ch. VA of the Municipal Act is concerned,—and what we say in regard to Ch. VA of the Municipal Act must also apply equally in relation to the Government Premises Eviction Act with the words "Government Premises" substituted for the words "Municipal premises"—the statement of objects and reasons for the introduction of this Chapter, as also the provisions contained in it, clearly indicate that this Chapter was enacted to provide to the Municipal F Corporation a speedier remedy for eviction of unauthorised occupants from Municipal premises, as against the ordinary remedy of a civil suit involving expense and delay, so that the Municipal Corporation should be able to carry out effectively 'its policy of slum clearance, speedy development of the estates of the Corporation and providing more housing accommodation'. Chapter VA of the Municipal Act, no doubt, differentiates occupiers of Municipal pre- G mises from occupiers of other premises, but there is a socially valid and legally intelligible differentiation between the two classes of occupiers. So far as Municipal premises are concerned, the members of the public are vitally interested in seeing that such premises are freed from unauthorised occupation as speedily and expeditiously as possible in order that the Municipal Corporation should be able to implement its policy of slum clearance, speedy development of H Municipal estates and providing for more housing accommodation,

(1) [1964] 6 S.C.R. 903.

which are projects redounding to public benefit. This element of public interest in speedy and expeditious recovery of possession from unauthorised occupants is absent in case of premises belonging to private parties. The speedy machinery for eviction of unauthorised occupants from Municipal premises is, therefore, justified, in that it is in the interest of the public that speedy and expeditious recovery of Municipal premises from unauthorised occupiers is made possible through the instrumentality of a speedier procedure, instead of the elaborate procedure by way of civil suit involving both expense and delay. Speedy justice is to-day, in view of the existing procedural skein of an ordinary suit, an almost impossible feat. There is, thus, a valid basis of differentiation between occupiers of Municipal premises and those of other premises, and there is a rational relation and nexus between the basis of the classification and the object of the legislation. The constitutional validity of the impugned provisions in the two statutes cannot, in the circumstances, be assailed on the ground that they make unjust discrimination between occupiers of Government or Municipal premises and occupiers of other premises.

The main ground of attack against the constitutionality of the impugned provisions, however, was that even if occupiers of Government or Municipal premises form a class by themselves as against occupiers of private owned properties and such classification is justified on the ground that they require differential treatment in public interest, the impugned provisions discriminate amongst occupiers of Government or Municipal premises *inter se* and are, therefore, violative of the equality clause. The petitioners-appellants contended that the special procedure for determining the liability to eviction laid down in the impugned provisions is more drastic and prejudicial than the ordinary procedure of a civil suit and both these procedures operate in the same field without there being any guidelines provided in the impugned provisions as to when one or the other procedure shall be followed with the result that the impugned provisions permit discrimination amongst occupiers of Government or Municipal premises in that some may be subjected to the special procedure while others may be subjected to the ordinary procedure. The occupiers of Government or Municipal premises can be proceeded against under the impugned provisions as also under the ordinary procedure of a civil suit, and there being no principle or policy to guide the authority as to when the special procedure should be adopted, or the case should be dealt with under the ordinary procedure, it would be open to the authority to make a discriminatory choice amongst occupiers of Government or Municipal premises, and this absolute and unguided power of selection, though exercisable within the class of occupiers of Government or Municipal premises, is discriminatory. The vice of discrimination, it was argued, consists in the unguided and unrestricted power of singling out for being subjected to the special procedure some amongst a class of persons, namely, occupiers of Government or Municipal premises, all of whom are similarly situate and circumstanced, leaving others to be dealt with according to the ordinary procedure. This argument was

A sought to be supported by the majority decision of this Court in *Northern India Caterers Ltd.* v. *State of Punjab.*(1) We do not think this argument is sound. The majority decision in *Northern India Caterers Ltd.* v. *State of Punjab*(1) has no application in the present case, and in any event, we are of the view that decision does not represent the correct law.

B The statute which came up for consideration before this Court in *Northern India Caterers Ltd.* v. *State of Punjab*(1) was the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. This Act laid down a special procedure for eviction of unauthorised occupants from public premises. The constitutional validity of the enactment of this special procedure was challenged before this Court as being violative of Art. 14. There were two grounds C on which the challenge was based : one was that the Act discriminated unjustly between occupants of public premises and those of private property and the other was that even amongst occupants of public premises *inter se,* there was discrimination, inasmuch as the special procedure set out in the Act was more drastic and prejudicial than the ordinary procedure of a civil suit and it was left to the arbitrary and unfettered discretion of the Government to adopt the D special procedure against some and not against the rest. So far as the first ground is concerned, it was clearly and in so many terms repelled by Bachawat, J., in the minority judgment, and though the majority, speaking through Shelat, J., did not finally pronounce upon the validity of this ground, they pointed out that there was great force in it as it was possible to say that there was intelligible differentia between occupiers of public premises and other occupiers and E the differentia had rational nexus with the object of the legislation. It was the second ground which evoked difference of opinion amongst the learned Judges, the majority, speaking through Shelat, J., taking the view that this ground was well founded, while the minority, speaking through Bachawat, J., holding that it was not. Shelat, J., speaking on behalf of the majority, referred to the earlier decisions F of this Court in *State of West Bengal* v. *Anwar Ali*(2) *Shree Meenakshi Mills Ltd., Madurai* v. *A. V. Visvanatha Sastri,*(3) *Suraj Mull Mohta* v. *A. V. Visvanatha Sastri*(4) and *Banarsi Das* v. *Cane Commissioner, U.P.,*(5) and pointed out that the "principle which emerges from these decisions is that discrimination would result if there are two available procedures, one more drastic and prejudicial to the party concerned than the other and which can be applied at G the arbitrary will of the authority". The learned Judge then proceeded to add : "if the ordinary law of the land and the special law provide two different and alternative procedures, one more prejudicial than the other, discrimination must result if it is left to the will of the authority to exercise the more prejudical against some and not against the rest. A person who is proceeded against under the more drastic procedure is bound to complain as to why the drastic pro- H cedure is exercised against him and not against the others. even

(1) [1967] 3 S.C.R. 399.
(2) [1952] S.C.R. 284.
(3) [1955] 1 S.C.R. 787.
(4) [1955] 1 S.C.R. 448.
(5) [1963] Supp. 2 S. C. R. 760.

though those others are similarly circumstanced. The procedure under s. 5 is obviously more drastic and prejudicial than the one under the Civil Procedure Code where the litigant can get the benefit of a trial by an ordinary court dealing with the ordinary law of the land with the right of appeal, revision, etc., as against the person who is proceeded against under s. 5 of the Act as his case would be disposed of by an executive officer of the Government, whose decision rests on his mere satisfaction, subject no doubt to an appeal but before another executive officer, viz., the Commissioner. There can be no doubt that s. 5 confers an additional remedy over and above the remedy by way of suit and that by providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic procedure under s. 5, that section has lent itself open to the charge of discrimination and as being violative of Article 14 and in that view, held s. 5 of the Act to be void. Bachawat, J., delivering judgment on behalf of himself and Hidayatullah, J., (as the then was) held that "without violating Art. 14, the law may allow a litigant a free choice of remedies, proceedings and tribunals for the redress of his grievances". The learned Judge observed that "it is not pretended that the proceeding under the impugned Act is unfair or oppressive. The unauthorised occupant has full opportunity of being heard and of producing his evidence. He is not denied the equal protection of the laws because the government has the option of proceeding against him either by a suit or under the Act", and added : "an unauthorised occupant has no constitutional right to dictate that the government should have no choice of proceedings. The argument based upon the option of the government to file a suit is unreal, because in practice the government is not likely to institute a suit in a case where it can seek relief under the Act". The learned Judge concluded by saying that "Art. 14 does not require a fanatical approach to the problem of equality before law" and upheld the validity of the Act. We find it difficult to accept the reasoning of the majority as well as the minority decisions. Neither reasoning commends itself to us. We shall presently explain our standpoint in relation to this problem, which arises when there are two procedures laid down by the Legislature, one harsher than the other, and the question is whether that involves violation of the constitutional mandate of equality before law. But one point we wish to make, and we cannot overemphasise it, that Art. 14 enunciates a vital principle which lies at the core of our republicanism and shines like a beacon light pointing towards the goal of classless egalitarian socio-economic order which we promised to build for ourselves when we made a tryst with destiny on that fateful day when we adopted our Constitution. If we have to choose between fanatical devotion to this great principle of equality and feable allegience to it, we would unhesitatingly prefer to err on the side of the former as against the latter. We should be breaking our faith with the Constitution if we whittle down in any measure this high and noble principle which is pregnant with hope for the common man and which is at once a goal as well as a pursuit, for history shows

A B C D E F G H

A that it is by insidious encroachments made in the name of pragmatism and expediency that freedom and liberty are gradually but imperceptibly eroded and we should not allow the same fate to overtake equality and egalitarianism in the name of expediency and practical convenience.

The first and preliminary answer given by the respondents to the challenge levelled on behalf of the petitioners-appellants was that no
B violation of the Constitutional guarantee under Art. 14 is involved where the law gives a free choice of remedies to a person entitled to relief, even if one remedy is more drastic and prejudicial than the other. The respondents relied on the decision of the United States Supreme Court in *Arizona Copper Co.* v. *Hammer*(1) in support of this contention. Now it may be noted that the minority decision in *Northern India Caterers Ltd.* v. *State of Punjab*(2) also found support
C in the decision in *Arizona Copper Co.* v. *Hammer,*(1) and on the basis of that decision, held that the law does not violate Art. 14 because it gives an aggrieved party the free choice of remedies and proceedings for the redress of his grievances. We cannot accept this broad and unqualified statement of the law as correct and if we scrutinise the decision in *Arizona Copper Co.* v. *Hammer*(1) closely, we would find that it does not support any such statement. It is, no
D doubt, true that Mr. Justice Pitney said in this case : ". . . . . it is throughly settled by our previous decisions that ..... election of remedies is an option very frequently given by the law to a person entitled to an action, — an option normally exercised to his own advantage, as a matter of course". But this observation must be read in the context of the question which arose for decision in that case and if it is so read, it would be clear that what Mr. Justice Pitney had in mind when
E he made this observation was the existence of several rights to relief arising out of the same act and not the existence of several remedies in enforcement of a single right to relief. Under the laws of Arizona, an employee injured in the course of his employment had open to him three avenues of redress, any one of which he might pursue according to the facts of his case, namely, (1) the common law liability relieved
F of the fellow-servant defense, and in which the defenses of contributory negligence and assumption of risk are questions to be left to the jury; (2) the Employers' Liability Law, which applies to hazardous occupations where the injury or death is not caused by his own negligence; and (3) the Compulsory Compensation Law, applicable to especially dangerous occupations, by which he may recover compensation without fault upon the part of the employer. The question which arose for
G determination was whether this system denied equal protection to employers because it conferred upon the employee a free choice amongst several remedies. Mr. Justice Pitney answered the question against the employers by saying that it is well settled by previous decisions that the law may give election of remedies to a person entitled to an action. The reference here obviously was to election between different rights to relief given by different laws for the injury suffered
H in the course of employment. The employee could claim damages under the common-law or under the Employees' Liability Law or

(1) [1967] Law Ed. 1058 250 U.S. 400. (2) [1967] 3 S.C.R. 399.

under the Compulsory Compensation Law. He could elect under what law he would claim damages,—which right he would enforce—depending on the facts of his case. It is not as if he had different procedures available to him for enforcing a right given to him by law. Here in the present case, there are no different rights conferred on the Municipal Corporation or the Government by different laws with choice to the Municipal Corporation or the Government to enforce one right or the other. The only right which is sought to be enforced by the Municipal Corporation or the Government is the right based on title given by the general law of the land, and it is for the enforcement of this right that two alternative procedures are, according to the petitioners-appellants, available to the Municipal Corporation or the Government. That is a totally different situation from the one in *Arizona Copper Co.* v. *Hammer* (*supra*) and that decision has, therefore, no application in the present case.

It is indeed too late and too much now to contend that Art. 14 does not forbid discrimination in matters of procedure. A rule of procedure comes as much within the purview of article 14 as any rule of substantive law, and to quote the words of Mukherjea, J., in the *State of West Bengal* v. *Anwar Ali Sarkar,* (supra) "it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination". *Vide* also Weaver's Constitutional Law, page 407. If for determination and enforcement of a liability, two alternative procedures are available, one more drastic and prejudicial than the other and no guiding policy or principle is laid down by the legislature as to when one or the other procedure shall be followed so that either procedure may be indiscriminately adopted against persons similarly situated, the law providing for the more drastic and prejudicial procedure would be violative of the equal protection clause. That was laid down as far back as 1952 in the celebrated case of *State of West Bengal* v. *Anwar Ali Sarkar* (*supra*) which was decided by a Bench of seven judges. Section 5(1) of West Bengal Act 10 of 1950 was impeached in that case and the majority decision held that section to be wholly invalid. The preamble to the Act merely stated that it was expedient to provide for speedy trial of certain offences and section 5(1) empowered a special Court to try such offences or class of offences or cases or class of cases as the State Government may by general or special order in writing direct. The majority of the judges took the view that the procedure laid down by the Act for trial by the special court varied substantially from that laid down for the trial of offences generally by the Code of Criminal Procedure and no standard was laid down and no principle or policy was disclosed in the Act to guide the exercise of the discretion by the Government in selecting cases for reference to the special court for trial under the special procedure provided under the Act. All that was relied on as indicative of a guiding principle for selection was the object, as disclosed in the preamble of the Act, of providing for the "speedier trial of certain offences", but the majority of the judges brushed that aside as too indefinite and vague to constitute a reasonable basis for classification. "Speedier trial of offences", observed Mahajan J., "may be the reason

A and motive for the legislation but it does not amount either to a classification of offences or of cases. . . In my opinion it is no classification at all in the real sense of the term as it is not based on any characteristics which are peculiar to persons or to cases which are to be subject to the special procedure prescribed be the Act". Mukherjea, J., said, "I am definitely of opinion that the necessity of a speedier trial is too vague, uncertain and elusive a criterion to form a rational basis for the B discrimination made. The necessity for speedier trial may be the object which the legislature had in view or it may be the occasion for making the enactment. In a sense quick disposal is a thing which is desirable in all legal proceedings. . . This is not a reasonable classification at all but an arbitrary selection". Similar observations were also made by Fazl Ali, J., and Chandrasekhara Aiyar, J. The majority judges accordingly held that section 5(1) vested an arbitrary and uncontrolled C discretion in the State Government to direct any cases which it liked to be tried by the special court and it was therefore, violative of article 14.

It is interesting to compare the decision in *State of West Bengal* v. *Anwar Ali Sarkar* (*supra*) with the decision of this Court in *Kathi Raning Rawat* v. *The State of Saurashtra*(1). Both these cases were taken up for hearing together, but the Saurashtra case was adjourned to en- D able the State Government to file an affidavit explaining the circumstances which led to the enactment of the Saurashtra State Public Safety (Third Amendment) Ordinance, 1949 which was impugned in that case. The Saurashtra case was thereafter heard by the same Bench of seven Judges which decided *Anwar Ali Sarkar's* (*supra*) case. Section 11 of the Saurashtra Ordinance was in the same terms as section 5(1) of the West Bengal Act and the constitutional objection against E the validity of that section was also the same, namely, that it committed to the absolute and unrestricted discretion of the executive Government the power to refer cases to be tried by the special procedure laid down in the Saurashtra Ordinance and the section was, therefore, discriminatory and void. But this time the conclusion reached by the majority judges was different. The decision in *Anwar Ali Sarkar's* case (*supra*) was distinguished by three of the learned judges who F were parties to the majority decision in that case. Fazl Ali, J., observed : "The main objection to the West Bengal Act was that it permitted discrimination without reason or without any rational basis. . . The mere mention of 'speedier trial' as the object of the Act did not 'cure the defect', as the expression afforded no help in determining what cases required speedier trial. . . The clear recital (in the Saurashtra Ordinance) of a definite objective furnishes a tangible and rational G basis of classification to the State Government for the purpose of applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and the preservation of peace and tranquillity. Thus under section 11, the State Government is expected only to select such offences or class of offences or class of cases for being tried in a Special Court in accordance with the special procedure, as are calculated to affect the public H safety, maintenance of public order etc." Mukherjea, J., also, after distinguishing the decision in *Anwar Ali Sarkar's case* (*supra*) on similar

(1) [1952] S.C.R. 435.

grounds, said : "In my opinion, 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. . . . In such cases the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. 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". Das, J., also pointed out that in the preamble of the Saurashtra Ordinance there was sufficient indication of policy to guide the executive Government in selecting offences or class of offences or class of cases for reference to the special court and section 11 of the Saurashtra Ordinance did not, therefore, confer an uncontrolled and unguided power on the State Government. The majority judges accordingly held section 11 of the Saurashtra Ordinance to be valid.

Though the minority judges in *Kathi Raning Rawat* v. *State of Saurashtra*(1) observed that the decision of the majority judges in that case marked a retreat from the position taken up by the majority in the earlier case of *Anwar Ali Sarkar* (*supra*), the majority judges strongly refuted this proposition and pointed out that it was on an application of the same principle which resulted in the invalidation of section 5(1) of the West Bengal Act that the validity of section 11 of the Saurashtra Ordinance was sustained by them. The principle which was applied by the majority judges in *Anwar Ali Sarkar's* case and *Kathi Raning Rawat's* case(1) was the same and it was stated in these terms by Patanjali Sastri, C.J., delivering the majority judgment of the Court in *Kedar Nath Bajoria* v. *State of West Bengal*(2) : "—if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the executive authority in accordance with the standard indicated or the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary, and therefore, obnoxious to article 14. In the case of such a statute it could make no difference in principle whether the discretion which is entrusted to the executive Government is to make a selection of individual cases or of offences, classes of offences or classes of cases. For, in either case, the discretion to make the selection is a guided and controlled discretion and not an absolute or unfettered one and is equally liable to be abused, but as has been pointed out, if it be shown in any given case that the discretion has been exercised in disregard of the standard or contrary to the declared policy and object of the legislation, such exercise could be challenged and annulled under article 14 which includes within its purview both executive and legislative acts." The statutory provision which

(1) [1952] S.C.R. 435. (2) [1954] S.C.R. 30

A was challenged in this case was section 4(1) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. This Act had been passed to provide for the more speedy and more effective punishment of certain offences because the Legislature thought that it was expedient to provide for the more speedy trial and more effective punishment of certain offences which were set out in the Schedule annexed to the Act. Section 4(1) authorised the provincial Government to allot B cases for trial to a special judge by notification as well as transfer cases from one special judge to another or to withdraw any case from the jurisdiction of the special judge or make such modifications in the description of a case as may be considered necessary. Patanjali Sastri, C.J., applied the aforesaid principle extracted from the decisions in *Anwar Ali Sarkar's* case (*supra*) and *Kathi Raning Rawat's* case (*supra*) and held that section 4(1) of the Act was valid and the special C court had jurisdiction to try and convict the appellants. This decision might at first blush appear to be unimportant as representing merely one more case falling within one or the other ruling in *Anwar Ali Sarkar's* case or *Kathi Raning Rawat's* case, but a little scrutiny will reveal that it furnishes a complete answer to the argument of discrimination which found favour with the majority judges in *Northern India Caterers Ltd.* v. *State of Punjab* (*supra*). We shall deal with that D aspect of the decision a little later.

We may then refer to the decision of this Court in *Suraj Mull Mohta* v. *A. V. Visvanatha Sastri* (*supra*). The constitutional validity of section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947 was assailed in that case on the ground that "evasion, whether substantial or unsubstantial, came within its ambit as well as within E the ambit of section 34 of the Indian Income Tax Act", and it was, therefore, violative of article 14. This Court compared the provisions of section 5(4) of the Act with those of section 34(1) of the Indian Income Tax Act and came to the conclusion that section 5(4) dealt with the same class of persons who fell within section 34 of the Indian Income Tax Act and were dealt with in sub-section (1) of that section, and whose income could be caught by proceeding under that section. F There was nothing uncommon, observed this Court, either in properties or in characteristics between persons who had been discovered as evaders of income tax during an investigation conducted under section 5(1) of the Act and those who had been discovered by the Income Tax Officer to have evaded income tax. Both these kinds of persons had common properties and characteristics, and therefore, required equal treatment but some of them would, at the choice of the Commission, be G dealt with under the more drastic and prejudicial procedure for assessment laid down by the Act, while the others would be proceeded against under the ordinary procedure set out in section 34 of the Indian Income Tax Act. This was clearly discriminatory and section 5(4) was therefore held by this Court to be void and unenforceable as offending article 14.

H The decision of this Court in *Shree Meenakshi Mills Ltd., Madurai* v. *A. V. Visvanatha Sastri* (*supra*) may also be noted in this connection. In this case it was section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947 which was challenged as consti-

tutionally invalid and the ground of challenge was that after the coming into force of the Indian Income Tax (Amendment) Act, 1954, which introduced section 34(1A) in the Indian Income Tax Act, section 5(1) became discriminatory and void as the newly introduced section 34(1A) operated in the same field as section 5(1). This challenge was upheld in a unanimous judgment and the reasons which weighed with this Court in taking that view may best be stated in the words of Mahajan, C.J., who delivered the judgment of the Court :

> "Parliament has—by amending section 34 of the Indian Income-tax Act, now provided that cases of those very persons who originally fell within the ambit of section 5(1) of Act XXX of 1947, and who it was alleged formed a distinct class, can be dealt with under the amended section 34 and under the procedure provided in the Income-tax Act. Both categories of persons, namely, those who came within the scope of section 5(1) as well those who came within the ambit of section 34, now form one class. In other words, substantial tax-dodgers or war profiteers who were alleged to have formed a definite class according to the contention of the learned Attorney-General under section 5(1), and whose cases needed special treatment at the hands of the Investigation Commission now clearly fall within the ambit of amended section 34 of the Indian Income-tax Act. That being so, the only basis for giving them differential treatment, namely, that they formed a distinct class by themselves, has completely disappeared, with the result that continuance of discriminatory treatment to them comes within the mischief of article 14 of the Constitution and has thus to be relieved against. All these persons can now well ask the question, why are we now being dealt with by the discriminatory and drastic procedure of Act XXX of 1947 when those similarly situated as ourselves can be dealt with by the Income-tax Officer under the amended provisions of section 34 of the Act—in other words, there is nothing uncommon either in properties or in characteristics between us and those evaders of income-tax who are to be discovered by the Income-tax Officer under the provisions of amended section 34. In our judgment no satisfactory answer can be returned to this query because the field on which amended section 34 operates now includes the strip of territory which previously was occupied by section 5(1) of Act of 1947 and two substantially different laws of procedure, one being more prejudicial to the Assessee than the other, cannot be allowed to operate on the same field in view of the guarantee of article 14 of the Constitution."

The same line of reasoning prevailed with this Court in *M. Ct. Muthiah & Ors.* v. *The Commissioner of Income-tax, Madras & Anr.*(1) in holding that though section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947 was valid when section

(1) [1955] 2 S.C.R. 1247.

34(1) of the Indian Income-tax Act stood in its unamended form, it became void and unenforceable on the amendment of section 34(1) by the Indian Income-tax and Business Profit Tax (Amendment) Act, 1948 because then section 34(1), as amended, operated on the same field as section 5(1) and cases which were covered by section 5(1) could be dealt with under the procedure laid down in section 34(1).

It is, therefore, clear from these decisions that where there are two procedures for determination and enforcement of a liability, be it civil or criminal or revenue, one of which is substantially more drastic and prejudicial than the other, and they operate in the same field, without any guiding policy or principle available from the legislation as to when one or the other procedure shall be followed, the law providing for the more drastic and prejudicial procedure would be liable to be condemned as discriminatory and void. This principle has held the field for over twenty years and it is logically sound and unexceptionable. The respondents however, tried to narrow its scope and ambit by contending that it applies only where the choice of two alternative procedures is vested in the same authority without any policy or principle being provided by the legislature to guide and control the exercise of his discretion and it has no validity where the initiation of one procedure is in the hands of one authority and the initiation of the other in the hands of another. The respondents pointed out that Chapter VA of the Municipal Act does not leave it to the discretion of the Municipal Commissioner to adopt at his own sweet will the special procedure provided in that Chapter or the ordinary procedure of a civil suit as he thinks fit. The initiation of the special procedure provided in Chapter VA is, no doubt, with the Municipal Commissioner as he is to issue a notice under section 105B(2), but so far as the ordinary procedure of a civil suit is concerned, it is not in the hands of the Municipal Commissioner to initiate it since the suit can be filed by the Municipal Corporation only with the previous approval of the Standing Committee under the provisions of the Municipal Act. The arbitrary choice of two alternative procedures is, therefore, not given to the same authority and there is accordingly no violation of article 14. This contention of the respondents, is, in our opinion, having regard to the substance of the guarantee of equality, untenable and cannot be accepted. It proceeds on a misconception of the true principle on which this Court has struck down laws providing for special procedure which is substantially more drastic and prejudicial than the ordinary procedure. Principle as well as precedent, clearly appreciated, would remove the mist of misunderstanding surrounding this facet of constitutional equality. The principle which emerges from the decisions of this Court—and we have already discussed some of the important decisions—is that where persons similarly circumstanced are exposed to two procedures for determination of liability, one being more drastic and prejudical than the other and no guidelines are provided by the legislature as to when one procedure shall be followed or the other, so that one person may be subjected to the more drastic and prejudicial procedure while the other may be subjected to the more favourable one, without there being any valid justification for distinguishing

between the two, the law providing for the more drastic and prejudicial procedure is liable to be struck down as discriminatory. It is not necessary, in order to incur the condemnation of the equality clause, that the initiation of both procedures should be left to the arbitrary discretion of one and the same authority. What the equality clause strikes at is discrimination, howsoever it results. It is not constricted by any constitutional dogma or rigid formula. There is an infinite variety of ways in which discrimination may occur. It may assume multitudinous forms. But wherever it is found and howsoever it arises, it is within the inhibition of the equality clause. Where, therefore, as between persons similarly situated, one may be subjected to one procedure while another may be subjected to the other, without there being any rational basis for distinction and one procedure is substantially more drastic and prejudicial than the other, unjust discrimination would result, irrespective of whether the arbitrary choice of initiation of the two procedures is vested in the same authority or not. Indeed to the person subjected to the more drastic and onerous procedure it is immaterial whether such procedure is put into operation by one or the other organ or agency of the Government or the public authority. It is poor comfort to him to be told that he is treated differently from others like him, but the differential treatment emanates from one organ or agency of the Government or the public authority as distinct from another. His rejoinder would immediately be that it makes no difference, because, whichever be the organ or agency of the Government or the public authority which initiates the differential treatment against him, it is traceable to the broad source of State power or power of the public authority. The unequal treatment by reason of the adoption of the substantially more drastic and onerous procedure would be meted out to him by the Administration in its larger sense—may be legally particularised in the shape of different instrumentalities—and he would suffer all the same. We are here dealing with the common man and when action is initiated against him for determining his liability to eviction, it would be incomprehensible to him to make a distinction between Municipal Commissioner and Municipal Corporation or Collector and Government. It would be nothing short of hypertechnicality to say that action against him is initiated not by the Municipal Corporation or the Government but by the Municipal Commissioner or the Collector. The constitutionality of a statutory provision cannot turn on mere difference of the hands that harm, though both belong to the Government or the Municipal Corporation, for otherwise it would be easy to circumvent the guarantee of equality and to rob it of its substance by a subtle and well-manipulated statutory provision vesting the more drastic and prejudicial procedure in a different organ of the Government or public authority than the one in whose hands lies the power to initiate the ordinary procedure. That would be disastrous. We must look at the substance and not the mere form. In fact in *Suraj Mull Mohta's* case (*supra*) and *Shree Meenakshi Mills* case (*supra*) the special procedure under the Income Tax Investigation Commission Act could be initiated by the Central Government while the ordinary

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A procedure under the Income Tax Act could be initiated by an altogether different authority, namely, the Income Tax Officer, and yet it was held that section 5, sub-section (4) in one case and section 5, sub-section (1) in the other were violative of article 14 since the two procedures, one substantially more drastic and prejudicial than the other, operated in the same field without any guideline being provided by the legislature as to when one or the other shall be adopted. Moresoever, B it is not correct to say that it is the Municipal Commissioner who would initiate the special procedure set out in Chapter VA. The Municipal Commissioner would be moved by the Estate Officer of the Municipal Corporation to issue a notice under section 105B, sub-section (2) just as a civil court would be moved by the Municipal Corporation to issue process against the occupant. Alternatively, the matter can also be viewed from a slightly different standpoint. When a Muni- C cipal Commissioner issues notice under section 105B, sub-section (2) initiating the special procedure against an occupant, he really acts on behalf and for the benefit of the Municipal Corporation—he seeks to enforce the right of the Municipal Corporation. Therefore, it is really the Municipal Corporation which avails of the special procedure set out in Chapter VA. The scope and content of the aforementioned rule against discrimination in matters of procedure cannot, there- D fore, be narrowed down or its applicability in the present case obviated on the ground suggested by the respondents.

It was then contended on behalf of the respondents that even where two procedures are available against a person, one substantially more drastic and prejudicial than the other, and there is no guiding principle or policy laid down by the legislature as to when E one or the other shall be adopted, there would be no violation of the equality clause, if both procedures are fair. The argument was that the special procedure provided by the legislature would not fall foul of the equality clause even if it is substantially more drastic and prejudicial than the ordinary procedure, if it is otherwise fair and reasonable. This argument was sought to be supported by reference to certain observations in the minority judgment in *Northern India* F *Caterers Ltd.* v. *State of Punjab.*(1) But we do not think this is sound in the context of the guarantee of equality although its relevance to reasonable restrictions under article 19 is obvious. When we are dealing with a question under article 14, we have to enter the comparative arena for determining whether there is equal treatment of persons similarly situated so far as the procedure for determination of liability is concerned. Mere fairness of the special procedure G which is impugned as discriminatory is not enough to take it out of the inhibition of article 14. The fairness of the special procedure would undoubtedly be relevant if the special procedure is challenged as imposing unreasonable restriction under article 19(1)(f). It would also be relevant if the special procedure were assailed as being in violation of the due process clause in a country like the United States. But where the attack is under article 14, what we have to consider H is whether there is equality before law, and there the question that has to be asked and answered is whether the two procedures are so disparate substantially and qualitatively as to lead to unequal treatment.

(1) [1967] 3 S.C.R. 399

Equality before law cannot be denied to a person by telling him : "It is true that you are being treated differently from others who are similarly situate with you and the procedure to which you are subjected is definitely more drastic and prejudicial as compared to the procedure to which others are subjected, but you should not complain because the procedure adopted against you is quite fair". The question which such a person would legitimately ask is : "why am I being dealt with under the more drastic and prejudicial procedure when others similarly situate as myself are dealt with under the ordinary procedure which is less drastic and onerous ?" There would have to be a rational answer to this query in order to meet the challenge of article 14. It is, therefore, no argument on the part of the respondents to say that the special procedure set out in Chapter VA of the Municipal Act is fair and consequently it does not have to stand the test of article 14.

Having cleared the ground, we may now proceed to apply the principle which we have discussed above and consider whether the impugned provisions in Chapter VA of the Municipal Act and the Government Premises Eviction Act are void and unenforceable as being discriminatory in character. Now, as already pointed out, the differentiation of occupiers of Municipal or Government premises from occupiers of other premises for the applicability of the special procedure laid down in the impugned provisions is based on an intelligible principle having a clear and reasonable relation with the object of the legislation, which is to ensure speedy and expeditious recovery of Municipal or Government premises from unauthorised occupiers in public interest and the impugned provisions cannot, therefore, be condemned as invalid on the ground that they make unjust discrimination between occupiers of Municipal or Government premises and occupiers of other premises. But the question is and that is the argument we must consider—whether the impugned provisions permit discrimination amongst occupiers of Municipal or Government premises *inter se* and are on that account invalid. Can it be said that the special procedure laid down in the impugned provisions and the ordinary procedure of a civil suit operate on the same class of occupiers of Municipal or Government premises without any guiding policy or principle being laid down by the legislature as to when one or the other procedure shall be adopted so that within the class of occupiers of Municipal or Government premises, some may, in the arbitrary uncontrolled discretion of the Municipal Corporation or Municipal Commissioner or Government, be proceeded against under the special procedure, while others may be left to be dealt with under the ordinary procedure ? Do the impugned provisions vest absolute and unguided power in the Municipal Corporation or Municipal Commissioner or Government to pick and choose some occupiers of Municipal or Government premises for being dealt with under the special procedure set out in the impugned provisions leaving others to be dealt with under the ordinary procedure of a civil suit ? The majority decision in *Northern Indian Caterers Ltd.* v. *State of Punjab*(1) would seem to suggest that the impugned provisions do suffer from this vice but that is not correct. There is a basic fallacy from which the majority decision in *Northern India Caterers*

(1) [1967] 3 S.C.R. 399

Ltd. v. *State of Punjab*(1) suffers and that is that it overlooks the distinction between those cases where the legislature itself makes a complete classification of persons or things and applies to them the law which it enacts and others where the legislature merely lays down the law to be applied to persons or things answering to a given description or possessing certain common characteristics and having regard to the impossibility of making a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to persons or things within the defined group, while laying down the standard or at least indicating in clear terms the underlying policy and purpose, in accordance with, and in fulfilment of which the administrative authority is expected to select the persons or things to be brought within the operation of the law. It must be remembered that having regard to the manifold complexities of life, an infinite variety of situations may arise which cannot be fitted into straight jacket formulae or classified into rigid inflexible divisions. No classification can be logically complete or accord with the pattern of plumb line precision. Life is not capable of being divided into water-tight divisions and categories and it is not possible to force the teeming multiplicity and variety of human activity into a procrustean bed of symmetrical rules. Absolute precision or complete symmetry are unattainable and it is as well that it should be so, for otherwise life would be mechanical and lose its manifold variety. The legislature can, therefore, do no more than define broad categories and indicate the policy and purpose underlying the legislation and leave it to a stated authority to make selective application of the law in accordance with such policy and purpose. That would not be obnoxious to article 14 because in such a case the discretion to make the selection would be a guided and controlled discretion and not an absolute and unfettered one. Mukherjee, J., pointed out in *Kathi Raning Rawat's case*(2); "—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. After all "the law does all that is needed when it does all that it can, indicates a policy—and seeks to bring within the lines all similarly situated so far as its means allow". (*Vide Buck* v. *Bell*,(3). In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. 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 direction is given and it is in relation to that objective that the propriety of the classification would have to be tested." It is, therefore, not correct to say that merely because the Municipal Corporation, or Municipal Commissioner or Government is not compellable to adopt the special procedure set out in the impugned provisions against all occupiers of Municipal or Government premises, but is vested with a discretion in the matter, the impugned provisions offend against article 14. What we have to see is whether there is any

(1) [1967] 3 S.C.R. 399 (2) [1952] 3 S.C.R. 435. (3) 274 U.S. 200, 208.

standard indicated or policy and purpose disclosed in the impugned provisions in accordance with and in fulfilment of which the Municipal Corporation or Municipal Commissioner or Government is expected to select occupiers of Municipal or Government premises for being proceeded against under the special procedure. If the discretion conferred on the Municipal Corporation or Municipal Commissioner or Government to make selective application of the special procedure is guided and controlled discretion, the impugned provisions would be free from the vice of discrimination. It is inevitable that when a special procedure is being prescribed for a defined class of persons such as occupiers of Municipal or Government premises, discretion, of course guided and controlled by the underlying policy and purpose of the legislature, must necessarily be left in the administrative authority to select occupiers of Municipal or Government premises to be brought within the operation of the special procedure. There may be endless variations from case to case depending on the peculiar facts and circumstances of each case, and it may be that some cases are such, as for example involving complicated questions of law or fact, where special procedure, which is comparatively of a summary nature, may not be found to be appropriate in the interest of justice. It would indeed be odd and certainly harsh and oppressive to the occupiers of Municipal or Government premises if the Municipal Corporation or Municipal Commissioner or Government were to be compelled to adopt the special procedure in such cases. The nature of the dispute, the complexity of the questions arising for consideration and the legal competence of the adjudicating authority to decide such questions would all have to be weighed alongside with the need for speedy and expeditious recovery of Municipal or Government premises for public uses which is the basic policy and purpose underlying the legislation and the Municipal Corporation or Municipal Commissioner or Government would have to decide in accordance with the guidance furnished by these considerations whether in a given case the special procedure should be adopted or the occupier of Municipal or Government premises should be proceeded against under the ordinary procedure. There is thus clear guidance provided by the legislature as to when the special procedure should be adopted and when a case should be left to be dealt with under the ordinary procedure and the impugned provisions do not suffer from the vice of discrimination.

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This view, which we are taking on principle, is not something novel or unusual. It treads the beaten path laid out by at least two decisions of this Court. The first is the decision in *Kedar Nath Bajoria* v. *State of West Bengal.*(1) There also an argument was advanced that even if the Scheduled offences and the persons charged with the commission thereof could properly form a class in respect of which special legislation could be enacted, section 4(1) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 was discriminatory and void inasmuch as it vested an unfettered discretion in the Provincial Government to choose any particular case of a person alleged to have committed an offence falling under any of the specified categories for allotment to the special court to be tried under the special procedure, while other offenders of the same category would be left to be tried by ordinary courts. It was urged that section 4(1) permitted the

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(1) [1954] S.C.R. 30.

A Provincial Government to make a discriminatory choice amongst persons charged with the same offence or offences for trial by special court and such absolute and unguided power of selection, though it had to be exercised within the class or classes of offences mentioned in the Schedule, was discriminatory. This contention urged on behalf of the petitioners was negatived and Patanjali Sastri, C.J., delivering the majority judgment of the Court pointed out :

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"The argument overlooks the distinction between those cases where the legislature itself makes a complete classification of persons or things and applies to them the law which it enacts, and other where the legislature merely lays C down the law to be applied to persons or things answering to a given description or exhibiting certain common characteristics, but being unable to make a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to persons or things within the defined group, while laying down the standards or at least indicating in clear terms the underlying policy and pur- D pose, in accordance with, and in fulfilment of which the administrative authority is expected to select the persons or things to be brought under the operation of the law. A familiar example of this type of legislation is the Preventive Detention Act, 1950, which, having indicated in what classes of cases and for what purposes preventive detention can be ordered, vests in the executive authority a discretionary E power to select particular persons to be brought under the law. Another instance in point is furnished by those provisions of the Criminal Procedure Code which provide immunity from prosecution without sanction of the Government for offences by public servants in relation to their official acts, the policy of the law being that public officials should not be unduly harassed by private prosecution unless F in the opinion of the Government, there were reasonable grounds for prosecuting the public servant which accordingly should condition the grant of sanction. It is not, therefore, correct to say that section 4 of the Act offends against article 14 of the Constitution, merely because the Government is not compellable to allot all cases of offences set out in the schedule to Special Judges but is vested with a discretion in G the matter—Mr. Chatterjee brought to our notice in the course of his argument a decision of the Calcutta High Court in *J. K. Gupta* v. *The State*(1) where a Special Bench (Harries, C.J., Das and Das Gupta, JJ.) inclined to the view that the Act now under challenge did not create a valid class or classes of offences, and held that even if the classification were held to be proper, section 4(1) was *ultra vires* article H 14 of the Constitution in that a discretionary power was given to the State to allot cases to the Special Court or not

(1) [1952] 56 C.W.N. 701,

as the State Government felt inclined, and thus to discriminate between persons charged with an offence falling within the same class. We are unable to share this view. There may be endless variations from case to case in the facts and circumstances attending the commission of the same type of offence, and in many of those cases there may be nothing that justifies or calls for the application of the provisions of the special Act. For example, sections 414 and 417 of the Indian Penal Code are among the offences included in the Schedule to the Act, but they are triable in a summary way under section 260 of the Criminal Procedure Code where the value of the property concerned does not exceed fifty rupees. It would indeed be odd if the Government were to be compelled to allot such trivial cases to a Special Court to be tried as a warrant case with an appeal to the High Court in case of conviction. The gravity of the particular crime, the advantage to be derived by the State by recoupment of its loss, and other like considerations may have to be weighed before allotting a case to the Special Court which is required to impose a compensatory sentence of fine on every offender tried and convicted by it. It seems reasonable, if misuse of the special machinery provided for the more effective punishment of certain classes of offenders is to be avoided, that some competent authority should be invested with the power to make a selection of the cases which should be dealt with under the special Act."

The other decision to which we may refer in this connection is *A. Thangal Kunju Musaliar* v. *M. Venkitachalam Potti*.(1) There the constitutional validity of section 5(1) of the Travancore Taxation on Income (Investigation Commission) Act, 1124 was challenged mainly on the ground that the procedure for assessment prescribed by it was discriminatory as compared with the procedure prescribed under section 47 of the Travancore Act XXIII of 1121. This challenge was repelled on the view that the persons dealt with under section 5(1) formed a distinct class of substantial evaders of income-tax who required to be specially treated under the drastic procedure provided by the Travancore Taxation on Income (Investigation Commission) Act, 1124. But it was urged as an alternative argument that even if the persons who could be proceeded against under section 5(1) formed a distinct class by themselves and there was rational justification for providing special procedure for assessing them, "it would be open to the Government within the terms of section 5(1) of the Act itself to discriminate between persons and persons who fall within the very group or category; the Government might refer the case of A to the Commission leaving the case of B to be dealt with by the ordinary procedure laid down in the Travancore Act, XXIII of 1121". This was an identical argument as the one advanced before us and it challenged the validity of section 5(1) on the ground that it was discriminatory as between persons who fall within the category of substantial evaders of income-tax. This Court however negatived the argument and N. H. Bhagwati, J., speaking on behalf of the Court observed :

(1) (1955) 2 S.C.R. 1196

A The possibility of such discriminatory treatment of persons falling within the same group or category, however, cannot necessarily invalidate this piece of legislation. It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done "not with an evil eye and unequal hand" and the selection made by the Government of the cases of persons to be referred for B investigation by the Commission would not be discriminatory."

The learned Judge then referred to the decisions of this Court in *Kathi Raning Rawat's case* (*supra*) and *Kedar Nath Bajoria's* case (*supra*) and concluded by saying:

C "It therefore, follows that the mere fact that the Government is entrusted with the power to select cases of persons falling within the group of category of substantial evaders of income-tax for reference to the Commission would not render section 5(1) discriminatory and void..... The selection of the cases of persons falling within that category by the Government cannot be challenged as discriminatory for D the simple reason that it is not left to the unguided or the uncontrolled discretion of the Government. The selection is guided by the very objective which is set out in the terms of section 5 (1) itself and the attainment of that object controls the discretion which is vested in the Government and guides the Government in making the necessary selection of cases of persons to be referred for investigation by the E Commission. It cannot, therefore, be disputed that there is a valid basis of classification to be found in section 5(1) of the Act."

These passages from the decisions in *Kedarnath Bajoria's* case (supra) and *A. Thangal Kunju Musaliar's* case (supra) provide the most convincing refutation of the contention of the petitioners/appellants based F on discrimination.

It may be pointed out that the aforesaid decisions in *Kedar Nath Bajoria* v. *State of West Bengal* (supra) and *A. Thangal Kunju Musaliar* v. *M. Venkitachalam Potti* (supra) were not brought to the attention of the learned Judges who decided *Northern India Caterers Ltd.* v. *State of Punjab* (supra). If their attention had been drawn to these deci- G sions, we have no doubt that the majority judges would not have come to the decision to which they did. We are of the view that the decision in *Northern India Caterers Ltd.* v. *State of Punjab* (supra) does not represent the correct law and must be overruled. The challenge against the constitutional validity of Chapter VA of the Municipal Act and the Government Premises Eviction Act must accordingly be rejected.

H It would on this view appear to be unnecessary to consider whether the special procedure set out in Chapter VA of the Municipal Act is substantially more drastic and prejudicial than the ordinary procedure of a civil suit. That is one more requirement which must be

satisfied before the special procedure provided in Chapter VA of the Municipal Act can be condemned as discriminatory. We would not have ordinarily proceded to consider whetner this requirement is satisfied or not as it is unnecessary to do so, but since we find that there is some confusion in regard to this question which needs to be cleared up and the mist of uncertainty surrounding this question needs to be dispelled, we propose to deal with this question. We may point at the outset—and this must be constantly borne in mind, for otherwise it is likely to distort the proper perspective of article 14—that mere minor differences between the two procedures would not be enough to invoke the inhibition of the equality clause. The equality clause would become the delight of legal casuistry and be shorn of its real purpose which is to provide hope of equal dispensation to the common man—"the butcher, the baker and the candle stick maker" —if we indulged in weaving gossamer webs out of this guarantee of equality or started meticulous hunt for minor differences in procedure. What the equality clause is intended to strike at are real and substantial disparities, substantive or processual and arbitrary or capricious actions of the executive and it would be contrary to the object and intendment of the equality clause to exalt delicate distinctions, shades of harshness and theoretical possibilities of prejudice into legislative inequality or executive discrimination. Our approach to article 14 must be informed by a sense of perspective and proportion based on robust understanding and rejection of over-refined distinctions. The whole dimension of protection against discrimination in the processual sphere relates to real and substantial disparties in procedures. What is necessary to attract the inhibition of article 14 is that there must be substantial and qualitative differences between the two procedures so that one is really and substantially more drastic and prejudicial than the other and not mere superfine differences which in this imperfect world of fallible human instruments are bound to exist when two procedures are prescribed. We should avoid dogmatic and finical approach when handling life's flexible realities.

We may also observe that there is no magic formula by which it can be said that one procedure is substantially more drastic and onerous than the other. It does not follow that merely because one procedure provides the forum of a civil court while the other provides the forum of an administrative tribunal, the latter is necessarily more drastic and onerous than the frontier. We cannot accept such a bald proposition. Indeed, not infrequently, the poor man gets lost when he is drawn into a regular suit in a civil court which, it is well known, has a long drawn out expensive and escalating litigative system which often spells ruin to the ordinary man and, consequently, by contrast, a prompt and inexpensive instrument, though manned by administrative personnel untrained in the sophisticated court methodology and unaided by long and intricate argument of counsel engaged on onerous terms, may be preferred by many in this country. The procedure of the civil court also suffers from many technicalities. It proceeds on rules of evidence which are sometimes highly technical, receives pro-

A bative material only when placed on record through prescribed procedures even though a better appreciation of the situation may perhaps be possible by other means and acts solely on the material brought on record excluding what commonsense and experience may sometime sugggest as useful in reaching the truth. Again, it functions on the basis of adversary system of administration of justice which may bring about inequality where the opposing adversaries are not evenly balanced.
B It is quite possible that in certain types of cases people may receive better justice where judicial formalism is kept out and the procedure is made informal. The many-tiered system of appeals built into the judicial pyramid often results in pyrrhic victory and leads to disenchantment with the end product of delayed justice. We cannot, therefore, accept as an axiomatic exemption or universal generalisation that as between an administrative tribunal and a civil court, the
C latter is always functionally better than the former. We have grown up in a system of administration of justice where civil courts have been the primary authority entrusted with the task of determination of disputes and, therefore, whenever a special machinery is devised by the Legislature entrusting the power of determination of disputes to another authority set up by the Legislature in substitution of courts of law,
D our minds which are conditioned by the historical existence of courts of law and which have, therefore, acquired a certain predilection for the prevailing system of administration of justice by courts of law, react adversely against the establishment of such an authority. We must cast aside our predilection for the existing system of administration of justice which has prevailed over a long period of time and examine the special machinery set up by the legislature objectively
E and dispassionately, without any pre-conceived notion or prejudice against it, and find out whether the special machinery is really and substantially more drastic and prejudicial than the age old machinery of Civil court. When we say this we do not wish to underscore the high qualities which are the inalienable attributes of administration of justice by civil courts, namely, detachment and impartiality, objectivity of approach, sensitivity and regard for natural justice and skill
F and expertise in sifting of evidence and interpretation and application of the law. But we do wish to point out that the machinery of an administrative tribunal is not necessarily and invariably more drastic and onerous than that of a civil court. The two procedures would have to be compared objectively and dispassionately without any predilection or prejudice to determine whether one is really and sub-
G stantially more drastic and prejudicial than the other.

If we examine the question before us in the light of these general observations, it will be apparent that the special procedure set out in Chapter VA of the Municipal Act is not substantially more drastic and prejudicial than the ordinary procedure of a civil suit. The initial authority to determine the liability to eviction is no doubt the
H Municipal Commissioner who is the chief executive officer of the Municipal Corporation and who may not be possessed of any legal training but section 68 of the Municipal Act provides that this function may be discharged by any Municipal officer whom the Municipal

Commissioner may generally or specially empower in writing in that behalf and the Municipal Commissioner can, therefore, authorise a Deputy Municipal Commissioner attached to the Legal Department of the Municipal Corporation, who would be an officer trained in law, to discharge this function and indeed we have no doubt that the Municipal Commissioner, if he is himself not trained in law, would do so. The determination of the liability to eviction would, therefore, really in practice be made by a Municipal officer having proper and adequate legal training. Then again, the occupant against whom the special procedure is set in motion would have a right to file his written statement and produce documents and he would also be entitled to examine and cross-examine witnesses. The Municipal Commissioner or other officer holding the inquiry is given the power to summon and enforce the attendance of witnesses and examine them on oath and also require the discovery and production of documents. The occupant is also entitled to appear at the inquiry by advocate, attorney or pleader. Thus, in effect and substance the same procedure which is followed in a civil court is made available in the proceeding before the Municipal Commissioner or other officer holding the inquiry. Then there is also a right of appeal against the decision of the Municipal Commissioner or other officer and this right of appeal is to a senior and highly experienced judicial officer and not to a mere executive authority. The appeal lies to the Principal Judge of the City Civil Court or such other judicial officer in Greater Bombay of not less than ten years standing as the Principal Judge may designate in that behalf and it is an appeal both on law and fact. It is true that a revision application against the appellate order is excluded, but if the judicial officer invested with appellate power has failed to exercise his jurisdiction or acted in excess of his jurisdiction or committed an error of law apparent on the face of the record or the decision given by him has resulted in grave miscarriage of justice, it is always open to the aggrieved party to bring it up before the High Court for examination under article 226 or article 227. The ultimate decision is, therefore, by a judicial officer trained in the art and skill of law and not by an executive officer. It is difficult to see how, in the context of the need for speedy and expeditious recovery of public premises for utilisation for important public uses, where dilatoriness of the procedure may defeat the very object of recovery, the special procedure set out in Chapter VA of the Municipal Act—and this applies equally to the special procedure set out in the Government Premises Eviction Act—can be regarded as really and substantially more drastic and prejudicial than the ordinary procedure of a civil suit. We do not think that the two procedures are so substantially and qualitatively disparate as to attract the vice of discrimination.

The result is that all the appeals and writ petitions fail and are dismissed. The petitioners in the writ petitions will pay one set of costs. So far as the appeals are concerned, they will be posted for final disposal before a Division Bench.

V.P.S. *Appeals and petitions dismissed.*