CASE NO.:
Appeal (civil) 171 of 2004

PETITIONER:
M/s Crawford Bayley & Co. & Ors

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 05/07/2006

BENCH:
H.K.SEMA & A.K. Mathur

JUDGMENT:
J U D G M E N T
W I T H :

C.A.No. 172 of 2004, C.A.No.5990 of 2004, W.P) 168 of 2004 & W.P.(C) No.244 of 2004.

A.K. MATHUR, J.

All these appeals & writ petitions raise similar question of law, therefore they are disposed off by this common order.

For the convenient disposal of these matter, the facts given in the Civil Appeal No. 171/2004 are taken into consideration.

This appeal is directed against an order passed by the Division Bench of the Bombay High Court in Writ Petition No. 3105/2002 on 25th April, 2003 whereby the High Court of Bombay dismissed the Writ Petition and held that in view of the certain proposition of law laid-down by the apex Court none of the argument raised by the party is sustainable and accordingly dismissed the writ petition.

The appellant No. 1 is a firm of Advocates and solicitors whereas appellant Nos. 2 & 3 are its partners. The appellants moved this writ petition before Bombay High Court under Article 226 of the Constitution of India for striking down the provisions of Section 3 of the Public Premises (Eviction of unauthorized occupants) Act, 1971 (hereinafter referred to as the said Act , 1971) on the ground that it is violative of Article 14 of the Constitution of India. They also sought an order for quashing of the termination of tenancy dated 17th April, 2002 issued by the respondent No. 2 as also a show cause notice dated 3rd October, 2002 issued by the respondent No. 2 under the provisions of the said Act.

The appellants also claimed a writ of prohibition prohibiting the respondent No. 2 (Estate Officer) from proceeding with Case No. 3 of 2002 initiated by him. The respondent No. 3, the State Bank of India owns a building in Fort, Mumbai. According to the appellants the management of the Imperial Bank which was the predecessor of respondent No.3 \026 State Bank of India (hereinafter referred to as "the Bank ") leased out the premises to appellant No. 1 in 1943. The ground floor and the second floor of the said building is occupied by the respondent no. 3 \026 Bank. The lease granted in favour of the appellants was renewed from time to time and it was last renewed till 1973. But after that same was not renewed. But by notice dated 6th January, 2000 respondent No.3 terminated the tenancy of the appellant No. 1 on the ground that it requires the premises to accommodate their Capital Market Branch, Personal Bank Branch and other branches. But subsequently on 17th April, 2002, the

termination notice dated 6th January, 2000 was withdrawn. Thereafter, another notice dated 17th April, 2002 was given terminating the tenancy at the end of calendar month next to the calendar month in which the notice was received by the appellant no.1. Several reasons were given for termination of the tenancy. Thereafter the respondent No. 2 issued a show cause notice under sub-section (1) and clause (b)(ii) of sub-section (2) of Section 4 of the Act, 1971 to the appellant No. 1 to show cause why the order of eviction should not be passed against them. This show cause notice issued by respondent No. 2 was challenged by filing present writ petition.

The appellant raised five grounds before the High Court ; first the provisions of the Maharashtra Rent Control Act, 1999 (herehinafter referred to as the Maharashtra Rent Act) shall prevail over the provisions of the said Act of 1941 in view of Article 254 (2) of the Constitution of India as the Maharashtra Rent Act applies to all premises belonging to the respondent and therefore, the appellant No. 1 is a protected tenant under the provisions of the Maharashtra Rent Act and the order of eviction for the appellant No. 1 cannot be made. It was submitted that the Mahrashtra Rent Act is a law made by the Legislature of the State in respect of matters enumerated under the Concurrent List i.e. Entries 6 & 46. The public premises Act, 1971 is an earlier law made by the Parliament under the Concurrent List i.e. Entry 6. It was submitted since it was reserved for the assent of the President of India as it contained the repugnant provisions to the earlier law made by the Parliament. Therefore, the later Act, i.e., The Maharashtra Rent Act having been reserved and having received an assent of the President of India, would prevail over the Act, 1971.

The second submission was that the provisions of Section 3 of the Public Premises Act are violative of Article 14 of the Constitution of India as it makes the Estate Officer of the statutory authority as a Judge in his own cause. Thirdly, it was submitted that the show cause notice is violative of the guildelines issued by the Central Government from time to time. Fourthly, it was submitted that the Government of India Allocation of Business Rules 1961 allots the powers of the Central Government to appoint Estate Officer under the provisions of the Act to the Ministry of Urban Development and not to the Ministry of Finance. Therefore, the order appointing the respondent No. 2 as Estate Officer was made by the Ministry of Finance and not by the Ministry of Urban Development. Therefore it is contrary to the rules of Allocation of Business. Fifthly and lastly it was submitted that the respondent No. 2 was appointed as an Estate Officer by order dated 24th June, 2002 which refers to the notification dated 29th July, 1988. It was submitted that the notification dated 29th July, 1988 had been superceded by the notification dated 25th January, 1993, therefore appointment is bad & without jurisdiction.

All these contentions were considered by the Division Bench and rejected on the basis of the decision given by this Court from time to time.

Aggrieved against this order passed by the Division Bench the present S.L.P. was preferred.

Leave was granted in these petitions & now finally appeals have come up for final disposal.

The first and the foremost question raised before this Court was validity of Section 3 of the Act of 1971. It is suffice it to say that the validity of Section 3 had already been upheld by this Court to which we will refer later however our special attention was drawn to the second proviso to Section 3 (a) of the Act, 1971, Section 3 of the Act of 1971 reads as under:

"3. Appointment of Estate Officers \026 The Central Government may, by notification in the Official Gazette. \026

(a) appoint such person, being Gazetted Officers of

Government or of the Government of any Union Territory or officers of equivalent rank of the Statutory Authority, as it thinks fit, to be Estate Officers for the purposes of this Act;

Provided that no officer of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with Speaker of the Lok Sabha:

Provided further that an officer of a Statutory Authority shall only be appointed as an Estate Officer in respect of the public premises controlled by that authority; and

(b) define the local limits within which, or the categories of public premises in respect of which, the Estate Officers shall exercise the powers conferred, and perform the duties imposed, on Estate Officers by or under this Act."

In this connection it may be mentioned here that the first case which arose before this Court was the case of Northern India Caterers Private Ltd., & Anr. Vs. State of Punjab & Another reported in (1967)3 SCR 399. In that case the majority view was that a law prescribing two procedures one more drastic or prejudicial to the party than the other and which can be applied at the arbitrary will of the authority, is violative of Art 14 of the Consititution. This case subsequently came up for consideration before this Court again in the case of Maganlal Chhaganlal (P) Ltd. Vs Municipal Corporation of Greater Bombay and Ors. Reported in (1974) 2 SCC 402. In that case the majority view was overruled by the majority. The case of Maganlal(Supra) was a Seven judges Bench case in which four judges; Hon. Mr. A.N. Ray, CJ, Hon. Mr. Palekar, Hon. Mr. Mathew & Hon. Mr. Alagiriswami overruled by Majority and held:
"The argument based on the availability of two procedures, one more onerous and harsher than the other, and therefore, discriminatory has 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. It is 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 constitutionally valid.

Where a statute providing for a more drastic procedure different from the ordinary procedure 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, 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 the statute themselves explained and amplified by affidavits, necessary guidelines could be inferred, the statute will not be hit by Article 14. Then again where the statute itself covers only a class of cases, 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 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 statutes themselves in the two classes of cases before the Court clearly lay down the purpose behind them, that is that premises belonging to the Corporation and the Government should be subject to speedy procedure 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 courts.

It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorized occupants of Government property or Municipal Property resort to the procedure prescribed by the two 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 fancilful 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 discrimination that must be taken into account. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice the Supreme Court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorized occupants of Government and Corporation property and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorized occupants.
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Therefore, it is not possible to agree with the majority in the Northern India Caterers' case\005\005."

Thereafter this proposition again came up for consideration in the case of In Re The Special Courts Bill, 1978 reported in (1979) 1 SCC 380 in which their Lordships referred to the case of Maganlal Chhagganlal (Supra) and did not differ from the majory view of the Maganlal Chhagganlal's case (Supra). In para 70 the relevant portion of the case reads as under:

"This analysis will be incomplete without reference to a recent decision of this Court in Maganlal Chhagganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay. In that case two parallel procedures, one under Chapter VA of the Bombay Municipal Corporation Act, 1888 and the other under the Bombay Government Premises (Eviction) Act, 1955 were available for eviction of persons from public premises. The constitutional validity of

the relevant provisions of the two Acts was challenged on the ground that they contravened Article 14, since the procedure prescribed by the two Acts 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 authorities ;to adopt such special procedure against some and the ordinary remedy of civil suit against others. It was held by this Court that where a statute providing for more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure without affording any guide-lines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Art. 14. However, a provision for appeal could cure the defect and if from the preamble and the surrounding circumstances as well as the provisions of the statutes themselves, explained and amplified by affidavits, necessary guidelines could be spelt out, the statute will not be hit by Article 14. On the merits of the procedure prescribed by the two Acts it was held by the Court that it was not so harsh or unconscionable as to justify the conclusion that a discrimination would result if resort to them is had in some cases and to the ordinary procedure of Civil Courts in others. By a separate but concurring judgment two of us, namely, Bhagwati, J., and V.R. Krishna Iyer, J., held that it was inevitable that when a special procedure is prescribed for a defined class of persons, such as occupiers of municipal or government premises, discretion which is guided and controlled by the underlying policy and purpose of the legislation has necessarily to be vested in the administrative authority to select occupiers of municipal or government premises for bringing them within the operation of the special procedure. The learned Judges further observed that minor differences between the special procedure and the ordinary procedure are not sufficient for invoking the inhibition of the equality clause and that it cannot be assumed that merely because one procedure provides the forum of a regular court while the other provides for the forum of an administrative tribunal, the latter is necessarily more drastic and onerous than the former. Therefore, said the learned Judges, whenever a special machinery is devised by the Legislature entrusting the power of determination of disputes to an authority set up by the Legislature in substitution of regular 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. 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 prescribed by the two Acts was held not to be really and substantially more drastic and prejudicial than the ordinary procedure of a Civil Court. The special procedure prescribed by the two Acts, it was observed, was not so substantially and qualitatively disparate as to attract the vice of discrimination."

So far as the validity of the provision of the Act, 1971 is concerned, this is no more res-integra. However, learned counsel submitted that the proviso is ultra virus of Art. 14 of the Constitution of India. The public premises Act 1971 was amended in 1980 by Act No. 61 of 1980 and the aforesaid proviso as quoted above was inserted, it specially provided that an officer of a Statutory Authority shall only be appointed as an Estate Officer in respect of the public premises controlled by that authority. It is submitted that this will amount to a Judge in his own cause and therefore, this proviso should be struck-down. In this connection, learned counsel have drawn our attention to the following cases:
(1) 1988(4)SCC 324 :Accountant and Secretarial Services Pvt. Ltd. and Another Vs. Union of India and Others.

(2) 2004(11)SCC 625: Delhi Financial Corpn. and Another Vs. Rajiv Anand And Ors.

(3) 1974(2)SCC 402 : Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Ors.

So far as the validity part is concerned, it has already been pointed out that Northern India Caterer's case has not been followed by the subsequent decision of this Court and the validity of Section 3 has been upheld. But the question in the present case is with regard to proviso. In this connection, a reference was made to a case of Accountant and Secretarial Services Pvt. Ltd. and Another Vs. Union of India and Others reported in 1988(4)SCC 324 and they tried to take a benefit of an observation made therein that though the bank is a corporation wholly owned and controlled by the Government, it has a distinct personalilty of its own and its property cannot be said to be the property of the Union. In this case, Hon'ble S. Ranganathan, J who wrote the leading judgment exhaustively considered all the submissions and held in no certain terms that this Act is applicable to the premises of the Bank.

In this case, the question arose whether the public premises (Eviction of Unauthorised Occupants) Act, 1971 will prevail over the West Bengal Premises Act, 1956 and the West Bengal Public Land(Eviction of unauthorized occupants) Act, 1962. It was argued that since eviction from premises of Central Statutory corporation owned or controlled by Government, like nationalized bank in the State of West Bengal is sought therefore both these Acts will govern. In that connection, Hon. Sh. Ranganathan J. observed as under:

"The present case is clearly governed by the primary rule in Article 254(1) under which the law of Parliament on a subject in the Concurrent List prevails over the State law. Article 254(2) is not attracted because no provision of the State Acts (which were enacted in 1956 and 1962) were repugnant to the provisions of an earlier law of Parliament or existing law. The fact that the 1956 Act was enacted, after being reserved for the President's assent is, therefore, immaterial. Even if the provisions of the main part of Article 254(2) can be said to be somehow applicable, the proviso, read with Article 254(1) reaffirms the supremacy of any subsequent legislation of Parliament on the same matter even though such subsequent legislation does not in terms amend, vary or repeal any provision of the State legislation. The

provisions of the 1971 Act will, therefore, prevail against those of the State Acts and were rightly invoked in the present case by the respondent-Bank."

Therefore, His Lordship has held that the premises of bank shall also be governed by the provisions of the Act, 1971. In view of the decision of this Court, the argument made by the appellant has no legs to stand.

In this connection, a reference was made to a case of Delhi Financial Corpn. and Another Vs. Rajiv Anand And Ors. Reported in 2004(11) SCC 625 with regard to personal bias i.e. an officer of the Statutory Authority has been appointed as an Estate Officer, therefore, they will carry their personal bias. However, this Court in the aforesaid case held that a doctrine 'no man can be a judge in his own cause' can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine, "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or connection or a personal interest or has personally acted in the matter concerned and /or has already taken a decision one way or the other which he may be interested in supporting.

In view of the aforesaid observation made by this Court that 'no man can be a judge in his own cause' certain parameters has to be observed i.e. a personal bias of the person concerned or personal interest or person acted in the matter concerned and has already taken a decision which he may be interested in supporting the same. These parameters have to be observed before coming to the conclusion that ' no man can be a judge in his own cause'. This is a matter of factual inquiry. Be that as it may. Mr. Gopal Subramanian learned Addl. Solicitor General of India with his usual fairness has submitted that the officer who has been appointed as an Estate Officer though alleged to have been associated as an officer dealing with the eviction matters will not be presiding over as an Estate Officer. Therefore, in view of this submission made by Mr. Subramanian we do not think that the matter is required to be prosecuted further.

It was next contended with reference to the allocation of Business Rules that the Central Government in the urban department can appoint an Estate Officer but in the present case, finance department has appointed an Estate Officer which is in violation of the Allocation of Business Rules, 1961. Though the division bench dealt with this aspect exhaustively in its judgment & held that the provisions of the Business Rules are not mandatory and will not vitiate the appointment, we fully agree that the rules of Business are administrative in nature for governance of its business of Govt. of India framed under Art. 77 of the Constitution of India. In this connection, Division Bench referred to the decision of this Court; Dattatreya Moreshwar Pangarkar vs. The State of Bombay and Others reported in (1952)SCR 612. There an analogous Rules of business framed by the State under Art. 166 of the Constitution of India came up for consideration and it was observed that they are director and no order will be invalidated, if there is a breach thereof. However, the division bench has also gone into the history how the nationalized banks came under the department of Economic Affairs, etc. which is a larger part of the Ministry of Finance. Be that as it may, it appears that the correct facts were not brought to the notice of the division bench, but now before us an affidavit has been filed by the Deputy Director of Estates, Urban Development, Deptt. Of Directorate of Estates and in that he has clarified in para 4 that the authority to appoint Estate Officer by the Central Government was decentralized with effect

from 1.1.1973 vide office Memorandum No.21012(8)72-Po.I dated 29.11.1972. By the said memorandum all Ministries/Departments have been authorized to appoint Estate Officer in respect of Public Sector Undertakings/Government Companies, etc. under their respective administrative control. And the copy of the same was placed on record. This memorandum dated 29th November, 1972 was issued by the Deputy Director of Estates, Government of India, Ministry of Works & Housing. By this notification the power has been decentralized. The relevant provisions of the Office Memorandum reads as under:

"Hitherto, notification regarding appointment of estate officers of Central Government departments autonomous bodies, Government companies, etc. had been issued centrally by this Ministry but it has been found that with the inclusion of the premises of the Corporation Companies within the purview of the above Act, the number of requests for appointment of Estate Officers has considerably increased. The matter has, therefore, been reviewed and it has been decided that such notifications, with effect from 1.1.1973, be issued by the Ministries/Departments concerned themselves even in respect of the public sector undertakings/Government Companies, etc. under their respective administrative control. In so far as the requests for appointment of estate officers already pending with this Ministry or that may be received upto 31.12.1972 are concerned, necessary notifications will be issued by this Ministry.

Whenever it is proposed to issue a notification the draft of the proposed notification should be got vetted from the Ministry of law and justice (legislative Deptt.) after the notification has been vetted by that Ministry, it should be got translated into Hindi from the Official Language (legislative) Commission Indian Law Institute Building, New Delhi and other after both the English and Hindi versions sent to the General Manager Government of India Press, Minto Road, New Delhi for publication in Part-II Section 3, sub-Section (ii) of the Gazette of India."

After this notification, nothing survives as the power has been decentralized for appointment of the Estate Officers and it has been given to the Ministry concerned and the Public Sector Undertakings and Government companies, etc. Therefore this submission of learned counsel also does not survive.

Lastly, with regard to the notifications dated 29th July 1988 and 25th January, 1993; suffice it to say that the matter has been exhaustively dealt with by the High Court and nothing turns on that as the Presiding Officer in the present case is gazetted officer i.e. the Assistant General Manager of the State Bank of India. Therefore, nothing turns on that issue. More so, learned counsel has already mentioned that the present officer who is presiding as an Estate Officer is also the Assistant General Manager of the Estates & Premises .

However, we may clarify that the Estate Officer appointed by the concerned administrative department cannot be said to be a judge in his own cause. This Court in the case of Delhi Financial Corpn. And Another Vs Rajiv Anand and Others reported in (2004) 11 SCC 625 has already laid down parameters. Applying those parameters we hold that there is no personal bias of Estate Officer in these proceedings because he has no personal interest. However, this will further depend upon facts of each case and no generalization can be made. However, in the present case, there is no such bias & even there is remote chance after the statement made by learned Addl. Solicitor General.

In this view of the matter, we do not find any merit in these

appeals/writ petitions hence, they are dismissed. The Estate Officer may now proceed and dispose of the matters expeditiously. No order as to costs.