A **NORTHERN INDIA CATERERS PRIVATE LTD., & ANR.**

v.

STATE OF PUNJAB AND ANOTHER

April 4, 1967

B [K. SUBBA RAO, C.J., M. HIDAYATULLAH, R. S. BACHAWAT, J. M. SHELAT AND C. A. VAIDIALINGAM, JJ.]

Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959), s. 5—Scope of —If violates Art. 14 of the Constitution.

The respondent-State leased its premises to the appellant for running a hotel and when the lease expired called upon the appellant to hand over vacant possession. On the appellant failing to do so, the Collector issued
C a notice under s. 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 requiring the appellant to show cause why an order of eviction should not be passed under s. 5. The appellant thereupon filed a writ petition in the High Court contending that the Act violated Art. 14 of the Constitution in two ways: (1) that it discriminated between the occupants of public premises and those of other premises; and (2) that it discriminated between the occupants of public premises *inter se* as the
D State could arbitrarily proceed against an occupant either under the Act or by way of suit. The High Court dismissed the petition holding that the proceeding under the Act is the exclusive remedy for eviction of unauthorised occupants of public premises, that there was a valid classification between the occupiers of public premises and those of private properties, and that, as the Act was substitutive and not supplemental there was no question of discrimination between the occupiers of public premises *inter se.*

E In appeal to this Court,

HELD: (1) The High Court erred in holding that the Act impliedly took away the right of suit by the Government. The Act was only intended to provide an additional remedy to the Government which was speedier than the one by way of a suit under the ordinary law of eviction. [404G; 411B]

(*Per* Subba Rao, C. J., Shelat and Vaidialingam, JJ.) : The impugned
F Act is neither in negative terms nor in such terms which result in negativing the right of the Government as a landlord to sue for eviction under the ordinary law. Nor is it possible to say that the co-existence of the two sets of provisions relating to eviction under the ordinary law and under the Act, leads to any inconvenience or absurdity. The impugned Act deals with the Government's right to evict the occupants and tenants of public premises, but that fact, by itself would not lead to the inference that the Legislature intended to take away the Government's right to file a suit for
G eviction. [404C-E]

(*Per* Hidayatullah and Bachawat, JJ.) : The Act does not create a new right of eviction. It creates an additional remedy for a right existing under the general law and does not repeal the ordinary law giving the remedy of a suit for eviction. [411C]

(2) By Full Court : There is an intelligible differentia between the two classes of occupiers, namely, occupiers of public property and premises and
H other occupiers. The classification has a reasonable relation to the object of the Act and does not offend Art. 14. The two classes of occupiers are not similarly situated in that, in the case of public properties and premises, the members of the public have a vital interest in seeing that such properties

and premises are freed from encroachment and unauthorised occupation as speedily as possible; and the impugned Act has properly devised a special machinery for the speedy recovery of premises belonging to the Government. [406C-D; 412C-E] A

Babu Rao Shantaram More v. *The Bombay Housing Board and another*, [1954] S.C.R. 572, followed.

(3) (*Per* Subba Rao, C. J., Shelat and Vaidialingam, JJ.)Section 5 of the Act confers an additional remedy over and above the remedy by way of suit. The section violates Art. 14 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. [409F-G] B

Discrimination would result if there are two available procedures one more drastic or prejudicial to the party concerned than the other and which can be applied at the arbitrary will of the authority. Assuming that persons in occupation of government properties and premises form a class by themselves as against tenants and occupiers of private owned properties and that such classification is justified on the ground that they require a differential treatment in public interest those who fall under that classification are entitled to equal treatment among themselves. [409B-D] C

State of West Bengal v. *Anwar Ali*, [1952] S.C.R. 284, *Suraj Mull Mohta* v. *A. V. Visvanatha Sastri*, [1955] 1 S.C.R. 448, *Shree Meenakshi Mills Ltd., Madurai* v. *A. V. Visvanathan Sastri*, [1955] 1 S.C.R. 787 and *Banarsi Das* v. *Cane Commissioner, U.P.* [1963] Supp. 2 S.C.R. 760 : A.I.R. 1963 S.C. 1417, followed D

(*Per* Hidayatullah and Bachawat, JJ. dissenting) : The impugned Act makes no unjust discrimination among the occupants of government properties *inter se*. It promotes public welfare and is a beneficial measure of legislation. [414D-E] E

The impugned Act is not unfair or oppressive. The unauthorised occupant has full opportunity of being heard and of producing his evidence before the Collector; he may obtain a review of the Collector's order by an appeal to the Commissioner and in appropriate cases ask for a writ of *certiorari* from the High Court. He is not denied equal protection of the laws merely because the Government has the option of proceeding against him either by way of a suit or under the Act. 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 when it can seek relief under the Act. [414B-D] F

Kanasari Haldar & Another v. *State of West Bengal*, [1960] 2 S.C.R. 646; *Shanti Prasad Jain* v. *The Director of Enforcement*, [1963] 2 S.C.R. 297, 303-304, *Seth Banarsi Dass* v. *Cane Commissioner, U.P.* [1963] Supp. 2 S.C.R. 760 and *Arizona Copper Co.* v. *Hammer*, 250 U.S. 400 : 63 L.Ed. 1058, referred to. G

Suraj Mull Mohta & Co. v. *A. V. Visvanatha Sastri*, [1955] 1 S.C.R. 448, 466, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1101 of 1965. H

Appeal from the judgment and order dated January 22, 1963 of the Punjab High Court in Civil Writ No. 16 of 1960.

A *A. K. Sen* and *Ravinder Narain*, for the appellants.

Gopal Singh and *R. N. Sachthey*, for the respondents.

The Judgment of SUBBA RAO, C.J., SHELAT AND VAIDIALINGAM, JJ., was delivered by SHELAT, J. The dissenting Opinion of HIDAYATULLAH and BACHAWAT JJ., was delivered by BACHAWAT, J.

B **Shelat, J.** This appeal, by certificate, is directed against the judgment and order of the High Court of Punjab dismissing the appellants' writ petition which challenged the validity of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, XXXI of 1959.

In or about September, 1953, the State of Punjab leased the C "Mount View Hotel" at Chandigarh to the appellants for a period of six years commencing from September 24, 1953 at an annual rent of Rs. 72,000/- subsequently reduced to Rs. 50,000/-. The deed of lease of the said Hotel, however, was drawn up and executed on May 21, 1959. On or about August 27, 1959, the Government offered to sell the said Hotel to the appellants at a price D of Rs. 12,00,000/-. Since the appellants did not accept the said offer the same was withdrawn and as the said period of six years had by that time expired, the Government called upon the appellants to hand over vacant possession on or before January 1, 1960. On January 1, 1960, the Estate Officer and Collector, Capital Project, Chandigarh served the appellants with a notice alleging that their occupation of the said Hotel had become unauthorised after Decem- E ber 31, 1959 and required them under s. 4 of the Act to show cause on or before January 11, 1960 as to why an order of eviction should not be passed against them. The appellants, in the meantime, filed the writ petition in the High Court and obtained an interim stay against any order of eviction.

The appellants contended in the High Court (1) that the Act F discriminated between the occupants of public premises and those of private property and also discriminated between the former *inter se* and, therefore, infringed their right of equality before law and equal protection under Art. 14 of the Constitution, (2) that the Act infringed their right to property, (3) that the procedure laid down in s. 5 of the Act infringed rules of natural justice and G (4) that the said notice was invalid as it did not give ten clear days as required by s. 4(2)(b) of the Act. The High Court negatived contentions 2, 3 and 4. As regards the first contention, it held that as appearing from the preamble, the object and the provisions of the Act, the Act substituted the remedy of the Government of eviction as a landlord under the ordinary law, *i.e.* H that by reason of the Act, the Government could only resort to the remedy under the Act and not by way of a suit for eviction and that the Act impliedly did away with the Government's right to sue under the Civil Procedure Code in respect of public pro-

perties and premises, that there was a valid classification between the occupiers of public premises and those of private property and that as the Act was substitutive and not supplemental, there was no question of discrimination also between the occupiers of public premises *inter se*. The High Court, however, agreed that if the Act furnished a 'supplemental' and not a 'substitutive' remedy, the contention as to discrimination would be one of substance. The reasons for holding that the Act impliedly repealed the ordinary law of eviction in respect of public property and premises were that the Act covered the entire subject-matter of law relating to eviction, that the two laws could not have been intended to exist simultaneously, that the preamble and the provisions of the Act lent themselves to the deduction that it was intended to substitute the general law of eviction as applicable to public premises, that the object of the Act was to discard the cumbersome procedure under the ordinary law involving delay and to provide a special and speedier remedy and lastly that though the absence of express words of repeal may raise a presumption that the pre-existing law was not repealed that presumption was offset by a comparison of the two laws which demonstrated the legislative intent to supplant the ordinary law.

Counsel for the appellants contended that the conclusions reached by the High Court were erroneous.

Before we proceed to examine them it is necessary to read the relevant provisions of the Act. The objects and reasons given for the enactment of the Act (as quoted by the High Court) were that there was no provision in the Land Revenue Act or in any other Act providing for summary removal of unauthorised encroachments on or occupation of Government and *Nazul* properties including agricultural lands and residential buildings and sites and for recovery of rent, that the only procedure available to Government was to sue the party concerned in a civil court which was a cumbersome procedure involving delay and that therefore to keep all Government owned lands whether put to agricultural or non-agricultural use free from encroachments and unlawful possessions, it was necessary to provide a speedy machinery. The preamble of the Act declares that the Act was passed to provide for eviction of unauthorised occupants from public premises and for certain incidental matters. Section 3 of the Act provides that a person shall be deemed to be in unauthorised occupation of any public premises, where being a lessee, he has, by reason of the determination of his lease, ceased to be entitled to keep or hold such public premises. Section 4 provides that if the Collector is of opinion that any person is in unauthorised occupation of public premises and that he should be evicted, he shall issue a notice in writing calling upon such person to show cause why an order of eviction should not be passed. The notice shall specify the grounds on which the

A order of eviction is proposed to be made and require such person to show cause on or before such date being a date not earlier than 10 days from the date of issue thereof. Section 5 provides that if after considering the cause and the evidence produced by such person and after giving him reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorised B occupation he 'may make an order of eviction'. Section 7 empowers the Collector to recover rent in arrears and assess and recover damages in respect of public premises as arrears of land revenue. Section 9 provides an appeal against an order of the Collector under s. 5 or s. 7 before the Commissioner. Section 10 confers finality to the order made by the Collector or the Commissioner and such order cannot be called in question in any suit, C application or execution proceedings.

We will first consider the High Court's conclusion as to implied repeal of the Government's remedy of eviction under the ordinary law. The rule of construction is that where a statute provides in express terms that its enactment will repeal an earlier Act by reason of its inconsistency with such earlier Act, the latter D may be treated as repealed. Even where the latter Act does not contain such express words, if the co-existence of the two sets of provisions is destructive of the object with which the latter Act was passed, the Court would treat the earlier provision as impliedly repealed. A latter Act which confers a new right would repeal an earlier right if the fact of the two rights co-existing together pro- E duces inconvenience, for, in such a case it is legitimate to infer that the legislature did not intend such a consequence. If the two Acts are general enactments and the latter of the two is couched in negative terms, the inference would be that the earlier one was impliedly repealed. Even if the latter statute is in affirmative terms, it is often found to involve that negative which makes it F fatal to the earlier enactment. Thus s. 40 of the Requirements of Fines and Recoveries Act, 1833, which empowered a married woman to dispose of land by deed which she held in fee, provided she did so with the concurrence of her husband and by deed acknowledged, was held to have been impliedly repealed by the Married Women's Property Act, 1882 which authorised her in G general terms to dispose of all real property as if she were a *feme sole*(1). But repeal by implication is not generally favoured by courts. Farwell, J. following such disinclination observed in *Re. Chance*(2) that "if it is possible, it is my duty to read the section as not to effect an implied repeal of the earlier Act". Maxwell on *Interpretation of Statutes*, 11th Ed., p. 162 remarks : "A sufficient Act ought not to be held to be repealed by implication without some H strong reason. It is a reasonable presumption that the legislature did not intend to keep really contradictory enactments on the

(1) *Re. Drummond* [1891] 1 Ch. 524. (2) 1936 Ch. 266, 270.

Statute Book, or, on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation, therefore, is not to be adopted unless it be inevitable. A reasonable construction which offers an escape from it is more likely to be in consonance with the real intention." The well-settled rule of construction is that when the latter enactment is worded in affirmative terms without any negative it does not impliedly repeal the earlier law. "What words", observed Dr. Lushington, in *The India,*(1) (as quoted in Craies on *Statute Law*, 6th Ed. 371) "will establish a repeal by implication it is impossible to say from authority or decided cases....The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences; or if the entire subject-matter were taken away by the subsequent statute". The impugned Act is neither in negative terms nor in such terms which result in negativing the right of the Government as a landlord to sue for eviction under the ordinary law. Nor is it possible to say that the co-existence of the two sets of provisions relating to eviction lead to inconvenience or absurdity which the legislature would be presumed not to have intended. The impugned Act no doubt deals with the Government's right to evict the occupants and tenants of public premises. In that sense it is an Act dealing with a particular subject-matter, but that fact by itself would not lead to the inference that the legislature intended to take away the Government's right to file a suit for eviction. As the reasons and objects, relied on by the High Court, show the legislature intended to provide an additional remedy to the Government, a remedy which it thought was speedier than the one by way of a suit under the ordinary law of eviction. In our view, there is nothing in the Act to warrant the conclusion that it impliedly takes away the right of suit by Government or that, therefore, it is substitutive and not supplemental. Nor is it possible to say that the co-existence of the two remedies would cause such inconvenience or absurdity that the Court would be compelled to infer that the enactment of the Act resulted in an implied deprivation of the Government's right to sue in the ordinary courts. In our view, the High Court with respect was in error in holding that there was an implied repeal only because the two sets of provisions deal with the subject-matter of eviction in respect of public premises.

As aforesaid, the High Court was of the view that if the Act conferred an additional remedy, the contention as to discrimination would have force. The guarantee of equality before law and equal protection under Art. 14 means that there should be no discrimination between one person and another if as regards the

(1) (1864) 33 L. J. Adm. 193.

A subject-matter of the legislation, their position is the same. It is well-recognised, however, that the legislature has power of making special laws to attain particular objects and for that purpose it has the power of selection or classification of persons and things upon which such laws are to operate. Such classification, however, has to be based on some real distinction bearing a just and reasonable
B relation. The two tests laid down by this Court for a valid classification are that 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 objects to be achieved by the Act. When, therefore, an enactment is challenged on the ground of discrimination, the Court must first ascertain the object sought to be achieved by the legislature and then
C apply the two tests. If the tests are satisfied, the classification cannot be held to be violative of Art. 14.

In *Baburao Shantaram More* v. *The Bombay Housing Board and another*(1), section 4 of the Bombay Rents Act, 1947 which exempted certain public properties from the operation of the Act
D was challenged on the ground that the exemption caused discrimination between the tenants of the Housing Board and the rest of the tenants of private properties. This Court upheld the section on the ground that there was an intelligible differentia which distinguished the tenants of the Board from the other tenants and that that differentia had a rational nexus with the object of the Act. The object of the Act, it was observed, was to solve the residential
E accommodation to achieve which the Housing Board was set up. The Board was not actuated by any profit motive and, therefore, there was no likelihood of its evicting its tenants for the purpose of unduly raising the rents as private landlords were likely to do taking advantage of dearth of accommodation. This Court held that the two classes of tenants were not, therefore, similarly situated
F and were not, by force of circumstances, placed on an equal footing and, therefore, there was no denial of equality before law or of equal protection. A modern State in a complex and growing society can no longer content itself with performance only of its traditional activities. To meet the manifold and variegated needs of society it has to undertake activities of considerable diversity.
G Such activities now-a-days range from supplying the elemental needs of its citizens such as housing, importation and distribution of food and clothes and other such necessities to highly industralised and technocratic projects, which it is said, the State alone can undertake. In such activities its citizens have a vital interest. If a classification is made between those who take advantage of such activities such as accommodation and the rest it may be difficult
H to say that there is not an intelligible differentia between the two or that there is no relation between such differentia and the object

(1) [1954] S.C.R. 572.

of such legislation. In such cases, if the law provides for differential treatment, it is possible to contend that it is justifiable on consideration of the circumstances, the object and the policy of such legislation though the mere fact that it is a Government-owned activity may not by itself be sufficient. A

The objects and reasons of the impugned Act and its preamble indicate that the Act was passed to provide for eviction of unauthorised occupants from public properties and premises, and to keep such properties free from encroachment and unlawful possession and to provide a speedier machinery for that purpose as against the lengthy proceedings under the ordinary law of eviction involving delay. The Act no doubt differentiates occupiers of public property and premises from other occupiers. Nevertheless, it is possible to say that there is an intelligible differentia between the two classes of occupiers, that they are not similarly situated in that in the case of public properties and premises the members of the public have a vital interest and are interested in seeing that such properties and premises are freed from encroachment and unauthorised occupation as speedily as possible. It is also possible to contend that such classification is justified in that it is in the interest of the public that speedy recovery of rents and speedy eviction of unauthorised occupiers is made possible through the instrumentality of a speedier procedure instead of the elaborate procedure by way of suit involving both expense and delay. On these considerations, it may be contended that the segregation of tenants of public properties and premises from the tenants of private property is based on justifiable reason and that such segregation has a rational nexus with the object and policy of the Act. B C D E

Assuming that such classification is valid, the complaint of the appellants is that s. 5 of the Act makes a discrimination amongst those in occupation of public properties and premises *inter se* and that such discrimination has no valid basis nor any reasonable nexus with the object of the Act. Under s. 4, if the Collector is of opinion that any person is in unauthorised occupation of any public premises and that he should be evicted, he has to issue a notice calling upon such person to show cause why an order of eviction should not be made. Under s. 5, if the Collector is satisfied that the public premises are in unauthorised occupation he has the power to make an order of eviction giving reasons therefor. The contention is that the Government thus has two remedies open to it, one under the ordinary law and the other a drastic and more prejudicial remedy under the present Act. The words "the Collector may make an order of eviction" in s. 5 show that the section confers discretion to adopt the procedure under ss. 4 and 5 or not. Section 5 has left it to the discretion of the Collector to make such an order in the case of some of the tenants and not to make such an order against others. Section 5 thus enables the F G H

A Collector to discriminate against some by exercising his power under s. 5 and take proceedings by way of a suit against others, both the remedies being simultaneously available to the Government. There can be no doubt that if the Collector were to proceed under ss. 4 and 5, the remedy is drastic for a mere opinion by him that a person is in unauthorised occupation authorises him to issue
B a show cause notice and his satisfaction under s. 5 is sufficient for him to pass an order of eviction and then to recover under s. 7 rent in arrears and damages which he may assess in respect of such premises as arrears of land revenue. Section 5 does not lay down any guiding principle or policy under which the Collector has to decide in which cases he should follow one or the other procedure
C and, therefore, the choice is entirely left to his arbitrary will. Consequently, s. 5 by conferring such unguided and absolute discretion manifestly violates the right of equality guaranteed by Art. 14.

It is well-settled that if a law were to provide for differential treatment for amongst persons similarly situated, it violates the equality clause of Art. 14. In the *State of West Bengal* v. *Anwar*
D *Ali*,(1) s. 5 of the W.B. Special Courts Act, 1950 was challenged as infringing Art. 14. The majority judgment held that the procedure laid down for trial by the Special Courts varied substantially from that laid down for the trial of offences generally under the Code of Criminal Procedure and that the Act did not classify or lay down any basis for classification of cases which may
E be directed to be tried by the Special Courts but left it to the uncontrolled discretion of the State Government to direct cases which it liked to be tried by the Special Courts. The language of s. 5(1) vested the State with unrestricted discretion to direct any case or class of cases to be tried by the Special Courts, not a discretion to refer cases where it is of opinion that a speedier trial is necessary. The majority held that a rule of procedure laid down by law comes
F as much within the purview of Art. 14 as rules of substantive law and that it was 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. If it is established that the person complaining has been discriminated against as a result of legislation and denied equal pri-
G vileges with others occupying the same position it would be enough to make such a law violative of Art. 14. In *Suraj Mall Mohta* v. *A. V. Visvanatha Sastri*,(2) the challenge was to s. 5(4) of the Taxation and Income (Investigation Commission) Act, 1947. The contention was that s. 5(4) gave arbitrary power to the Commission to pick and choose the evaders of income-tax as it liked and, therefore, the sub-section was highly discriminatory in character.
H This Court held that sub-s. (4) of s. 5 dealt with the same class of persons who fell within the ambit of s. 34 of the Income-tax

(1) [1952] S.C.R. 284.

(2) [1955] 1 S.C.R. 448.

Act, 1922, that both s. 34 of the Income Tax Act and s. 5(4) of the Investigation Act dealt with persons who had similar characteristics and similar properties, the common characteristics being that they were persons who had not truly disclosed their income and had evaded payment of taxation on income, that the procedure prescribed by the Investigation Act was substantially more prejudicial and more drastic to the assessee than the one under the Income Tax Act and that, therefore, s. 5(4) in so far as it affected persons proceeded against under that sub-section was a piece of discriminatory legislation and offended Art. 14. It appears that after that decision, Parliament amended s. 34 of the Income-tax Act providing for the cases of those very persons who originally fell within the ambit of s. 5(1) of the Investigation Act to be dealt with under the amended s. 34 and under the procedure of the Income-tax Act. As a result of the amendment both categories of persons, *viz.*, those who came within the ambit of s. 5(1) as well as those who came within the ambit of s. 34 of the Income-tax Act now formed one class. That being the effect of the amendment, it was urged in *Shree Meenakshi Mills Ltd., Madurai* v. *A. V. Visvanatha Sastri*(1) that assuming that s. 5(1) of the Investigation Act was based on a rational classification that classification had, because of the amendment of s. 34 become void, as the classification which saved it from the mischief of Art. 14 had become ineffective, its distinctive characteristics having disappeared, and that the persons falling within the class defined in s. 5(1) now belonged to the same class as was dealt with by s. 34 as amended. This Court accepted the contention and held that as a result of the said amendment s. 34 as amended operated on the same field as s. 5(1) of the Investigation Act, assuming that the latter was based on a rational classification, and that therefore it became void and unenforceable as being discriminatory in character. Similarly, in *Banarsi Das* v. *Cane Commissioner, Uttar Pradesh*(2), Rule 23 of the U.P. Sugar Factories Rules, 1938 was impeached on the ground that it provided two different procedures either of which could be followed by the Cane Commissioner. Raghubar Dayal, J. who gave a dissenting opinion was of the view that the rule was discriminatory and should, therefore, be struck down as contravening Art. 14. Hidayatullah, J. who spoke for the majority agreed with him on principle that if "it could be said that the rule as framed, allows the Cane Commissioner to discriminate between one party and another then the rule must offend Art. 14". He, however, construed the rule to mean that the parties, instead of leaving the dispute to the decision of the Commissioner, could go to arbitration with his permission. On this construction, he held that where there are two procedures, one for every one and the other, if the disputants voluntarily agree to follow it, there would be no

(1) [1955] 1 S.C.R. 787.

(2) A.I.R. 1963 S.C.R. 1417.

A discrimination because discrimination can only be found to exist if the election is with someone else who can exercise his will arbitrarily. The principle which emerges from these decisions is that discrimination would result if there are two available procedures one more drastic or prejudicial to the party concerned than the other and which can be applied at the arbitrary will of the B authority.

Assuming that persons in occupation of Government properties and premises form a class by themselves as against tenants and occupiers of private owned properties and that such classification is justified on the ground that they require a differential treatment in public interest, those who fall under that classification are C entitled to equal treatment among themselves. 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 prejudicial against some and not against the rest. A person who is proceeded against under the more drastic procedure D is bound to complain as to why the drastic procedure is exercised against him and not against the others, even 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 E 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 F 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 Art. 14. In this view s. 5 must be declared to be void.

G In the result, the appeal is allowed. The order of the High Court is set aside and the writ petition filed by the appellants is made absolute with costs.

Bachawat, J. An unauthorised occupant of public premises claims immunity from eviction under the summary procedure of H the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (Punjab Act No. 31 of 1959), on the ground that the Act offends art. 14 of the Constitution. The State of Punjab leased the premises known as Mount View, Chandigarh to the appellant

upto December 31, 1959 after which the lease was not extended. On January 1, 1960, the Collector issued a notice under s. 4 of the Act to the appellant to show cause on or before January 11, 1960, why an order of eviction from the premises should not be made against it. On January 7, 1960, the appellant filed a writ petition challenging the vires of the Act. Since then it has successfully defied the law and continued to be in occupation of the premises under the shelter of stay orders and injunctions. The High Court dismissed the writ petition. This appeal has been filed on a certificate granted by the High Court.

The object of the impugned Act is to provide a summary procedure for the eviction of unauthorised occupants of public premises without recourse to the cumbersome procedure of a title suit. Public premises means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the State government, or requisitioned by the competent authority under the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, and includes any premises belonging to any district board, municipal committee, notified area committee or panchayat [s. 2(d)]. A person deemed to be in unauthorised occupation of any public premises includes where he, being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises [s. 3(b)]. If the Collector is of the opinion that any persons are in unauthorized occupation of any public premises situate within his jurisdiction and that they should be evicted, he shall issue a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made (s. 4). If after considering the objection, if any, of the person concerned and giving him a reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorized occupation, he may make an order of eviction for reasons to be recorded therein (s. 5). Section 6 provides for disposal of property left on public premises by unauthorized occupants. Section 7 gives the Collector the power to recover rent or damages in respect of public premises as arrears of land revenue. For the purpose of holding any inquiry under the Act, the Collector has the power of summoning witnesses and certain other powers vested in the civil court when trying a suit (s. 8. An appeal lies from every order of the Collector under ss. 5 and 7 to the Commissioner (. 9. Save as provided in the Act, every order made by the Collector or Commissioner is final and cannot be called in question in any original suit, application or execution proceeding (s. 10). Section 11 protects action taken under the Act in good faith. Section 12 gives power to make rules. This in short is the scheme of the Act. Its provisions are similar to

A those of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958, save that an appeal under the Central Act from an order of the estate officer lies to the district judge.

The High Court found that the Act does not offend arts. 14 and 19(1)(f) of the Constitution. The appellant has now abandoned B the attack based on art. 19(1)(f). Being an unauthorized occupant, it has no right of property in the premises. The High Court repelled the attack based on art. 14 on the ground that the proceeding under the Act is the exclusive remedy for the eviction of unauthorized occupants of public premises. With this reasoning we cannot agree. The Act does not create a new right of eviction. It C creates an additional remedy for a right existing under the general law. It does not repeal the law giving the remedy of a suit or bar the jurisdiction of civil courts to try a suit for eviction. The government is at liberty to proceed against the occupant either under the Act or by way of a suit.

The argument for the appellant is that the Act violates art. 14 D in two ways, first, that it discriminates between unauthorized occupants of public premises and those of other premises and the classification of public premises has no reasonable relation to the object of the Act. Second, that it discriminates between occupants of public premises *inter se* as the State can arbitrarily proceed against the occupant either under the Act or by way of a suit at its sweet E will. The argument must be rejected.

The constitutional guarantee of art. 14 requires that there shall be no unjust discrimination and all persons shall be treated alike under like circumstances and conditions. The article sustains a rich diversity of laws and permits reasonble classification and differential treatment based on substantial differences having reason- F able relation to the object of the legislation. The protection of art. 14 extends to procedural laws, but the legislature may adopt one or more types of procedure for one class of litigation and a different type for another so long as the classification satisfies the test of reasonableness. Thus without violating art. 14, the law may prohibit cross-examination of witnesses in proceedings for G externment of undesirable persons, see *Gurbachan Singh* v. *State of Bombay and another*(1).

Article 14 permits differential treatment of the government in matters of both substantive law and procedure. The legislature may reasonably provide a longer period of limitation for suits by the government, see *Nav Rattanmal and others* v. *State of Raja-* H *than*(2), give the government the right of priority in payment of its claims, see *Builders Supply Corporation* v. *Union of India and*

(1) [1952] S.C.R. 737, 743-44. (2) [1962] 2 S.C.R. 324.

others(1) and deny the protection of the Rent Act to tenants of premises belonging to the government while extending its protection to the government, see *Baburao Shantaram More* v. *The Bombay Housing Board and another*(2). A

It is settled by our previous decisions that the Revenue Recovery Acts and other Acts creating special tribunals and procedure for the expeditious recovery of revenue and State dues are in the public interest and do not violate art. 14, see *Shri Manna Lal and another* v. *Collector of Jhalawar and others*(3), *Nav Rattanmal and others* v. *State of Rajasthan*(4), *The Collector of Malabar* v. *Erimal Ebrahim Hajee*(5), *Purshottam Govindji Halai* v. *Shree B. M. Desai, Additional Collector of Bombay and others*(6) and *Lachhman Das* v. *State of Punjab and others*(7). If quick recovery of revenue is in the public interest, expeditious recovery of State property from which revenue is derived is *a fortiori* in the public interest. The impugned Act has properly devised a special machinery for the speedy recovery of premises belonging to the government. B C

The class of public premises to which the benefit of the impugned Act extends includes premises belonging to the district board, municipal committee, notified area committee and panchayat. The classification has reasonable relation to the object of the Act and does not offend art. 14. We have upheld similar classification for the purpose of other Acts, see *Baburao Shantaram More* v. *The Bombay Housing Board and another*(2). D E

The government has the option of proceeding against an unauthorized occupant of public premises either under the Act or by a civil suit. On the question whether such an option offends art. 14, our decisions upholding the validity of the Revenue Recovery Acts are conclusive. The Revenue Recovery Acts do not deny the equal protection of the laws because the government has the free choice of recovering its revenue either by a suit or by a proceeding under those Acts. F

We have struck down harsh, oppressive and unjust laws giving the government an arbitrary power of directing a summary trial of offences by a special criminal court instead of trial by the ordinary courts or of subjecting assessee to the inquisitorial procedure of the Taxation of Income (Investigation Commission) Act, 1947. It is because those laws were harsh, despotic and tyrannical that they were struck down. It is remarkable that in *Suraj Mall Mohta and Co.* v. *A. V. Visvanatha Sastri and another*(8), the Court said that if there was a provision for reviewing the con- G

(1) [1965] 2 S.C.R. 289.
(2) [1954] S.C.R. 572. H
(3) [1961] 2 S.C.R. 962.
(4) [1962] 2 S.C.R. 324, 332.
(5) [1957] S.C.R. 970.
(6) [1955] 2 S.C.R. 887.
(7) [1963] 2 S.C.R. 353.
(8) [1955] 1 S.C.R. 448 at 466.

A clusions of the investigation commission when acting both as investigators and judges, the Taxation of Income (Investigation Commission) Act 1947, might have been sustained. Even an Act giving the executive an option of sending a case for trial by a special criminal court is not necessarily violative of art. 14, see *Kangsari Haldar and anr.* v. *The State of West Bengal*(1). We B have upheld an Act empowering an administrative tribunal trying an offence to send the case to a court for trial if the case deserves more severe punishment, see *Shanti Prasad Jain* v. *The Director of Enforcement*(2).

Without violating art. 14, the law may allow a litigant a free choice of remedies, proceedings and tribunals for the redress of C his grievances. The plaintiff may have a choice of claiming specific relief or damages. As *dominus litis*, he has the option of suing in one of several courts having concurrent jurisdiction, and the defendant cannot insist that he must be sued at a place where he can more conveniently carry on the litigation. The plaintiff may even fix the original and appellate forums on the basis of his own D arbitrary valuation. For a suit on a negotiable instrument, he may instead of choosing the ordinary procedure, adopt the summary procedure of Order XXXVII of the Code of Civil Procedure and shut out the defence altogether unless leave to defend is obtained. A landlord may evict a tenant by a suit or by a summary proceeding under chapter VII of the Presidency Small Cause Courts Act. An aggrieved party may be free to choose one of several types of E tribunals and modes of proceeding. He may obtain a rectification of the share register by a suit or by an application to the court taking company matters or by appealing to an administrative tribunal against the refusal of the company to register the transfer of shares.

F Instead of filing a suit or a proceeding before an administrative tribunal, a party may at his option obtain quick and effective relief against the government by an application in the writ jurisdiction and by adopting this mode of proceeding may deprive the government of the procedural safeguards available to it in suits and other proceedings. Likewise, the law may give the government an option of recovering its revenue and properties by a suit or by a G proceeding before an administrative tribunal.

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. In *Arizona Copper Co.* v. *Hammer*,(3) the U.S. Supreme Court held that employers were not denied the equal protection of the laws because an employee injured in course of his H employment had open to him three avenues of redress under three

(1) [1960] 2 S.C.R. 646. (2) [1963] 2 S.C.R. 297, 303-4.

(3) 250 US 400 : 63 L.Ed. 1058.

different laws, each one of which he might pursue at his free choice. As Pitney J. said, "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." A

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 before the Collector. He may obtain a review of the order of the Collector by an appeal to the Commissioner. He may in appropriate cases ask for a writ of *certiorari* from the High Court. 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. 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. B C

Article 14 does not require a fanatical approach to the problem of equality before the law. It permits a free choice of remedies for the redress of grievances. The impugned Act makes no unjust discrimination. It promotes public welfare and is a beneficient measure of legislation. If we strike down the Act, we shall be giving a free charter to unauthorized occupants and to officers squatting on public premises after they have vacated their offices to continue in occupation for an indefinite time until they are evicted by dilatory procedure of a title suit. The Act does not suffer from any blemish and we uphold it. D E

In *Seth Banarsi Das v. Cane Commissioner*(1), the Court upheld a law prescribing two procedures one for every one and the other if the disputants agree to follow it. The Court did not say that a law cannot allow a choice of procedure to an aggrieved party. F

We would accordingly dismiss the appeal with costs.

ORDER

In accordance with the opinion of the majority, the appeal is allowed. The order of the High Court is set aside and the writ petition filed by the appellants is made absolute with costs. G

V.P.S.

(1) [1963] Supp. 2 S.C.R. 760.