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HIGH COURT OF GUJARAT *(D.B.)*

MANGALJIBHAI ROOPAJIBHAI
V/S
STATE OF GUJARAT

Date of Decision: 24 December 1971

Citation: 1971 LawSuit(Guj) 92

Hon'ble Judges: P N Bhagwati, T U Mehta

Eq. Citations: 1972 GLR 649

Case Type: Special Civil Application; Special Civil Application

Case No: 604 of 1971; 650, 435, 64, 652, 653, 654, 81 and 1653 of 1971

Subject: Constitution

Head Note:

To occupy the land under the final scheme power delegated to the local authority under the Town planning Act - to enforce under the Town planning Act - To enforce them special remedy provided in the new Act - S.54 not violative of the equal protection clause contained in Art.14. Quasi-judicata power given to statutory authority to make decision - Its impact on the right of citizens and such other relevant circumstances - power of summery eviction - principle of natural justice not excluded in R.27 - R.27 can not be said to be ultra vires S.54.

The local authority is conferred power under sec. 54 of the Bombay Town Planning Act 1954 to summarily evict such occupants who are not entitled to continue to occupy the land in their occupation under the final scheme. This remedy has been provided by the Legislature in order to enforce the rights and liabilities created under the final scheme. It is by virtue of the final scheme read with sec. 53 clause (a) that land required by the local authority under the final

scheme vests absolutely in the local authority free from all encumbrances. The final scheme is by a legal fiction given effect as if it were enacted in the new Act and therefore it is the new Act. the final scheme being a part of the new Act which creates the aforementioned rights and liabilities and provides a remedy for enforcing them by enacting that any person continuing to occupy any land which he is not entailed to occupy under the final scheme may be summarily evicted by the local authority. (Para 5) So far as the land required by the local authority under the final scheme is concerned the right to own it and to obtain possession of it with the corresponding liability of the occupant of such land to eviction did not exist under the general law prior to the making of the final scheme and it was a right or liability created for the first time by the final scheme which is to be read as a part of the new Act. The new Act while creating these new rights and liabilities gave a special and particular remedy for enforcing them under sec. 54 and the remedy of summary eviction provided in sec. 54 therefore must be held to be an exclusive remedy and the liability to eviction under sec. 53 clause (a) or clause (b) cannot be enforced by the ordinary remedy of a suit. (Para 7) Where a person continues to occupy any land which he is not entitled to occupy under the final scheme there is only one remedy for eviction which can be availed of against him and that is the remedy of summary eviction provided in see. 54. Sec. 54 is therefore not violative of the equal protection clause contained in Art. 14 of the Constitution. (Para 8) Bombay Town Planning Act (XXVII of 1955)-Sec. 54-Bombay Town Planning Rules-Rule 27-Where statutory authority given power to make decision duty to act judicially may be inferred-Sec. 54 impliedly requires local authority to apply principle of natural justice-This requirement must also be read in rule 27-Rule 27 not ultra vires sec. 54 of the Town Planning Act. Where a statutory authority is given power to make a decision or perform an act which effects the rights of individuals or imposes an obligation on them the duty to act judicially need not be expressly superimposed on the statutory authority it may be inferred from the nature of the power conferred its impact on the rights of citizens and such other relevant circumstances. (Para 9) Having regard to the nature of the power conferred its impact on the rights of occupants of land and the consequences ensuing from the exercise of the power the only conclusion, which can be reached, is that the power is a quasi-judicial power. (Para 10) Since sec. 54 impliedly requires that the local authority shall observe the principles of natural justice in exercising the power of summary eviction this requirement must also be read in Rule 27 of the Bombay Town Planning Rules since Rule 27 merely lays down the procedure for summary eviction under sec. 54. There is nothing in

Rule 27, which excludes the principles of natural justice, and Rule 27 cannot be said to be ultra vires sec. 54 of the Bombay Town Planning Act. (Para 11) Wolverhamption New Water Works Co. v. Hawkesford Nevile v. London Express Newspapers Ltd. Attorney General v. Gordon Grant & Co. Secretary of State v. Mask & Co. N. P. Ponnuswami v. The Returning Officer Namakkal A. K. Kraipak v. Union of India Rex v. Electricity Commissioner Ex-parte London Electricity Joint Committee Co. (1920) Ltd. Rex v. Legislative Committee of The Church Assembly Ex-parte Haynes Smith Ridge v. Baldwin Associated Cement Companies v. P. N. Sharma Shri Bhagwan v. Ram Chand referred to.

Acts Referred:

Constitution Of India Art 14

Bombay Town Planning Act, 1954 Sec 53

Bombay Town Planning Rules, 1955 R 27

Final Decision: Application dismissed

Advocates: I M Nanavati, A M Nanawati,K S Nanavati, J M Bhatt, N C Thakkar, J R Nanavati, M M Dave, M A Purnanand & Co, S B Vakil, M D Pandya, G N Desai

Reference Cases:

Cases Cited in (+): **6**

Cases Referred in (+): **11**

Judgement Text:-

Bhagwati, C J

[1] These petitions raise a short question as to the constitutional validity of sec. 54 of the Bombay Town Planning Act, 1954. The facts giving rise to the petitions in so far as they are material for the determination of the main controversy between the parties are almost identical and it would, therefore, be sufficient if we set out the facts relating only to one petition, namely, Special Civil Application No. 604 of 1971 which was argued as the main petition.

[2] The petitioners in Special Civil Application No. 604 of 1971 are lessees of certain lands belonging to a public trust called Kama Muktheswar Mahadeo Trust. By a

resolution dated 18th April 1927 the Borough Municipality of Ahmedabad declared its intention to make a town planning scheme in respect of certain area which included the lands which are at present in the possession of the petitioners. The declaration of intention to make the town planning scheme was published on 28th April 1927 and the Borough Municipality then applied to the Provincial Government for sanction, for the making of such scheme. The Provincial Government, for reasons difficult to imagine, took a period of about three years to decide whether sanction to the making of the town planning scheme should be granted or not and ultimately by a notification dated 22nd April 1930 sanctioned the making of the town planning scheme. The Borough Municipality then prepared a draft scheme on 8th April 1931 and published it on 16th April 1931. The objections to the proposals in the draft scheme were filed within one month from the date of publication of the draft scheme and the Borough Municipality considered those objections and modified the draft scheme in the light of the objections by a resolution dated 9th March 1934. The Borough Municipality then requested the Collector by a letter dated 17th April 1934 to obtain the sanction of the Provincial Government to the draft scheme as modified. The Provincial Government again slept over the matter for about eight years and ultimately sanctioned the draft scheme by a resolution dated 7th August 1942. The Provincial Government also by the same resolution appointed one G. B. Soparkar as Arbitrator to decide the matters set out in sec. 30 of the Bombay Town Planning Act, 1915 (hereinafter referred to as the 'old Act') which was the law in force at the relevant time and to prepare the final scheme for being forwarded to the Provincial Government. Very little progress was, however, made by G. B. Soparkar and before he could complete his task, he was succeeded by another Arbitrator and ultimately one J. R. Mankad came to be appointed as the Arbitrator. Whilst the proceedings were pending before him, the Bombay Town Planning Act, 1954 (hereinafter referred to as the 'new Act') was enacted and it came into force on 1st April 1957. Sec. 90 sub-sec. (1) of the new Act repealed the old Act but sub-sec. (3) of sec. 90 continued the proceedings pending before J. R. Mankad who now became the Town Planning Officer under the new Act. J. R. Mankad as the Town Planning Officer thereafter gave his decision on 12th March 1964 or the various matters referred to in sec. 32 sub-sec. (1) and so far as the decision related to the matters arising under Clauses (v), (vi), (viii), (ix), (x) and (xiii), those who were aggrieved by the decision preferred appeals against the same to the Board of Appeal constituted under sec. 35. The Board of Appeal decided the appeals after hearing the appellants and sent a copy of its decision to the Town Planning Officer and the Town Planning Officer made variations in the Town Planning Scheme in accordance with such decision and

forwarded the final scheme to the State Government for sanction. The State Government sanctioned the final schema by a notification dated 21st July 1965 and directed in the notification that the final scheme shall come into force from 1st September 1965. The lands in the possession of the petitioners were allotted or reserved for construction of a road under the final scheme and, therefore, being lands required by the Municipal Corporation, they vested absolutely in the Municipal Corporation free from all encumbrances under sec. 53 clause (a). The Municipal Corporation thereafter issued a notice to the petitioners under sec. 54 read with Rule 27 of the Bombay Town Planning Rules, 1955, calling upon the petitioners to hand over possession of the lands occupied by them. This led to the filing of a civil suit by the petitioners challenging the validity of the notice issued against them and on the civil suit being dismissed and the appeal against the decision of the civil suit also being rejected, the petitioners filed Special Civil Application No. 604 of 1971 calling in question the validity of the same notice. Similar petitions were also filed by other occupiers of lands which were allotted or reserved for public purpose under the final scheme and to whom notices for handing over possession were issued by the Municipal Corporation.

[3] There were in the main two grounds on which the validity of the impugned notices was challenged on behalf of the petitioners and they were;

(A) Sec. 54 discriminates amongst those in occupation of lands required by the local authority under the final scheme in that it leaves it open to the local authority at its own sweet will to adopt either the ordinary remedy of civil suit or the drastic summary remedy under the section and there being no guiding policy or principle, it permits the local authority to pick and choose occupants of such lands for the application of the more drastic procedure under the section and the section is, therefore, violative of the equal protec tion clause contained in Article 14 of the Constitution.

(B) Even if sec. 54 is valid, Rule 27 is ultra vires sec. 54 because, on a proper construction, sec. 54 requires that before any notice of summary eviction can be issued, the local authority must observe the principles of natural justice and afford an opportunity to the occupant of land to show cause why he should not be summarily evicted and this requirement is disobeyed by the procedure for summary eviction prescribed by Rule 27.

We shall examine these grounds in the order in which we have set them out. But before we can do so, we may refer to an application for amendment made by the petitioners in each petition barring Special Civil Application No. 1652 of 1971. The petitioners applied for leave to amend each petition by introducing a new ground of challenge, namely, that no opportunity to show cause was afforded to the petitioners before issuing the impugned notices and the impugned notices were, therefore, null and void. Now the petitioners in these petitions were, served with notices of summary eviction under sec. 54 read with Rule 27 in December 1965. On being served with such notices, the petitioners, barring petitioners Nos. 4, 9, 15 and 19 in Special Civil Application No. 604 of 1971, filed suits in the City Civil Court at Ahmedabad in October 1966 challenging the validity of those notices. They are the self-same notices which are now impugned in the present petitions. There were several grounds on which the validity of the impugned notices was challenged in these suits but they did not include Grounds (A) and (B) nor did they include the ground that the impugned notices were issued in violation of the principles of natural justice and were, therefore, invalid. The grounds of challenge which were urged in these suits were negatived and the suits were dismissed by the City Civil Court by a common judgment dated 28th October 1967. The petitioners preferred appeals in this Court against the decision of the City Civil Court and at the hearing of the appeals before Mr. Justice M. U. Shah, an application was made on behalf of the petitioners in each appeal for leave to amend the plaint by introducing Ground (A). But this application was rejected by the learned Judge as it was made at the appellate stage and the appeals were ultimately dismissed by a common judgment dated 12th August 1970. It was, thereafter, that the petitioners having failed in the first round of litigation started a fresh round by filing the present petitions challenging the validity of the impugned notices on Grounds (A) and (B). Even in this second round of litigation the petitioners did not originally include the challenge on the ground that the impugned notices were issued in breach of the principles of natural justice and it was only when the petitions reached hearing that an application was made for leave to amend each petition by introducing this new ground. We did not think it fit to allow the application for amendment and rejected it. There were several reasons which prompted us to refuse this amendment. In the first place the impugned notices were issued in December 1965 while the amendment was being sought in December 1971, more than six years after

the date of issue of the impugned notices. Secondly, the new ground of challenge sought to be introduced by the amendment could have been taken by the petitioners in the suits filed by them in the City Civil Court in October 1966, but the petitioners failed to do so. The petitioners applied for amendment of the plaint in each suit at the stage of appeal before the High Court but even in the amendment application, this new ground of challenge was not included. It did not form part of the grounds of challenge even when the petitions were filed and it was only at the hearing of the petitions that it was sought to be added by way of amendment. There is no explanation given by the petitioners as to why they could not take up this new ground of challenge earlier when they had as many as three opportunities to do so. It must be remembered that the present petitions seek to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution and it is an elementary principle which governs the exercise of discretion in such petitions that the Court would not aid the petitioners who are guilty of negligence or inaction. We do not see any reason why we should permit the petitioners to amend the petitions at this stage after a period of about six years has elapsed since the date of issue of the impugned notices particularly when the petitioners had ample opportunity to do so during that period. Moreover, the new ground of challenge sought to be introduced by way of amendment raises a question of fact which would call for an affidavit-in-reply from the respondents and that is an additional reason why we should be most disinclined to entertain the application for amendment made on behalf of the petitioners in each petition. We must, therefore, proceed 'to consider the petitions as they stand and that means that only two grounds, namely, grounds (A) and (B) require to be examined.

[4] We may also at this stage refer to a preliminary contention urged on behalf of the Municipal Corporation against the maintainability of the petitions. The Municipal Corporation contended that since suits were filed by the petitioners in all the petitions barring only petitioners Nos. 4, 9, 15 and 19 in Special Civil Application No. 604 of 1971 challenging the validity of the impugned notices on various grounds, the decision of Mr. Justice M. U. Shah confirming the judgment of the City Civil Court dismissing the suits would operate as a bar against the petitioners precluding them from re-agitating the question of validity of the impugned notices once again in the petitions on principles analogous to res judicata. It is no doubt true, said the Municipal Corporation, that

Grounds (A) and (B) were agitated in the suits and in fact application for leave to amend the plaint in each suit by introducing Ground (A) was rejected by Mr. Justice M. U. Shah but that made no difference to the application of the principles analogous to res judicata because Grounds (A) and (B) might and ought to have been raised by the petitioners in the suits and if fresh suits by the petitioners challenging the validity of the impugned notice on Grounds (A) and (B) would be barred by constructive res judicata, the petitions must also be equally held to be barred on the same principles. The Municipal Corporation also urged that in any event even if principles analogous to res judicata did not attract the applicability of the rule of constructive res judicata to the petitions, we should in any event refuse to entertain the petitions in the exercise of our discretion since to entertain the petitions would be to permit the petitioners to do that which they could not do by filing fresh suits instead of these petitions. This contention of the Municipal Corporation is a formidable contention andprima facie it does appear that it has great force but we do not propose to decide it since we are of the view that even if we do not shut out the petitioners from raising Grounds (A) and (B) in these petitions, the petitioners must yet fail because there is no substance in either of these two grounds.

[5] RE: GROUND (A) : In order to determine the validity of this ground it is necessary first to arrive at a proper interpretation of sec. 54 but we cannot construe sec. 54 in isolation. It must read along with the other provisions of the new Act and we must examine the scheme of which it forms a part. The new Act, as its preamble shows, is enacted in order to ensure that town planning schemes are made in proper order and their execution is made effective. Broadly speaking, the making of town planning schemes is dealt with in Secs. 21 to 53 while the execution of the town planning schemes is provided for in Secs. 54, 55 and 71 to 78. The process of making a town planning scheme commences with the declaration of intention to make a town planning scheme by the local authority. The local authority then makes, in consultation with the Consulting Surveyor, a draft scheme for the area in respect of which the declaration has been made and publishes it in the prescribed manner. The draft scheme contains various particulars and amongst other things it shows how it is proposed to alter the boundaries of original plots so as to constitute new plots and sets out the size and shape of every reconstituted plot, so far as may be, to render it suitable for building purposes and where the plot has already been built upon, to ensure that the building as far as possible complies with the provisions of the scheme as regards open spaces. The draft scheme may also make provision inter alia for allotment or reservation of lands for roads, open spaces, gardens, recreation grounds, schools, markets, green belts and

dairies, transport facilities and public purposes of all kinds. There would also be other particulars in the draft scheme; for example, it would contain a provision for lay out of lands, filling up or reclamation of low lying, swamp or unhealthy areas; lay out of new streets or roads; construction, diversion, extension, alteration, improvement and stopping up of streets, roads and communications; construction, alteration and removal of buildings, bridges and other structures; drainge, lighting, water supply, preservation of objects of historical or national interest or natural beauty and of buildings actually used for religious purposes; imposition of restrictions and conditions relating to construction and such other matters not inconsistent with the object of the new Act, as may be prescribed. The persons affected by the draft scheme may file their objections to the proposed scheme and after considering the objections and modifying the scheme in the light of the objections, the local authority would submit the same to the State Government for its sanction. The State Government may sanction the draft scheme or refuse to give its sanction. Where the draft scheme is sanctioned, the State Government would appoint a Town Planning Officer to decide various matters in connection with the scheme which are enumerated in sec. 32 sub-sec. (1). There is an appeal provided against the decision of the Town Planning Officer in respect of certain specified matters and the appeal lies to the Board of Appeal. The Town Planning Officer has then to finalise the scheme in accordance with his decision except to the extent to which his decision may have been superseded by the decision of the Board of Appeal. The final scheme as drawn up by the Town Planning Officer is then sent to the State Government for sanction and the State Government may sanction the final scheme or refuse to sanction it. When the State Government sanctions the final scheme, it comes into force on such date as may be fixed by the State Government in the notification sanctioning the final scheme. The final scheme becomes effective from the date fixed in the notification and it has then effect '-as if it were enacted" in the new Act: it acquires legislative force as if it were written out in the new Act. Now, in the final scheme, as pointed out above, all lands within the area of the scheme are reconstituted into new plots and the reconstituted plots are either required by the local authority for roads, open spaces, gardens, recreation grounds, schools, markets, green-belts and dairies' transport facilities or other public purposes and are, therefore, allotted or reserved for such public purposes or are allotted to different plot holders who may include original owners. The question would naturally arise what is the effect of the final scheme on such reconstituted plots ? In whom would the rights in respect of such reconstituted plots vest ? The answer is provided by sec. 53 which is in the following terms :

"53. On the day on which the final scheme conies into force,...

(a) all lands requited by the local authority shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encumbrances;

(b) all rights in the original plots which have been reconstituted shall determine and the re-constituted plots shall become subject to the rights settled by the Town Planning Officer."

But how is this provision to be implemented ? When lands required by the local authority vest absolutely in the local authority free from all encumbrances under sec. 53 clause (a), all persons in occupation of such lands would cease to be entitled to occupy the same. Such persons would have to be evicted from the lands and possession of the lands would have to be handed over to the local authority. So also rights in the original plots would determine and the re-constituted plots would become subject to the rights settled by the Town Planning Officer and those who are in occupation of the reconstituted plots would cease to be entitled to occupy them unless of course they are granted rights in respect of the reconstituted plots by the Town Planning Officer under the final scheme. It would consequently be necessary to evict such -persons and to hand over possession of the reconstituted plots to the plot holders to whom they are allotted. The Legislature has provided a special machinery for this purpose in sec. 54. That section reads :-

"54. On and after the day on which the final scheme comes into force any person continuing to occupy any land which he is not entitled to occupy under the final scheme may, in accordance with the prescribed procedure, be summarily evicted by the local authority."

The local authority is conferred power under this section to summarily evict such occupants who are not entitled to continue to occupy the land in their occupation under the final scheme. This remedy has been provided by the Legislature in order to enforce the rights and liabilities created under the final

scheme. It is by virtue of the final scheme read with sec. 53 clause (a) that land required by the local authority under the final scheme vests absolutely in the local authority free from all encumbrances. The right to own the land and to obtain possession of it is created in the local authority by the final scheme read with sec. 53 clause (a) with a corresponding liability in the occupant of the land to hand over possession of it to the local authority. Similarly the right to own the reconstituted plot and to obtain possession of it with the corresponding liability in the occupant of the reconstituted plot to hand over possession of it to the person to whom it is allotted is also created by the final scheme read with sec. 53 clause (b), Now the final scheme is by a legal fiction given effect as if it were enacted in the new Act and, therefore, it is the new Act the final scheme being a part of the new Act-which creates the aforementioned rights and liabilities and provides a remedy for enforcing them by enacting that any person continuing to occupy any land, which he is not entitled to occupy under the final scheme, may be summarily evicted by the local authority.

[6] The question immediately arises for consideration whether this remedy of summary eviction provided by sec. 54 in cases falling within it is an exclusive remedy or an additional remedy. Does it negative the ordinary remedy of a suit or is it a supplementary remedy given in addition to the ordinary remedy of a suit ? The rule governing decision of questions of this kind is now well-settled and it is stated with great clarity by Willes J., in Wolverhampton New Water Works Co. v. Hawkesford, (1859) 6 C.B. (N.S.) 336 at page 356 in a passage which has now become a locus classicus :

"There are three classes of cases in which a liability may be established founded upon statute. One is, where there was liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely but provides no particular form as remedy; there, the party can only proceed by section at common law. But there is a third class, viz., where a liability not existing at common law is created by the statute which at the same time gives a special

and particular remedy for enforcing it.....The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Nevile v. London Express Newspapers Ltd., (1919) A.C. 368 and has been re-affirmed by the Privy Council in Attorney General v. Gordon Grant & Co., (1935) A.C. 532 and Secretary of State v. Mask & Co., 44 Cal. W.N. 709 and it has also been adopted and approved by the Supreme Court in N. P. Ponnuswami v. The Returning Officer, Namakkal, A.I.R. 1952 S.C. 64. Let us apply this rule.

[7] Now so far as the land required by the local authority under the final scheme is concerned, the right to own it and to obtain possession of it with the corresponding liability of the occupant of such land to eviction did not exist under the general law prior to the making of the final scheme and it was a right or liability created for the first time by the final scheme which is to be read as part of the new Act. So also the right to own the re-constituted plot and to obtain possession of it with the corresponding liability of the occupant of such re-constituted plot to eviction did not exist under the general law prior to the making of the town planning scheme but it was a right or liability created for the first time by the final scheme which was, as it were, incorporated in the new Act. The new Act while creating these new rights and liabilities gave a special and particular remedy for enforcing them under sec. 54 and the remedy of summary eviction provided in sec. 54, therefore, clearly falls within the third class of cases given by Willes J., and it must be held to be an exclusive remedy and the liability to eviction under sec. 53 clause (a) or clause (b) cannot be enforced by the ordinary remedy of a suit.

[8] Now if the remedy of summary eviction provided by sec. 54 is an exclusive remedy, the entire ground on which the challenge to the validity of sec. 54 is based must disappear. There are, on this view, no two different and alternative remedies available for eviction of an occupant of land so that the party entitled to possession of the land may be able at its own sweetwill to choose one remedy or the other and thereby discriminate between the occupants of land. Where a person continues to occupy any land which he is not entitled to occupy under the final scheme, there is only one remedy for eviction which can be availed of against him and that is the remedy of summary

eviction provided in sec. 54. Sec. 54 cannot, therefore, be assailed as violative of the equal protection clause contained in Article 14 of the Constitution.

[9] RE: GROUND (B). That takes us to the second ground of challenge, namely, that even if sec. 54 is valid, Rule 27 is ultra vires sec. 54 because it lays down a procedure which does not conform to the principles of natural justice. Now the first question which must arise for consideration under this ground of challenge is whether sec. 54 requires that before any notice of summary eviction can be issued under it, the local authority must observe the principles of natural justice and afford an opportunity to the occupant of land to show cause why he should not be summarily evicted. To determine this question we must in the first place try to ascertain what is the true nature of the power conferred on the local authority under sec. 54. Is it a quasi-judicial power or an administrative power ? If the power is a quasi-judicial power there can be no doubt that the local authority would be bound to observe the principles of natural justice in exercising the power, though it may be pointed out that an alternative contention was also raised on behalf of the petitioner that even if the power is an administrative power, the local authority must act in conformity with the principles of natural justice in view of the recent decision of the Supreme Court in A. K. Kraipak v. Union of India, A.I.R. 1970 S.C. 150. Now the classic definition of what is a quasi-judicial power is to be found in the famous words of Atkin, L. J., in Rex v. Electricity Commissioner, Ex-parte London Electricity Joint Committee Co., (1920) Ltd., 1924-1 K. B. 171 where the learned Lord Justice said, describing the extent of the certiorari jurisdiction of the Court of Queens Bench :

> "Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

> Lord Hewart, C. J., put a gloss on this definition in Rex v. Legislative Committee of the Church Assembly, Ex-Parte Haynes Smith, (1928) 1 K.B. 411 by interpreting it to mean that "In order that a body may satisfy the required test, it is not enough that it should have legal authority to determine questions affecting the rights of subjects.....there must be super added to that characteristic the further characteristic that the body has the duty to act judicially ! Or in other words, there must always be something more to impose on it a duty to act judicially before it can be found to observe the

principles of natural justice. This gloss of Lord Hewart, C. J., continued to obsess the courts until the case of Ridge v. Baldwin, 1964 A.C. 40, went to the House of Lords when Lord Reid boldly cast it aside and extirpated the confusion caused by it. Lord Reid pointed out that where a statutory authority is given power to determine questions affecting the rights of subjects, the duty to act judicially need not be expressly superimposed on the statutory authority : it may be implied from the nature of the power conferred or the nature of the decision to be reached by the statutory authority. This view taken by Lord Reid found quick approval from our Supreme Court in the well-known case of Associated Cement Companies v. P. N. Sharma, A.I.R. 1965 S.C. 1595 and it was reiterated and re-affirmed in Shri Bhagwan v. Ram Chand, A.I.R. 1965 S.C. 1767. The Supreme Court also pointed out in A. K. Kraipak v. Union of India (supra) that in order to determine whether a power is an administrative power or a quasi-judicial power, one must look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. It would, therefore, seem that where a statutory authority is given power to make a decision or perform an act which affects the rights of individuals or imposes an obligation on them, the duty to act judicially need not be expressly superimposed on the statutory authority : it may be inferred from the nature of the power conferred, its impact on the rights of citizens and such other relevant circumstances.

[10] If this test is applied, it would be clear that the power of summary eviction conferred on the local authority under sec. 54 is a quasi-judicial power. The local authority is required to determine in the exercise of this power whether the occupant of land sought to be summarily evicted is or is not entitled to occupy it under the final scheme. The local authority would have to interpret the final scheme and come to the conclusion whether on a proper interpretation of its provisions, the occupant is not entitled to occupy the land. The final scheme is by a legal fiction made a part of the new Act as if it were enacted in it and what the local authority would, therefore, have to do while exercising the power of summary eviction would be to interpret a legislative provision for the purpose of determining whether the occupant is entitled to occupy the land or not. This process is in no way different from that in which a local authority maybe required to interpret a statutory provision. Moreover, the effect of the decision reached by the local

authority would be to determine the rights of the occupant of the land and the consequence of an adverse determination would be that the occupant would be summarily evicted from the land. There can, therefore, be no doubt that, having regard to the nature of the power conferred, its impact on the rights of occupants of land and the consequences ensuing from the exercise of the power, the only conclusion which can be reached is that the power is a quasi-judicial power. Now if the power is a quasi-judicial power, it must be exercised in conformity with the principles of natural justice and if there is any violation of the principles of natural justice, the exercise of the power would have to be struck down as invalid.

[11] The question then arises whether Rule 27 dispenses with the observance of the principles of natural justice and is on that account ultra vires as contravening the requirement that the rules of natural justice must be followed in exercising the power conferred under sec. 54, Rule 27 prescribes the procedure of summary eviction under sec. 54 in these terms :-"27. For eviction under sec. 54, the local authority shall follow the following procedure, namely :

(a) The local authority shall in the first instance serve a notice upon the person to be evicted requiring him, within such reasonable time as may be specified in the notice, to vacate the land.

(b) If the person to be evicted fails to comply with the requirement of the notice, the local authority shall depute any officer or servant to remove him.

(c) If the person to be evicted resists or obstructs the officer or servant, deputed under clause (b) or if he re-occupies the land after eviction, the local authority shall prosecute him under sec. 188 of the Indian Penal Code."

The contention of the petitioners was that the procedure prescribed by Rule 27 does not require the local authority to observe the principles of natural justice before issuing a notice of summary eviction and Rule 27 is, therefore, ultra vires sec. 54. We do not think this contention is well-founded. Rule 27 no doubt provides that the local authority shall in the first instance serve a notice upon the person to be evicted requiring him to vacate the land within such reasonable time as may be specified in the notice and if the person to be evicted fails to comply with the requirement of the notice, the local

authority is empowered to depute any officer or servant to remove him. But this rule does not say anywhere that the principles of natural justice need not be followed by the local authority before summarily evicting the occupant of the land. Since sec. 54 impliedly requires that the local authority shall observe the principles of natural justice in exercising the power of summary eviction, this requirement must also be read in Rule 27 since Rule 27 merely lays down the procedure for summary eviction under sec. 54. There is nothing in Rule 27 which would create any inconsistency or contradiction if we read the requirement of natural justice in the procedure prescribed by that rule. Rule 27 can certainly be read in a manner which would accord with the requirement of sec. 54. If Rule 27 is so read, it would mean that the local authority cannot depute any officer or servant to remove the occupant of land without affording an opportunity to him to show cause why he should not be summarily evicted. The basic minimum requirement of natural justice is that the occupant of land who is sought to be summarily evicted must be told what are the grounds on which he is sought to be summarily evicted and he must be afforded an opportunity of showing cause against the action proposed to be taken against him. The local authority may, therefore, adopt either of two procedures : the local authority may, before issuing a notice of summary eviction, under Rule 27 clause (a), give a notice to the occupant of land setting out the grounds why, according to the local authority, he is not entitled to occupy the land and calling upon him to show cause why he should not be summarily evicted. The local authority may in such a case determine, after hearing the occupant of the land, whether he is entitled to occupy the land or not and if it comes to the conclusion that he is not entitled to occupy the land, it may then issue a notice of summary eviction under Rule 27 clause (a). The local authority may also, if it so thinks fit, afford an opportunity to the occupant of the land to show cause against the proposed action by stating in the notice of summary eviction issued under Rule 27 clause (a) that he should vacate the land unless, within such reasonable time as may be specified in the notice, he shows cause why he should not be summarily evicted. The occupant of the land would in such case have an opportunity of making his defence or explanation showing that he is entitled to occupy the land under the final scheme and he should not, therefore, be summarily evicted. If the local authority is satisfied with the defence or explanation of the occupant of the land, it may discharge the notice. But if it is not so satisfied, it may confirm the notice and after fixing a reasonable

time for vacating in the order of adjudication, proceed to summarily evict the occupant of the land if he fails to vacate within the time so fixed. Either of these two procedures would satisfy the basic minimum requirements of natural justice. It is, therefore, clear that there is nothing in Rule 27 which excludes the principles of natural justice and Rule 27 cannot be said to be ultra vires sec. 54.

[12] These were the only two grounds urged in support of the petitions and since there is no substance in them, the petitions fail and the rule issued in each petition will stand discharged with costs. Mr. J. M. Bhatt on behalf of the petitioners, in Special Civil Application No. 1653 of 1971 and Mr. I. M. Nanavati on behalf of the petitioners in the other petitions apply for leave to appeal to the Supreme Court under Articles 132(1) and 133(1)(c). This case does not involve any question relating to the interpretation of the provisions of the Constitution since the question raised here is not one of interpretation but of application of Article 14. The case is also not a fit one for appeal to the Supreme Court since the only question which we have decided is, whether the remedy of summary eviction provided under sec. 54 is an exclusive remedy or an additional remedy. We, therefore, reject the application for leave to appeal to the Supreme Court under Articles 132(1) and 133(1)(c). The petitioners, however, desire to approach the Supreme Court for special leave to appeal and, therefore, we make an interim order in each petition restraining the Municipal Corporation from summarily evicting the petitioners for a period of three weeks from the date when the certified copy of the judgment is ready for delivery. The petitioners undertake that they will apply immediately for an urgent certified copy of the judgment.

Applications dismissed.

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