of taxation by the State of Bombay. Each party will bear and pay its own costs throughout.

Appeal allowed.

RAM PRASAD NARAYAN SAHI AND ANOTHER

v.

THE STATE OF BIHAR AND OTHERS

[PATANJALI SASTRI C. J., MUKHERJEA, VIVIAN BOSE, GHULAM HASAN and BHAGWATI JJ.]

Constitution of India, 1950, arts. 13, 14—Sathi Lands (Restoration) Act, 1950—Law declaring settlement of land with particular individual void—Validity—Infringement of fundamental right to equal protection of the laws—Discrimination—Presumption of reasonableness.

The Court of Wards granted to the appellants a large area of land belonging to the Bettiah Raj which was then under the management of the Court of Wards, on the recommendation of the Board of Revenue, at half the usual rates. A few years later, the Working Committee of the Indian National Congress expressed the opinion that the settlement of the lands was against public interest, and in 1950, the Bihar Legislature passed an Act called the Sathi Lands (Restoration) Act, 1950, which declared that, notwithstanding anything contained in any law for the time being in force the settlement granted to the appellants shall be null and void and that no party to the settlement or his successors in interest shall be deemed to have acquired any right or incurred any liability thereunder, and empowered the Collector to eject the appellants if they refused to restore the lands. The appellants, alleging that the Act was unconstitutional, applied under article 226 of the Constitution for a writ of mandamus against the State of Bihar restraining it from taking any action under the Act. It was found that there were several other settlements of lands belonging to the Bettiah Raj on similar terms against which the Government had taken no action:

Held, that the dispute between the appellants and the State was really a private dispute and a matter to be determined by a judicial tribunal in accordance with the law applicable to the case, and, as the Legislature had, in passing the impugned enactment singled out the appellants and deprived them of their right to

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have this dispute adjudicated upon by a duly constituted Court, the enactment contravened the provisions of article 14 of the Constitution which guarantees to every citizen the equal protection of the laws, and was void.

Legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others and against which even the right of complaint is taken away is highly discriminatory.

Though the presumption is in favour of the constitutionality of a legislative enactment and it has to be presumed that a Legislature understands and correctly appreciates the needs of its own people, yet when on the face of a statute there is no classification at all, and no attempt has been made to select any individual or group with reference to any differentiating attribute peculiar to that individual or group and not possessed by others, this presumption is of little or no assistance to the State.

Ameerunnissa Begum v. *Mahboob Begum* [1953] S.C.R. 404 and *Gulf of Colorado etc. Co.* v. *Ellis* [165 U.S. 150] referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 59 of 1952.

Appeal from the Judgment and Order dated 3rd January, 1952, of the High Court of Judicature at Patna (Ramaswami and Sarjoo Prosad JJ). in an application under article 226 of the Constitution registered as Miscellaneous Judicial Case No. 204 of 1950.

Original Petition No. 20 of 1952 under article 32 of the Constitution was also heard along with this appea.

P. R. Das (*B. Sen*, with him) for the appellants.

M. C. Setalvad, Attorney-General for India, and *Mahabir Prasad, Advocate-General of Bihar* (*G. N. Joshi*, with them) for the respondents.

1953. February 20. The court delivered judgment as follows :—

PATANJALI SASTRI C. J.—I concur in the judgment which my learned brother Mukherjea is about to deliver, but I wish to add a few words in view of the important constitutional issue involved.

The facts are simple. The appellants obtained a settlement of about 200 bikhas of land in a village known as Sathi Farm in Bettiah Estate, in Bihar,

then and ever since in the management of the Court of Wards on behalf of the disqualified proprietress who is the second respondent in this appeal. The lands were settled at the prevailing rate of rent but the salami or premium payable was fixed at half the usual rate as a concession to the appellants who are said to be distant relations of the proprietress. The appellants paid the salami and entered into possession of the lands on the 2nd November, 1946, and have since been paying the rents regularly. On the 13th June, 1950, the Bihar Legislature passed an Act called the Sathi Lands (Restoration) Act, 1950. The genesis of this legislation is thus explained in the counter-affidavit filed on behalf of the State of Bihar, the first respondent herein.

Report against the settlement of these lands with the petitioners as well as some other lands to Sri Prajapati Mishra and the unlawful manner in which these settlements were brought about, was carried to the Working Committee of the Indian National Congress, which body, after making such enquiry as it thought fit, came to the conclusion that the settlement of these lands with the petitioners was contrary to the provisions of law and public policy and recommended that steps should be to taken by the State of Bihar to have these lands restored to the Bettiah Estate. In pursuance thereof a request was made to the petitioners and to the said Prajapati Mishra to return the lands to Bettiah Estate. While Sri Prajapati Mishra returned the land settled with him, the petitioners refused to do so.

The Statement of Objects and Reasons of the Sathi Lands (Restoration) Bill runs thus :

"As it has been held that the settlement of Sathi lands in the District of Champaran under the Court of Wards with Sri Ram Prasad Narayan Sahi and Shri Ram Rekha Prasad Narayan Sahi is contrary to the provisions of the law and as Sri Ram Prasad Narayan Sahi and Sri Ram Rekha Narayan Sahi have refused to return the lands to the Bettiah Estate, Government

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have decided to enact a law to restore these lands to the Bettiah Estate."

The impugned Act consists of three sections. Section 2(1) declares that "notwithstanding anything contained in any law for the time being in force", the settlement obtained by the appellants is "null and void", and that "no party to the settlement or his successor in interest shall be deemed to have acquired any right or incurred any liability thereunder". Sub-section (2) provides that the appellants and their successors in interest "shall quit possession of the said land from the date of commencement of this Act and if they fail to do so, the Collector of Champaran shall eject them and restore the lands to the possession of the Bettiah Wards Estate". Sub-section (3) provides for the refund of the amount of salami money and the cost of improvement, if any, to the lessees by the estate on restoration to it of the lands in question.

In the "case" lodged in this court for the State of Bihar, the legislation is sought to be justified and its validity maintained on the following grounds:

"It is well settled that a Legislature with plenary powers so long as it enacts laws within the ambit of its powers, is competent to enact a law which may be applicable generally to society or to an individual or a class of individuals only...It is submitted that grants of the lands belonging to the Bettiah Estate made by the Court of Wards were of doubtful validity; hence they have been dealt with by the impugned Act...No evidence has been adduced by the appellants, except a bare allegation, which has not been substantiated, that about 2000 acres of land were settled to show that persons in similar circumstances with whom similar settlements were made, were treated differently. It is submitted that in the context the impugned Act has a reasonable basis of classification."

The decision of the majority of this Court in *Chiranjit Lal* v. *The Union of India*(1) is relied on in support of these contentions. In that case, however, the

(1) [1950] S.C.R. 869.

majority felt justified in upholding the legislation, though it adversely affected the rights and interest of the shareholders of a particular joint stock company, because the mismanagement of the company's affairs prejudicially affected the production of an essential commodity and caused serious unemployment amongst a section of the community. Mr. Justice Das and I took the view that legislation directed against a particular named person or corporation was obviously discriminatory and could not constitutionally be justified even if such legislation resulted in some benefit to the public. In a system of government by political parties, I was apprehensive of the danger inherent in special enactments which deprive particular named persons of their liberty or property because the Legislature thinks them guilty of misconduct, and I said in my dissenting opinion:

"Legislation based upon mismanagement or other misconduct as the differentia and made applicable to a specified individual or corporate body is not far removed from the notorious parliamentary procedure formerly employed in Britain of punishing individual delinquents by passing bills of attainder, and should not, I think receive judicial encouragement."

My apprehensions have come true. Recently we had before us a case from Hyderabad (Civil Appeal No. 63 of 1952—*Ameerunnissa Begum* v. *Mahboob Begum*)[1] where the duly constituted legislative authority of that State intervened in a succession dispute between two sets of rival claimants to the estate of a deceased person and "dismissed" the claim of the one and adjudged the property to the other by making a special "law" to that effect. And now comes this case from Bihar of an essentially similar type. The appellants assert title to certain lands in Bettiah Estate under a settlement which they claim to have lawfully obtained from the Court of Wards, while it is now alleged on behalf of the Estate that the settlement was not for the benefit of the Estate and was contrary to law, as the Court of Wards did not then "apply its

(1) Since reported as [1953] S.C.R. 404.

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mind" to that question. This is purely a dispute between private parties and a matter for determination by duly constituted courts to which is entrusted, in every free and civilised society, the important function of adjudicating on disputed legal rights, after observing the well established procedural safeguards which include the right to be heard, the right to produce witnesses and so forth. This is the protection which the law guarantees equally to all persons, and our Constitution prohibits by article 14 every State from denying such protection to anyone. The appellants before us have been denied this protection. A political organisation of the party in power decides after making such enquiry as it thought fit, that the settlement in question was "contrary to the provisions of law and public policy" and the State Legislature, basing itself on such decison, purports to declare the settlement "null and void" and directs the eviction of the appellants and the restoration of the lands to the Estate. The reasons given for this extraordinary procedure are indeed remarkable for their disturbing implications. It is said that "there was agitation amongst the tenantry of the locality and opposition on the part of persons living in the locality against the appellants' possession of the lands which led to breach of the peace and institution of criminal cases". Whenever, then, a section of the people in a locality, in assertion of an adverse claim, disturb a person in the quiet enjoyment of his property, the Bihar Government would seem to think that it is not necessary for the police to step in to protect him in his enjoyment until he is evicted in due course of law, but the Legislature could intervene by making a "law" to oust the person from his possession. Legislation such as we have now before us is calculated to drain the vitality from the rule of law which our Constitution so unmistakably proclaims, and it is to be hoped that the democratic process in this country will not function along these lines.

MUKHERJEA J.—This appeal, which has come before us on a certificate granted by the High Court of

Patna under article 132 (1) of the Constitution, is directed against a judgment of a Division Bench of that court, dated 3rd January, 1952, by which the learned Judges dismissed a petition of the appellants under article 226 of the Constitution. The prayer in the petition was for a writ in the nature of *mandamus*, directing the opposite party, not to take any action, under an Act passed by the Bihar Legislative Assembly in 1950 and known as The Sathi Lands (Restoration) Act which was challenged as void and unconstitutional.

To appreciate the points in controversy between the parties to the proceeding, it may be necessary to narrate the material facts briefly. Maharani Janki Koer, the respondent No. 2 in the appeal, is the present proprietress of an extensive Estate in Bihar known by the name of Bettiah Raj, which is held and managed on her behalf by the Court of Wards, Bihar, constituted under Bengal Act IX of 1879. On 19th July, 1946, the appellants, who are two brothers and are distantly related to the Maharani, made a representation to the Government of Bihar through the Manager of the Estate, praying for settlement in raiyati right, of 200 bighas of land preferably in Sathi farm or Materia farm along with a certain quantity of waste lands. On 20th July, 1946, the then Manager of the Wards Estate wrote a letter to the Collector of Champaran recommending that the applicants might be given settlement of the lands as prayed for, without payment of any *selami*. The Collector, however, did not agree to this proposal, nor did the Commissioner of the Tirhut Division, and the matter then came up for consideration before the Board of Revenue which recommended that settlement might be made with the applicants provided they were agreeable to pay *selami* at half the usual rates. On 14th October, 1946, the recommendation of the Revenue Board was accepted by the Provincial Government and six days later the Court of Wards accepted a cheque for Rs. 5,000 from one of the lessees, towards payment of the *selami* money and rent for the year 1354 F.S. On the 2nd November, 1946, possession

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of the lands was given to the appellants and on the 18th of November following, the Manager of the Court of Wards recorded a formal order fixing the *selami* of the land at Rs. 3,988 annas odd and rent at Rs. 797 annas odd per year. On the same day, a *Hisab Bandobasti* form, which is the usual form employed in the Estate for raiyati settlements, was signed by the Circle Officer on behalf of the Court of Wards and by one of the lessees for himself as well as the constituted attorney of the other lessees. It is not disputed that the lessees continued to possess the lands since then on payment of the stipulated rent.

On the 3rd June, 1950, the Bihar Legislative Assembly passed an Act known as The Sathi Lands (Restoration) Act which received the assent of the Governor on the 13th June, 1950. The object of the Act, as stated in the preamble, is to provide for restoration of certain lands belonging to the Bettiah Wards Estate which were settled contrary to the provisions of law in favour of certain individuals. Section 2, which is the only material section in the Act, enacts in the first sub-section that the settlement of Sathi lands (described in the schedule to the Act) on behalf of the Bettiah Court of Wards Estate with the appellants, as per order of the Manager of the Estate dated the 18th November, 1946, is declared null and void and no party to the settlement or his successor-in-interest shall be deemed to have acquired any right or incur any liability under the same. The second sub-section embodies a direction to the effect that the said lessees and their successor-in-interest shall quit possession of the lands from the date of the commencement of the Act and if they fail to do so, the Collector of Champaran shall eject them and restore the lands to the possession of the Bettiah Estate. The third and the last sub-section provides that the Bettiah Wards Estate shall on restoration to it of the lands pay to the lessees the *selami* money paid by them and also such amount as might have been spent by them in making improvements on the lands prior to the commencement of the Act.

In substance, therefore, the Act declared the lease granted by the Bettiah Wards Estate to the appellants on the 18th November, 1946, to be illegal and inoperative and prescribed the mode in which this declaration was to be given effect to and the lessees evicted from the lands.

On the 28th August, 1950, the appellants filed the petition, out of which this appeal arises, under article 226 of the Constitution in the High Court of Patna, challenging the validity of The Sathi Lands Act and praying for a writ upon the respondents restraining them from taking any steps under the said Act, or from interfering with the possession of the appellants in respect of the lands comprised in the lease. It was asserted by the petitioners that in passing the impugned legislation the Bihar Legislature actually usurped the power of the judiciary and the enactment was not a law at all in the proper sense of the expression. The other material contentions raised were that the legislation was void as it conflicted with the fundamental rights of the petitioners guaranteed under articles 14, 19(1) (f) and 31 of the Constitution.

The respondents opposite parties in resisting the petitioners' prayer stated *inter alia* in their counter-affidavit that the settlement of the lands in question with the appellants by the Court of Wards, was not for the benefit of the estate or advantage of the ward and that the transaction was entered into by the Wards Estate without properly applying their mind to it. It was stated further that after the settlement was made, there was a good deal of agitation among the tenants in the locality which led to the institution of certain criminal proceedings. In these circumstances, the matter was brought to the notice of the Working Committee of the Indian National Congress and the Working Committee was of opinion that the settlement of these lands was against public interest. The lessees, therefore, were asked to vacate the lands and on their refusal the legislation in question was passed.

The petition was heard by a Division Bench consisting of Ramaswami and Sarjoo Pershad JJ. Ramaswami J.

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decided all the points raised by the petitioners against them and held that the Act was neither *ultra vires* the Bihar Legislature nor was void under article 13(1) of the Constitution. The learned Judge was further of opinion that it was not a fit case for interference by the High Court under article 226 of the Constitution. The other learned Judge expressed considerable doubts as to whether a legislation of this type, which in form and substance was a decree of a court of law, was within the competence of the legislature and warranted by the Constitution. He agreed, however, with his learned colleague that the case was not such as to justify an interference of the High Court in exercise of its discretionary powers under article 226 of the Constitution. The remedy of the petitioners might lie, according to him, in a regularly constituted suit. The result, therefore, was that the appellants' petition was dismissed and it is the propriety of this judgment that has been assailed before us in this appeal.

Mr. P. R. Das, who appeared in support of the appeal, put forward at the forefront of his arguments, the contention raised on behalf of his client in the court below that the impugned legislation was void by reason of its violating the fundamental rights of the appellants under article 14 of the Constitution. The point appeared to us to be of substance and after hearing the learned Attorney-General on this point we were satisfied that the contention of Mr. Das was well-founded and entitled to prevail, irrespective of any other ground that might be raised in this appeal.

There have been a number of decisions by this court where the question regarding the nature and scope of the guarantee implied in the equal protection clause of the Constitution came up for consideration and the general principles can be taken to be fairly well settled. What this clause aims at is to strike down hostile discrimination or oppression or inequality. As the guarantee applies to all persons similarly situated, it is certainly open to the legislature to classify persons and things to achieve particular legislative objects;

but such selection or differentiation must not be arbitrary and should rest upon a rational basis, having regard to the object which the legislature has in view. It cannot be disputed that the legislation in the present case has singled out two individuals and one solitary transaction entered into between them and another private party, namely, the Bettiah Wards Estate and has declared the transaction to be a nullity on the ground that it is contrary to the provisions of law, although there has been no adjudication on this point by any judicial tribunal. It is not necessary for our present purpose to embark upon a discussion as to how far the doctrine of 'separation of powers has been recognised in our Constitution and whether the legislature can arrogate to itself the powers of the judiciary and proceed to decide disputes between private parties by making a declaration of the rights of one against the other. It is also unnecessary to attempt to specify the limits within which any legislation, dealing with private rights, is possible within the purview of our Constitution. On one point our Constitution is clear and explicit, namely, that no law is valid which takes away or abridges the fundamental rights guaranteed under Part III of the Constitution. There can be no question, therefore, that if the legislation in the present case comes within the mischief of article 14 of the Constitution, it has got to be declared invalid. This leads us to the question as to whether the impugned enactment is, in fact, discriminatory and if so, whether the discrimination made by it can be justified on any principle of reasonable classification ?

The appellants, it is not disputed, are only two amongst numerous leaseholders who hold lands in raiyati right under the Bettiah Wards Estate. It cannot also be disputed that the lands were settled with them on the recommendation of the Board of Revenue after due consideration of the respective views put forward by the Manager of the Estate on the one hand and the Collector and the Divisional Commissioner on the other. The appellants are admittedly paying rents which are normally assessed on lands of similar

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description in the locality. The learned Attorney-General referred in this connection to the provisions of section 18 of the Court of Wards Act and argued that the lease in dispute was granted in contravention of that section. Section 18 of the Court of Wards Act provides as follows:

"The Court may sanction the giving of leases or farms of any property under its charge...and may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the Ward".

Apparently it makes the Court of Wards the sole judge of the benefit to the estate or advantage of the ward. But it is said that the Court of Wards did not apply its mind properly to this matter when it granted lease to the appellants at half the usual rate of *selami*. The Wards Estate thus suffered loss to the extent of nearly Rs. 4,000 which could legitimately have been recovered from any other lessee. This contention does not impress us much; the utmost that can be said is that this could have been put forward, for what it is worth and with what result, nobody can say, as a ground for setting aside the lease in a court of law. But that is not the question which is relevant for our present purpose at all; we were not called upon to decide whether or not the lease was a proper one or beneficial to the estate. The question for our decision is, whether the statute contains discriminatory provisions so far as the appellants are concerned and if so, whether these discriminations could be reasonably justified? It is clearly stated in paragraph 9 of the affidavit made by the appellants in support of their petition that there are numerous other persons to whom leases on similar terms were granted by the Bettiah Wards Estate. Clauses (b), (c) and (d) of paragraph 9 of the affidavit stand thus:

"(b) In this long course of management by the Court of Wards, leases or settlement of lands used to be made without any selami, on proper rent. This state of affairs continued down to recent times during

which period thousands of bighas were so settled with numerous persons;

(c) in 1945 the authorities decided to make settlements on large scale with war returned soldiers on a selami equal to 5 times the average rent prevailing in the locality for similar lands;

(d) in 1946, 1947, 1948 and 1949 a good number of settlements covering about 2000 acres of lands were settled on the basis of 10 years' rental obtaining in the locality and in some cases for good reasons, at five years' rental."

In paragraph 12 of the counter-affidavit put in on behalf of the respondents, these statements are not denied. In fact, they are admitted and the only thing said is, that these leases were granted in due course of management. Ramaswami J. has dismissed this part of the case by simply remarking that no details of these settlements were furnished by the appellants; but no details were at all necessary when the correctness of the statements was not challenged by the respondents. It will be interesting to note that the respondents themselves in paragraph 10 of their counter-affidavit mentioned the name of Shri Prajapati Mishra as one of the persons with whom similar settlement of lands was made by the Bettiah Estate. It is stated in that paragraph that the cases of the appellants as well as of Prajapati Mishra were brought to the notice of the Working Committee of the Indian National Congress and the Committee came to the conclusion that both the settlements were contrary to the provisions of law. Thereupon a request was made to both these sets of lessees to restore their lands to the Estate, but whereas Prajapati Mishra returned his lands to the Bettiah Estate, the appellants refused to do so. In reply to this statement, the appellants stated in their rejoinder that the said Prajapati Mishra did not vacate the lands but created a trust in respect of the same, he being the chairman of the board of trustees and the lands were still in possession of the board of trustees. Strangely, as it seems, the State of Bihar raked up this matter again in a

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further affidavit where it was admitted that the said Prajapati Mishra did execute a trust and that the trustees took possession of the property. It was stated, however, that Prajapati Mishra, who was one of the trustees, did actually surrender the lands in two instalments but the other trustees did not, and hence legal advice was being taken to find out ways and means of recovering the property from them. The whole thing smacks of disingenuousness and the State of Bihar, it seems, was not well advised in relying upon facts like these in their attempt to repel the appellants' attack on the legislation on the ground of discrimination.

Be that as it may, there is no doubt that the appellants were not the only lessees under the Bettiah Estate who got settlement of lands at a selami of five years' rental. On the sworn statements of the appellants, which are not challenged by the other side, it appears that there are numerous persons occupying the same position as the appellants, who however were not subjected to this expropriatory legislation. But the vice in this legislation goes much deeper than this. It is not merely a question of treating the appellants differently from the other lessees under the Wards Estate, with whom settlements of land have been made on similar or identical terms. If a lease has been given by a Court of Wards, which is not for the benefit of the estate or advantage of the ward, it is for a court of law to decide whether it is warranted by the terms of the Court of Wards Act. If the lessor proceeds to cancel the lease, the lessee has a legal right to defend his claim and satisfy the court that the lease is not in contravention of law. If, on the other hand, the lessee is actually dispossessed, he has a right to sue in court for recovery of possession of the property on establishing that he has been illegally turned out. The dispute here, is a legal dispute pure and simple between two private parties. What the Legislature has done is to single out these two individuals and deny them the right which every Indian citizen possesses to have his rights adjudicated upon by a judicial tribunal in accordance with

the law which applies to his case. The meanest of citizens has a right of access to a court of law for the redress of his just grievances and it is of this right that the appellants have been deprived by this Act. It is impossible to conceive of a worse form of discrimination than the one which differentiates a particular individual from all his fellow subjects and visits him with a disability which is not imposed upon anybody else and against which even the right of complaint is taken away. The learned Attorney-General, who placed his case with his usual fairness and ability, could not put forward any convincing or satisfactory reason upon which this legislation could be justified. It is true that the presumption is in favour of the constitutionality of a legislative enactment and it has to be presumed that a Legislature understands and correctly appreciates the needs of its own people. But when on the face of a statute there is no classification at all, and no attempt has been made to select any individual or group with reference to any differentiating attribute peculiar to that individual or group and not possessed by others, this presumption is of little or no assistance. to the State. We may repeat with profit what was said by Mr. Justice Brewer in *Gulf Colorado etc. Co.* v. *Ellis*(1) that "to carry the presumption to the extent of holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory legislation is to make the protection clauses of the Fourteenth Amendment a mere rope of sand". In our opinion, the present case comes directly within the principle enunciated by this court in *Ameerunnissa Begum* v. *Mahboob Begum*(2).

The result is that we allow the appeal and set aside the judgment of the High Court. A writ in the nature of mandamus shall issue directing the respondents not to take any steps in pursuance of The Sathi Lands (Restoration) Act of 1950 or to interfere with the possession of the appellants in respect to the lands

(1) 165 U.S. 150. (2) [1953] S.C.R. 404.

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comprised in the lease referred to in that Act. The appellants will have their costs in both courts.

VIVIAN BOSE J.—I am in entire agreement with my Lord the Chief Justice and with my learned brother Mukherjea.

GHULAM HASAN J.—I agree with my Lord the Chief Justice and with my brother Mukherjea.

BHAGWATI J.—I entirely agree with the judgment just delivered by my Lord the Chief Justice and my brother Mukherjea and there is nothing which I can usefully add.

Appeal allowed.

Agent for the appellants: *I. N. Shroff.*

Agent for the respondents: *G. H. Rajadhyaksha.*

ELECTION COMMISSION, INDIA

v.

SAKA VENKATA SUBBA RAO

UNION OF INDIA—Intervener.

[PATANJALI SASTRI C. J., MUKHERJEA, VIVIAN BOSE, GHULAM HASAN and BHAGWATI JJ.]

Constitution of India, 1950, arts. 132, 192, 226—High Court —Power to issue writs—Limitations—Power to issue writ on persons residing outside territorial jurisdiction—Election to Madras Assembly—Reference to Election Commission, New Delhi—Jurisdiction of Madras High Court to issue writ against Commission—Disqualification before election—Effect of—Appeals from Single Judge.

The respondent, who had been convicted and sentenced to rigorous imprisonment for seven years, was elected a member of the Madras Legislative Assembly. At the instance of the Speaker of the Assembly, the Governor of Madras referred to the Election Commission, which had its offices permanently located at New Delhi, the question whether the respondent was disqualified and could be allowed to sit and vote in the Assembly. The respondent thereupon applied to the High Court of Madras under article 226 of the Constitution for a writ restraining the Election Commission from enquiring into his alleged disqualification for membership of the Assembly:

Held, that the power of the High Court to issue writs under article 226 of the Constitution is subject to the two-fold limitation