1974 KHC 469

Supreme Court of India

*A. N. Ray, C. J. I.; D. G. Palekar; *H. R. Khanna; K. K. Mathew; *A. Alagiriswami; *P. N. Bhagwati; V. R. Krishna Iyer, JJ.*

Maganlal Chhagganlal (P) Ltd. and Others v. Municipal Corpn. of Greater Bombay and Others

C. A. No. 680 of 1968, 2076, 2077, 2078, 2079, 2080, 2093-2103, 2527 of 1969, 249 of 1970, W. P. No. 333-348 of 1970, 11 April, 1974

Municipal Corporation Act, 1888 (Bombay), Chap.VA, S.105A, S.105B - Government Premises (Eviction) Act, 1956 (Bombay), S.4 -- Provisions are not violative of Art.14 -- Municipal Corporation Act, 1888 (Bombay), S.105A, S.105B, S.105C, S.105D, S.105E, S.105F, S.105G, S.105H. (Para 18)

JUDGMENT

A. Alagiriswami, J.:- (Concurring with A. N. Ray, C.J., D. G. Palekar; K. K. Mathew JJ. and for himself)

1. These appeals and writ petitions relate to the legality of certain proceedings taken under Chapter VA of the Bombay Municipal Corporation Act and the Bombay Government Premises (Eviction) Act 1955. Chapter VA was introduced in the Bombay Municipal Act, 1888 by Maharashtra Act 14 of 1961. That chapter contains S.105A and 105B. According to the provisions of those sections the Commissioner in relation to premises belonging to or vesting in, or taken on lease by the corporation and the General Manager (also defined as the Commissioner) of the Bombay Electric Supply and Transport Undertaking in relation to premises of the corporation which vest in it for the purposes of that undertaking were granted certain powers of eviction in respect of unauthorised occupation of any corporation is defined as occupation by any person of corporation premises without authority for such occupation and includes the continuance in occupation by any person of the premises after the authority under which he was allowed to occupy the premises has expired, or has been duly determined Under S.105B the Commissioner by notice served on the person in unauthorised occupation, could ask him to vacate if he had not paid for a period of more than two months the rent or taxes lawfully due from him in respect of such premises; or sublet, contrary to the terms of conditions of his occupation, the whole or any part of such premises; or committed, or is committing, such acts of waste as are likely to diminish materially the value or impair substantially the utility, of the premises; or otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises; or if any person is in unauthorised occupation of any corporation premises; or any corporation premises in the occupation of any person are required by the corporation in the public interest. Before making such an order the Commissioner should issue a notice calling upon the person concerned to show cause why an order of eviction should not be made and specify the grounds on which the order of eviction is proposed to be made. The person concerned can file a written statement and produce documents and is entitled to appear before the Commissioner by advocate, attorney or pleader. Persons failing to comply with the order of eviction as well as any other person who obstructs eviction can be evicted by force. Under S.150C there is power to recover rent or damages as arrears of property taxes. A person ordered to vacate on the grounds of being in arrears of rent or acting in contravention of the terms under which he is authorised to occupy the premises could be allowed to continue if he satisfies the Commissioner. The Commissioner has, for the purpose

of holding any inquiry, the same powers as are vested in civil court under the Code of Civil Procedure, when trying a suit, in respect of (a) summoning and enforcing the presence of any person and examining him on oath, (b) requiring the discovery and production of documents and (c) any other matter which may be prescribed by regulations. An appeal from every order of the Commissioner lies to the principal Judge of the City Civil Court or such other judicial officer as the principal Judge may designate. The appeal is to be disposed of as expeditiously as possible. Subject to the results of the appeal every order of the Commissioner or the appellate officer is final. The power to make regulations includes the power to make regulations in respect of holding of inquiries and the procedure to be followed in such appeals.

2. The provisions of the Bombay Government Premises (Eviction) Act are more or less similar except that they relate to Government premises and the power to order eviction is given to the competent authority not lower in rank than that of a Deputy Collector or an Executive Engineer appointed by the State Government. The only other matter in respect of which the provisions of this Act differ from the provisions of the Bombay Municipal Corporation Act, just now referred to, is that S.8A of this Act provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Government premises on any of the grounds specified in S.4 for the recovery of the arrears of rent or the damages payable for use or occupation of such premises. This amendment was made as a consequence of the decision of this Court in Northern India Caterers (P) Ltd. v. State of Punjab, (1967 (3) SCR 399 : AIR 1967 SC 1581). But the matters arising under this Act and now before this Court were in respect of proceedings taken before S.8A was introduced in the Act of Maharashtra Act 12 of 1969 and this Section has, therefore, no relevance for the purposes of these cases.

3. It was not and could not be argued that the Acts in so far as they provide for special procedures applying to the State and the Municipal Corporation were invalid. The decisions in Baburao Shantaram v. Bombay Housing Board, 1954 SCR 572 : AIR 1954 SC 153) upholding the exemption of premises belonging to the Government or a local authority from the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947; Collector of Malabar v. Erimmal Ebrahim Hajee, (1957 SCR 970 : AIR 1957 SC 688) upholding the provision for special modes of recovery for income tax; Asgarali Nazarali v. State of Bombay, (1957 SCR 678 : AIR 1957 SC 503) upholding the validity of Criminal Law Amendment Act, 1952, providing for the trial of all offences punishable under S.161, 165 or 165A of the Indian Penal Code, or sub-section (2) of S.5 of the Prevention of Corruption Act, 1947 exclusively by Special Judge; Manna Lal v. Collector of Jhalawar, (1961 (2) SCR 962 : AIR 1961 SC 828) upholding the provisions of the Rajasthan Public Demands Recovery Act, 1952 for recovering moneys due to a State Bank; Nav Rattanmal v. State of Rajasthan, AIR 1961 SC 1704 upholding a special period of limitation for the Government; Lachhman Das v. State of Punjab, (1963 (2) SCR 353 : AIR 1963 SC 222) upholding the provisions of an Act setting up separate authorities for determination of disputes and prescribing a special procedure to be followed by them for the recovery of the dues of a State Bank; and Builders Supply Corpn. v. Union of India, (1965 (2) SCR 289 : AIR 1965 SC 1061) upholding the doctrine of priority of Crown Debts are all instances where special provisions applicable to the State were upheld. It cannot now be contended that special provision applicable to the State were upheld. It cannot now be contended that special provision of law applying to Government and public bodies is not based upon reasonable classification or that it offends Art.14.

4. The submission was a much more limited one and that is that as there are two procedures available to the Corporation and the State Government, one by way of a suit under the ordinary

law and the other under either of the two Acts, which is harsher and more onerous than the procedure under the ordinary law, the latter is hit by Art.14 of the Constitution in the absence of any guidelines as to which procedure may be adopted. For this reliance was wholly placed on the decision in the Northern India Caterers' case (1967 (3) SCR 399 : AIR 1967 SC 1581). In that case the question arose under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act of 1959. The majority consisting of Subba Rao, C.J., and Shelat and Vaidialingam, JJ. accepted that there is an intelligible differentia between the two classes of occupiers, namely, occupiers of public property and premises and occupiers of private property and that it is in the interest of public that speedy recovery of rents and speedy eviction of unauthorised occupiers is made possible through the instrumentality of a speedier procedure. However, they referred to the decisions of this Court in State of West Bengal v. Anwar Ali Sarkar, (1952 SCR 284 : AIR 1952 SC 75) : Suraj Mall Mohta v. A. V. Visvanatha Sastri, (1955 (1) SCR 448 : AIR 1954 SC 545); 'Shree Meenakshi Mills Ltd., Madurai v. A. V. Visvanatha Sastri, (1955 (1) SCR 787 : AIR 1955 SC 13) and Banarsi Das v. Cane Commr. U.P., (1963 Supp (2) SCR 760 : AIR 1963 SC 1417) and concluded that the principle which emerged from these decisions was that discrimination would result if there are two available procedures, one more drastic or prejudicial to the party concerned that the other which can be applied at the arbitrary will of the authority. They thought that as S.5 conferred an additional remedy over and above the remedy by way of suit leaving it to the unguided discretion of the Collector to resort to one or the other by picking and choosing some only of those in occupation of public properties and premises for the application of the more drastic procedure under S.5, that section laid itself open to the charge of discrimination and as being violative of Art.14, and in that view held that Section void. The minority consisting of Hidayatullah and Bachawat, JJ. held that the impugned Act made no unjust discrimination among the occupants of Government properties inter se, that is promoted public welfare and was a beneficial measure of legislation, that it was not unfair or oppressive and that the unauthorised occupant was not denied equal protection of the laws merely because the Government had the option of proceeding against him either by way of a suit or under the Act. They further held that "*an unauthorised occupant has no constitutional right to dictate that the Government should have no choice of proceedings, and that the argument based upon the option of the Government to file a suit is unreal because in practice the Government is not likely to institute a suit in a case when it can seek relief under the Act*".

5. The decision in Northern India Caterers' case (1967 (3) SCR 399 : AIR 1967 SC 1581) led to the Public Premises (Eviction of Unauthorised Occupation) act, 1958 being replaced by Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which was given retrospective operation from the date of the 1958 Act and barred the jurisdiction of the Court to entertain a suit or proceeding in respect of eviction of any person in unauthorised occupation of public premises. It also led to the amendment of one of the Acts now under consideration, the Bombay Government Premises (Eviction) Act introducing therein S.8A, already referred to, barring resort to the Civil Court. In Hari Singh v. Military Estate Officer, (1973 (1) SCR 515 : AIR 1972 SC 2205) this Court referred to the decision in Northern India Caterers' case and upheld the validity of the 1971 Act on the ground that there was only one procedure for ejectment of persons in unauthorised occupation of public premises under the 1971 Act and that there was no vice of discrimination under it.

6. The argument based on the availability of two procedures, one more onerous and harsher than the other and, therefore, discriminatory has led some High Courts to resort to various reasoning in order to get round the effect of the decision in the Northern India Caterers' case (1967 (3) SCR 399 : AIR 1967 SC 1581). This has happened in the case of the Madras High

Court in Abdul Rashid v. Asstt. Engineer (Highways), AIR 1970 Mad. 387, the Andhra Pradesh High Court in M. Begum v. State of A.P., AIR 1971 Andh Pra 382 and Mehrunnissa Begum v. State of Andhra Pradesh, 1970 (1) Andh LT 88 and the Patna High Court in Bhartiya Hotel v. Union of India, AIR 1968 Pat 476. The decision of the Patna High Court is one of the cases which was considered along with Hari Singh's case, (1973 (1) SCR 515 : AIR 1972 SC 2205). It is rather interesting that this attack based on Art.14 of the Constitution should have led to the apparently more onerous and harsher procedure becoming the rule, the resort to the ordinary Civil Court being taken away altogether. it is difficult to imagine who benefits by resort to the ordinary Civil Courts being barred. One finds it difficult to reconcile oneself to the position that the mere possibility of resort to the Civil Court should make invalid a procedure which would otherwise be valid. It can very well be argued that as long as a procedure does not by itself violate either Art.19 or Art.14 and is thus constitutionally valid, the fact that that procedure is more onerous and harsher than the procedure in the ordinary Civil Courts, should not make that procedure void merely because the authority competent to take action can resort to that procedure in the case of some and ordinary Civil Court procedure in the case of others. That a constitutionally valid provision of law should be held to be void because there is a possibility of its being resorted to in the case of some and the ordinary civil court procedure in the case of others somehow makes one feel uneasy and that has been responsible for the attempts to get round the reasoning which is the basis in the decision in Northern India Caterers case.

7. Let us now, therefore, see whether the decisions of this Court necessarily lead to the conclusion reached by the majority in Northern India Caterers' case (1967 (3) SCR 399 : AIR 1967 SC 1581). In doing so we shall take the various decisions of this court in their chronological order. The first of these is Anwar Ali Sarkar's case, (1952 SCR 284 : AIR 1952 SC 75) (supra). In that case under S.5(1) of the West Bengal Special Courts Act, 1950, which read as follows:

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

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

"*On the other hand, it is easy to visualise a situation when certain offences, e.g., theft in a dwelling house, by reason of the frequency of their perpetration or other attending circumstances, may legitimately call for a speedier trial and swift retribution by way of punishment to check the commission of such offences. Are we not familiar with gruesome crimes of murder, arson, loot and rape committed on a large scale during communal riots in particular localities and are they not really different from a case of a stray murder, arson, loot or rape in another district which may not be affected by any communal upheaval? Do not the*

existence of the communal riots and the concomitant crimes committed on a large scale call for prompt and speedier trial in the very interest and safety of the community? May not political murders or crimes against the State or a class of the community, e.g. women, assume such proportions as would be sufficient to constitute them into a special class of offences requiring special treatment? Do not these special circumstances add a peculiar quality to these offences or classes of offences or classes of cases which distinguish them from stray cases of similar crimes and is it not reasonable and even necessary to arm the State with power to classify them into a separate group and deal with them promptly? I have no doubt in my mind that the surrounding circumstances and the special features I have mentioned above will furnish a very cogent and reasonable basis of classification for it is obvious that they do clearly distinguish these offences from similar or even same species of offences committed elsewhere and under ordinary circumstances. This differentia quite clearly has a reasonable relation to the object sought to be achieved by the Act, namely, the speedier trial of certain offences. Such a classification will not be repugnant to the equal protection clause of our Constitution for there will be no discrimination, for whoever may commit the specified offence in the specified area in the specified circumstances will be treated alike and sent up before a Special Court for trial under the special procedure. Persons thus sent up for trial by a Special Court cannot point their fingers to the other persons who may be charged before an ordinary Court with similar or even same species of offences in a different place and in different circumstances and complain of unequal treatment, for those other persons are of a different category and are not their equals".

He, therefore, held that:

"*S.5(1), in so far as it empowers the State Government to direct "offences" or "classes of offences" or "classes of cases" to be tried by a Special Court, also, by necessary implication and intendment, empowers the State Government to classify the "offences" or "classes of offences" or "classes of cases", that is to say, to make a proper classification in the sense I have explained. In my judgment, this part of the section, properly construed and understood, does not confer an uncontrolled and unguided power on the State Government. On the contrary, this power is controlled by the necessity for making a proper classification which is guided by the preamble in the sense that the classification must have a rational relation to the object of the Act as recited in the preamble. It is, therefore, not an arbitrary power*".

8. It is interesting to compare this decision with the decision of this Court in the next case, Kathi Raning Rawat v. State of Saurashtra, (1952 SCR 435 : AIR 1952 SC 123) which was heard in part along with Anwar Ali Sarkar's case (1952 SCR 284 : AIR 1952 SC 75) but was adjourned to enable the respondent State to file an affidavit explaining the circumstances which led to the enactment of the Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949. It was heard by the same Bench which decided Anwar Ali Sarkar's case, S.11 of the Ordinance there under consideration was exactly in the same terms as S.5(1) of the West Bengal Special Courts Act. The only difference between the two was that the Saurashtra Ordinance was purported to have been passed to provide "for public safety, maintenance of public order and preservation of peace and tranquillity in the State of Saurashtra". However, an affidavit was filed on behalf of the State giving facts and figures relating to an increasing number of incidents of looting, robbery, dacoity, nose cutting and murder by marauding gangs of dacoits in certain areas of the State and these details were held to support the claim that the security of the State and public peace were jeopardised and that it became impossible to deal with the offences that were committed in different places expeditiously. The affidavit also stated that the areas specified in the notification were the main zones of the activities of the

dacoits. The impugned Ordinance having thus been passed to combat the increasing tempo of certain types of regional crime, the two fold classification on the lines of type any territory adopted in the impugned Ordinance was held reasonable and valid and the degree of disparity of treatment involved as in no way in excess of what the situation demanded. It was held that "the reference to public safety, maintenance of public order and preservation of peace and tranquility in the preamble shows a definite objective and furnishes a tangible and rational basis of classification to the State Government for the purpose of applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and preservation of peace and tranquility". It would be noticed thus that Anwar Ali Sarkar's case was concerned with a piece of legislation which covered the whole field of criminal law without any basis for classification except speedier trial which was held not to be a good ground for classification, while in (1952 SCR 435 : AIR 1952 SC 123) the preamble as well as the notification issued under the Act specified certain types of offences in certain areas alone as being those which were to be tried by the Special Judge and were held to validate an exactly similar provision.

9. In Lachmandas Kewalram v. State of Bombay, 1952 SCR 710 : AIR 1952 SC 235) S.12 of the Bombay Public Safety Measures Act, 1947 empowered Government to refer cases for trial by a Special Judge and was, therefore, held void as it did not purport to proceed on any classification. This would belong to the same category as Anwar Ali Sarkar's case (1952 SCR 284 : AIR 1952 SC 75). The next case in chronological order is of Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri, (1955 (1) SCR 448 : AIR 1954 SC 545). In that case S.5(4) of the Taxation on Income (Investigation Commission) Act, 1947 was held as "dealing with the same class of persons who fall within the ambit of S.34 of the Indian Income Tax Act, and as both these sections dealt with all persons who have similar characteristics and similar properties, the common characteristics being that they are persons who have not truly disclosed their income and have evaded payment of taxation on income, and the procedure prescribed by the Taxation on Income (Investigation Commission) Act is substantially prejudicial and more drastic to the assessee than the procedure under the Indian Income Tax Act, and therefore, S.5(4) being a piece of discriminatory legislation offends against the provisions of Art.14 of the Constitution and is thus void". It would be noticed that as in Anwar Ali Sarkar's case in this case also the ordinary law under the Indian Income Tax Act and the extraordinary procedure under the Taxation on Income (Investigation Commission) Act covered the same class of people and there is no indication as to why certain cases should be sent to the Commission and certain cases be dealt with by the regular Income Tax Authorities. But here again it is interesting to note the observation:

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

It would, thus appear that if there had been a provision for appeal against the decision of the Investigation Commission the reference to that Commission would have been held valid. We are referring particularly to this aspect because in both the statutes now under consideration

there is a provision for appeal to the Civil Court which is safer and more liberal than the provision of appeal under the Income Tax Act to the Appellate Assistant Commissioner and the Appellate Tribunal. Mr. Sen appearing for the appellants, however, tried to argue that the reference to the appeal in this decision was only a reference to the appeal against the order of the Income Tax Officer to the Appellate Assistant Commissioner. We do not see how that makes any difference. As already pointed out the fact that under the statutes under consideration the appeal lies to the ordinary Civil Court is a point in their favour. The common feature between this case and Anwar Ali Sarkar's case is that the special procedure covers the whole field covered by the ordinary procedure and it was held that there was no rational basis of classification of cases which could be sent to the Investigation Commission. The decisions in (1955 (1) SCR 787 : AIR 1955 SC 13) and Muthiah v. Commr. of Income Tax Madras, (1955 (2) SCR 1247 : AIR 1956 SC 269) are on the same lines as in Suraj Mall Mohta's case and do not call for any discussion.

10. It is interesting to pass on next to A. Thangal Kunju Musaliar v. M. Venkitachalam, (1955 (2) SCR 1196 : AIR 1956 SC 246) a case referred by the Government of the United State of Travancore and Cochin under S.5(1) of the Travancore Taxation on Income (Investigation Commission) Act, 1124 modelled on the Indian Taxation on Income (Investigation Commissioner) Act, 1947, for investigation by the Travancore Income Tax Investigation Commission in 1949. In 1950 the Indian Act was extended to Travancore and Cochin and the Travancore Act was allowed to continue to be in force with certain modifications. It was held that S.5(1) of the Travancore Act XIV of 1124 read in juxtaposition with S.47 of the Travancore Income Tax Act, 1121 (XXIII of 1121) was not discriminatory because S.47(1) of the Travancore Act (XXIII of 1121) was directed only against those persons concerning whom definite information came into the possession of the Income Tax Officer and in consequence of which the Income Tax Officer discovered that the income of those persons had escaped or been under assessed or assessed at too low a rate or had been the subject to excessive relief, and the class of persons envisaged by S.47(1) was a definite class about which there was definite information leading to discovery within 8 years or 4 years as the case may be of definite item or items of income which had escaped assessment. On the other hand under S.5(1) of the Travancore Act XIV of 1124 the class of persons sought to be reached comprised only those persons about whom there was no definite information and no discovery of any definite item or items of income which escaped taxation but about whom the Government had only prima facie reason to believe that they had evaded payment of tax to a substantial amount. Further, it was definitely limited to the evasion of payment of taxation on income made during the war period, whereas S.47(1) of the Travancore Act XXIII of 1121 was not confined to escapement from assessment of income tax made during the war period." It was, therefore, held that there was no discrimination. It would be noticed how thin is the line of distinction between the two lines of classification. But that was held as justifying the different treatment between the two classes of cases. It is interesting to note that in Suraj Mall Mohta's case (1955 (1) SCR 448 : AIR 1954 SC 545) the provision of S.5(1) of the Taxation on Income (Investigation Commission) Act (Act XXX of 1947) referring to the class of "substantial evaders of Income Tax" who required to be specially treated under the drastic procedure provided in that Act was held not to provide a valid classification. But in this case the word "substantial" was, by reference to Stroud's Judicial Dictionary and the statement of law by Viscount Simon in Palser v. Grinling, 1948 AC 291, 317 taken along with an affidavit filed in the case, held to mean "class of persons who are intended to be subjected to this drastic procedure". It was also held that the possibility of such discrimination treatment of persons falling within the same group or category, however, cannot necessarily, invalidate this piece of legislation and that it was to be presumed, unless the contrary were shown, that the administration of a particular law would

be done "not with an evil eye and unequal hand" and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory". Reference was made to the judgment of Mukherjea, J. in the Saurashtra case (1952 SCR 435 : AIR 1952 SC 123) to the effect:

"*.....In such cases, the power given to the executive body would import a duty on it to classify the subject matter of legislation in accordance with the objective indicated in the statute. The discretion that is conferred on official agencies in such circumstances is not an unguided discretion, it has to be exercised in conformity with the policy to effectuate which the direction is given and it is in relation to that objective that the propriety of the classification would have to be tested. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can certainly be annulled offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied".*

11. In Kedar Nath Bajoria v. State of West Bengal, (1954 SCR 30 : AIR 1953 SC 404) the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 was under consideration. The Act provided for special procedure for the trial of certain offences. It was entitled an Act to provide for the more speedy trial and more effective punishment of certain offences. These offences were set out in the Schedule to the Act. The Act empowered the Provincial Government to constitute Special Courts of Criminal Jurisdiction for specified areas and to appoint Special Judges to preside over such courts. It was observed that:
".....The vice of discrimination, it is said, consists in the unguided and unrestricted power of singling out for different treatment one among a class of persons all of whom are similarly situated and circumstanced, be that class large or small. The argument overlooks the distinction between those cases where the legislature itself makes a complete classification of persons or things and applies to them the law which it enacts, and others where the legislature merely lays down the law to be applied to persons or things answering to a given description or exhibiting certain common characteristics, but being unable to make a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to person or things within the defined group, while laying down the standards or at least indicating in clear terms the underlying policy and purpose, in accordance with, and in fulfilment of, which the administrative authority is expected to select the persons or things to be brought under the operation of the law. A familiar example of this type of legislation is the Preventive Detention Act, 1950, which having indicated in what classes of cases and for what purposes preventive detention can be ordered vests in the executive authority a discretionary power to select particular persons to be brought under the law. Another instance in point is furnished by those provisions of the Criminal Procedure Code which provide immunity from prosecution without sanction of the Government for offences by public servants in relation to their official acts, the policy of the law being that public officials should not be unduly harassed by private prosecution unless in the opinion of the Government, there were reasonable grounds for prosecuting the public servant which accordingly should condition the grant of sanction. It is not, therefore, correct to say that S.4 of the Act Offends against Art.14 of the Constitution merely because the Government is not compellable to allot all cases of offences set out in the schedule to Special Judges but is vested with a discretion in the matter."

Later, reference was made to Anwar Ali Sarkar's case (1952 SCR 284 : AIR 1952 SC 75) and it was pointed out that the observations made therein were not applicable to the statute under

consideration in Bajoria's case (1954 SCR 30 : AIR 1953 SC 404) which was based on a classification which, in the context of the abnormal post war economic and social conditions was readily intelligible and obviously calculated to subserve the legislative purpose. Reference was also made to the statement by Mukherjea, J. in the Saurashtra case (1952 SCR 435 : AIR 1952 SC 123) that:

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

12. We may now refer to the decision in Kangshari Haldar v. State of West Bengal, (1960 (2) SCR 646 : AIR 1960 SC 457). There the appellants were prosecuted for having committed offences under S.120B read with S.302 and 436 of the Indian Penal Code before the Tribunal Constituted under the West Bengal Tribunals of Criminal Jurisdiction Act, 1952. A notification issued under the Act declared certain to be a disturbed area within a specified period, and the case against the appellants was in respect of their activities in that area and during that period. It was held that the "classification made by the impugned Act is rational and the differentia by which offenders are classified has a rational relation with the object of the Act to provide for the speedy trial of the offences specified in the Schedule to the Act". It also dealt with certain other offences not specified in the Schedule to the Act. In dealing with this case the Court observed:

"This question necessarily leads us to inquire whether the discriminatory provisions of the Act are based on any rational classification, and whether the differentiation of the offenders brought within the mischief of the Act has a rational nexus with the policy of the Act and the object which it intends to achieve. The preamble shows that the Legislature was dealing with the problem raised by disturbances which thrown a challenge to the security of the State and raised a grave issue about the maintenance of public peace and tranquillity and the safeguarding of industry and business. It, therefore, decided to meet the situation by providing for speedy trial of the scheduled offences. Thus the object of the Act and the principles underlying it are not in doubt. It is true that speedy trial of all criminal offences is desirable; but there would be no difficulty in appreciating the anxiety of the Legislature to provide for a special procedure for trying the scheduled offences so as to avoid all possible delay which may be involved if the normal procedure of the Code was adopted. If the disturbances facing the areas in the State had to be controlled and the mischief apprehended had to be checked and rooted out a very speedy trial of the offences committed was obviously indicated.

The classification of offenders who are reached by the Act is obviously reasonable. The offences specified in the four items in the schedule are clearly of such a character as led to the disturbance and it is these offences which were intended to be speedily punished in order to put an end to the threat to the security of the State and the maintenance of public peace and tranquillity. It would be idle to contend that if the offences of the type mentioned in the schedule were committed and the Legislature thought that they led to the disruption of public peace and tranquillity and caused jeopardy to the security of the State they could not be dealt with as a class of themselves. Other offences committed by individuals under the same categories of offences specified by the Code could be rationally excluded from the classification adopted by the Act because they did not have the tendency to create the problem which the Act intended to

meet. We are, therefore, satisfied that the classification made by the Act is rational and the differentiation on which the offenders included within the Act are treated as a class as distinguished from other offenders has a rational nexus or relation with the object of the Act and the policy underlying it. Therefore, it would be difficult to accede to the argument that the Act violates Art.14 of the Constitution".

The Court pointed out that the majority decision in Anwar Ali Sarkar's case (1952 SCR 284 : AIR 1952 SC 75) was based on two principal considerations that, having regard to the bald statement made in the preamble about the need of speedier trials, it was difficult to sustain the classification made by S.5(1), and that the discretion left to the executive was unfettered and for its exercise no guidance was given by the statute. It was pointed out that in the Saurashtra case (1952 SCR 435 : AIR 1952 SC 123) the majority took the view that the preamble to the Act gave a clear indication about the policy underlying the Act and the object which it intended to achieve, that the classification on which the impugned provisions were based was a rational classification, and that the differentia on which the classification was made had a rational nexus with the object and policy of the Act. They then referred to Lachmandas Kewalram Ahuja's case (1952 SCR 710 : AIR 1952 SC 235) and pointed out that it merely followed Anwar Ali Sarkar's case. Reference was then made to the decision in Kedar Nath Bajoria's case (1954 SCR 30 : AIR 1953 SC 404) and to Chief Justice Patanjali Sastri's statement that
"*the Saurashtra case would seem to lay down the principle that if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which is to be applied, but leaves the selective application of the law to be made by the executive authority in accordance with the standard indicated or the underlying policy and object disclosed, is not a sufficient ground for condemning it as arbitrary and, therefore, obnoxious to Art.14"*.

The result of the earlier decisions was summed up thus:

"*The result of these decisions appears to be this. In considering the validity of the impugned statute on the ground that it violates Art.14 it would first be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. In this process the preamble to the Act and its material provisions can and must be considered. Having thus ascertained the policy and the object of the Act the court should apply the dual test in examining its validity. Is the classification rational and based on intelligible differentia; and has the basis of differentiation any rational nexus with its avowed policy and object? If both these tests are satisfied the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not satisfied the statute must be struck down as violative of Art.14. Applying this test it seems to us that the impugned provisions contained in S.2(b) and the proviso to S.4(1) cannot be said to contravene Art.14. As we have indicated earlier, if in issuing the notification authorised by S.2(b) the State Government acts mala fide or exercises its power in a colourable way, that can always be effectively challenged; but, in the absence of any such plea and without adequate material in that behalf this aspect of the matter does not fall to be considered in the present appeal"*.

13. In Jyoti Pershad v. Administrator for the Union Territory of Delhi, (1962 (2) SCR 125 : AIR 1961 SC 1602) S.19 of the Slum Areas (Improvement and Clearance) Act, 1956,which provided that any decree obtained for the eviction of tenant in respect of buildings in areas declared "slum areas" could not be executed without the permission of the "competent

authority", was held not obnoxious to the equal protection of law on the ground that there was enough guidance to the competent authority in the use of the discretion under S.19(1) of the Act. It was urged before this Court that S.19(3) of the Slum Areas Act vested an unguided, unfettered, and uncontrolled power in an executive officer to withhold permission to execute a decree which the petitioner had obtained after satisfying the reasonable requirements of the law as enacted in the Rent Control Act and thus offends Art.14. In considering this argument the Court referred to the summary of the decisions of this Court laying down the proper construction of Art.14 rendered up to 1959, made by Das, C.J. in Ramakrishna Dalmia v. S. R. Tendolkar, (1959 SCR 279 : AIR 1958 SC 538) and made its own summary on slightly different lines. Of them 2 and 4 are important :

"*1.* *xxxx* *xxxx* *xxxx*

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

xxxx *xxxx* *xxxx*

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

3. *xxxx* *xxxx* *xxxx*

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

(Then a reference was made to the statement of law in Bajoria's case, 1954 SCR 30 : AIR 1953 SC 404 which is already extracted).

Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well known facts of which the Court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits, (1952 SCR 435 : AIR 1952 SC 123) being an instance where the guidance was gathered in the manner above indicated, (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment."

The Court then went on to observe:

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

ground of the same being ultra vires as not being sanctioned or authorized by the enactment itself".

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

14. To summarise.

Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in Anwar Ali Sarkar's case (1952 SCR 284 : AIR 1952 SC 75) and Suraj Mall Mohta's case (1955 (1) SCR 448 : AIR 1954 SC 545) without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Art.14. Even there, as mentioned in Suraj Mall Mohta's case, a provision for appeal may cure the defect. Further, in such cases it 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 as in Saurashtra case (1952 SCR 435 : AIR 1952 SC 123) and Jyoti Pershad's case (1962 (2) SCR 125 : AIR 1961 SC 1602) the statute will not be hit by Art.14. Then again where the statute itself covers only a class of cases as in Haldar's case (1960 (2) SCR 646 : AIR 1960 SC 457) and Bajoria's case (1954 SCR 30 : AIR 1953 SC 404) 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 reasons of authority.

15. The statute itself in the two classes of cases before us clearly lays 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 Court. Even normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be prolonged one, to resort to the latter. Administrative officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary Civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice this Court is not powerless. Furthermore, the fact that the

Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property and provided a special speedy procedure therefor is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers' case (1967 (3) SCR 399 : AIR 1967 SC 1581).

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

17. It is also necessary to point out that the procedures laid down by the two Acts now under consideration are not so harsh or onerous as to suggest that a discrimination would result it resort is made to the provisions of these two Acts in some cases and to the ordinary Civil Court in other cases. Even though the officers deciding these questions would be administrative officers there is provision in these Acts for giving notice to the party affected, to inform him of the grounds on which the order of eviction is proposed to be made, for the party affected to file a written statement and produce documents and be represented by lawyers. The provisions of the Civil Procedure Code regarding summoning and enforcing attendance of persons and examining them on oath, and requiring the discovery and production of documents are a valuable safeguard for the person affected. So is the provision for appeal to the Principal Judge of the City Civil Court in the city of Bombay, or to a District Judge in the districts who has got to deal with the matter as expeditiously as possible, also a sufficient safeguard as was recognised in Suraj Mall Mohta's case (1955 (1) SCR 448 : AIR 1954 SC 545). The main difference between the procedure before an ordinary Civil Court and the executive authorities under these two Acts is that in one case it will be decided by a judicial officer trained in law and it might also be that more than one appeal is available. As against that there is only one appeal available in the other but it is also open to the aggrieved party to resort to the High Court under the provisions of Art.226 and Art.227 of the Constitution. This is no less effective than the provision for a second appeal. On the whole, considering the object with which these special procedures were enacted by the legislature we would not be prepared to hold that the difference between the two procedures is so unconscionable as to attract the vice of discrimination. After all, Art.14 does not demand a fanatical approach. We, therefore, hold that neither the provisions of Chapter VA of the Bombay Municipal Corporation Act nor the provisions of the Bombay Government Premises (Eviction) Act, 1955 are hit by Art.14 of the Constitution.

18. In the result of the appeals and writ petitions are dismissed. The petitioners will pay one set of costs. The appeals will be posted for disposal before a Division Bench.

19. P. N. Bhagwati, J.: (Concurring with V. R. Krishna Iyer, J.) These appeals and writ petitions challenge the constitutional validity of Chapter VA of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as the Municipal Act) and the Bombay Government Premises (Eviction) Act, 1955 (hereinafter referred to as the Government Premises Eviction Act) as it stood prior to its amendment by Maharashtra Act 12 of 1969, on the ground that they contravene Art.14 of the Constitution. The challenge is based mainly on the decision of this Court in (1967 (3) SCR 399 : AIR 1967 SC 1581) where this Court held S.5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 void as being in conflict with Art.14 of the Constitution. The question is whether the ratio of this decision is applicable to the provisions contained in Chapter VA of the Municipal Act and the Government Premises Eviction Act, and if it is, whether this decision requires to be reconsidered by us.

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

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

(a) that the person authorised to occupy any corporation premises has, whether before or after the commencement of the Bombay Municipal Corporation (Amendment) Act, 1960:

> (i) not paid for a period of more than two months, the rent or taxes lawfully due from him in respect of such premises; or
>
> (ii) sub let, contrary to the terms or conditions of his occupation, the whole or any part of such premises; or
>
> (iii) committed, or is committing, such acts of waste as are likely to diminish materially the value, or impair substantially the utility, of the premises; or
>
> (iv) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises;

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

(c) that any corporation premises in the occupation of any person are required by the corporation in the public interest, the Commissioner may notwithstanding contained in law for the time being in force, by notice...order that that person, as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice."

Before, however, an order can be made by the Municipal Commissioner against any person under sub-section (1) of S.105B, sub-section (2) of that section says that the Municipal Commissioner shall issue a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made. This notice is required to specify the grounds on which the order of eviction is proposed to be made and it is intended to give an opportunity to all persons who are or may be in occupation of or claim interest in the Corporation premises to show cause against the proposed order of eviction. Sub-section (2) of S.105B then proceeds to say that the person concerned may file a written statement and produce documents in support of his case and at the inquiry before the Municipal Commissioner, he is entitled to appear by advocate, attorney or pleader. This procedure is intended to give effect to the principle of natural justice embodied in the maximum *audi alteram partem* and it is as it should be, for the Municipal Commissioner is given power to determine whether a person is liable to be evicted from any Corporation premises under clause (a), or clause (b) or Cl.(c) of sub-section (1), and before any determination adverse to him is made affecting his right to hold the said premises, he must be given a reasonable opportunity of being heard. If after hearing the person concerned, the Municipal Commissioner is satisfied that the case falls within Cl.(a), Cl.(b) or Cl.(c), and such person is liable to be evicted under any of these three clauses, he may by notice order such person to vacate the Corporation premises within one month of the date of the service of the notice. If the person ordered to vacate the Corporation premises does not comply with the order of eviction, the Municipal Commissioner can under sub-section (3) of S.105B evict that person and any other person who obstructs him and take possession of the Corporation premises, if necessary, by use of force. Sub-section (6) of S.105B provides that if a person, who has been ordered to vacate any Corporation premises under sub clause (i) or sub clause (iv) of clause (a) of sub-section (1), within one month of the date of service of the notice, or such longer time as the Municipal Commissioner may allow, pays to the Municipal Commissioner the rent and taxes in arrears, or as the case may be, carries out or otherwise complies with the terms contravened by him to the satisfaction of the Municipal Commissioner, the Municipal Commissioner shall on such terms as he thinks fit, in lieu of evicting such person under sub-section (2), cancel the order made by him under sub-section (1), and thereupon such person may continue to hold the Corporation premises on the same terms as before. Then follows S.105C which inter alia confers power on the Municipal Commissioner to assess damages on account of use and occupation of the Corporation premises in cases where any person is found to be in unauthorised occupation of the same. S.105D is not material for our purpose and we may omit it from consideration. S.105E is the next section and that says that the Municipal Commissioner shall, for the purpose of holding any inquiry under the Act, have the same powers as are vested in the Civil Court under the Code of Civil Procedure, when trying a suit, in respect of (a) summoning and enforcing attendance of any person and examining him on oath, (b) requiring the discovery and production of documents and (c) any other matter which may be prescribed by Regulations made under S.105H. This section clearly contemplates that the Municipal Commissioner while holding an inquiry, can order discovery and production of documents and also examine witnesses on oath in the same manner as a civil court. Every order of the Municipal Commissioner under S.105B or S.105C is made appealable under S.105F and the appeal lies to the Principal Judge of the City Civil Court of Bombay or such other judicial officer in Greater Bombay of not less than ten years standing as the Principal Judge may designate in that behalf. The appellate officer is given power to stay the enforcement of the order of the Municipal Commissioner which is impugned in the appeal, for such period and on such conditions as he deems fit and the appeal is to be disposed of by him as expeditiously as possible. S.105G gives finality to the order made by the Municipal Commissioner or the appellate officer and provides that it shall not be called in question in any original suit,

application or execution proceedings. There is lastly S.105H which confers power on the Municipal Commissioner, with the approval of the Standing Committee, to make Regulations for all or any of the matters set out in that section, which include inter alia the holding of enquiries, the principles which may be taken into account in assessing damages under S.105C and the procedure to be followed in appeals preferred under S.105F. It would thus be seen that a special procedure is enacted under these sections for eviction of any person from Corporation premises on any of the grounds set out in clause (a), clause (b) or clause (c) of sub-section (1) of S.105B.

21. The Government Premises Eviction Act also lays down a special procedure for eviction of any person from Government premises which is more or less identical with that set out in Chapter VA of the Municipal Act. The only difference is that whereas under Ch.VA of the Municipal Act the power to determine the liability and make an order of eviction is given to the Municipal Commissioner, the Government Premises Eviction Act gives this power to the Competent Authority, who would be an officer not lower in rank than that of a Deputy Collector or an executive engineer appointed by the State Government. There is also one other difference between the provisions of Chapter VA of the Municipal Act and the provisions of the Government Premises Eviction Act and that arises because S.8A has been introduced in the Government Premises Eviction Act by an amendment made by Maharashtra Act 12 of 1969 whereas no such amendment has been made in Ch. VA of the Municipal Act. This amendment was made in the Government Premises Eviction Act in consequence of the decision of this Court in (1967 (3) SCR 399 : AIR 1967 SC 1581) but that is not material because, so far as the present cases arising under the Government Premises Eviction Act are concerned, the proceedings for eviction were taken and the order of eviction was made before S.8A was introduced in the Government Premises Eviction Act and the provisions of the Government Premises Eviction Act with which we are concerned are, therefore, the provisions as they stood prior to their amendment by the introduction of S.8A.

22. Having set out the relevant provisions of the two statutes impugned in these cases, we may now turn to examine the grounds on which they are challenged. But before we do so, we may clear the ground by pointing out -- and this is important to remember in the context of an argument advanced on behalf of the respondents which we shall have occasion to examine a little later -- that the special procedure for determining the liability to eviction and securing eviction of persons found liable to be so evicted laid down in the two statutes had not been assailed before us on the ground that it is unreasonable and imposes unjustified restriction on the fundamental right to hold property guaranteed under Art.19(1)(f). It was faintly argued before us that the impugned provisions of these two statutes by providing special procedure for eviction of occupants of Municipal or Government premises have made unjust discrimination between occupants of other premises and are on that account violative of Art.14. But there is no substance in this challenge. It is not uncommon to find legislation according special treatment to Government or other public bodies and such legislation has been upheld by this Court in numerous decided cases. Bachawat, J., in his minority judgment in (1967 (3) SCR 399 : AIR 1967 SC 1581) has referred to several such decisions and there are many more. We may mention a few of them. The decision in (1954 SCR 572 : AIR 1954 SC 153) upheld the validity of the exemption of premises belonging to the Government or a local authority from the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The decision in (1961 (2) SCR 962 : AIR 1961 SC 828) held that the Rajasthan Public Demands Recovery act, 1952 was not unconstitutional as giving special facility to the Government as a banker for recovery of its dues. It was decided in (1962 (2) SCR 324 : AIR 1961 SC 1704) that the Legislature may reasonably provide a longer period of limitation for suits by the

Government and in (1963 (2) SCR 353 : AIR 1963 SC 222) it was held that the Patiala Recovery of State Dues Act, IV of 2002 BK, in setting up separate authorities for determination of disputes and prescribing a special procedure to be followed by them for recovery of dues of the Patiala State Bank by Summary process, was not discriminatory and void. Now, in all these decisions the law providing for special treatment to Government or other public bodies was held not to be discriminatory, but from that it does not follow that every law which gives differential treatment to Government or other public bodies in necessarily immune from challenge on the ground of discrimination. There is no talisman or charm protecting a law from the vice of unconstitutional discrimination, when the discrimination is in favour of the Government or other public bodies. The law is now well settled that the Legislature has power of making special laws to attain particular ends, and for that purpose it may select or classify persons and things upon which such laws are to operate. But the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause contained in Art.14. To get out of its reach it must appear that not only a classification has been made but also that it is one based on some real distinction, bearing a just and reasonable relation to the object of the Legislation, and is not a mere arbitrary selection. The classification to be valid and permissible must satisfy a double test: It must be founded on an intelligible differentia, which distinguishes those who are grouped together from others, and that differentia must have a rational relation to the object sought to be achieved by the statute. It was on an application of this double test that in the above mentioned decisions the law making special provision for Government or other public bodies was held to be constitutionally valid. The application of the same double test, however, resulted in the invalidation of the exemption of debts due to the Central Government of any State or a local authority from the operation of the Rajasthan Jagirdar's Debt Reduction Act which provided for scaling down of debts of Jagirdars whose Jagir lands had been resumed by the Government Vide State of Rajasthan v. Mukanchand, (1964 (6) SCR 903 : AIR 1964 SC 1633). It will thus be seen that where a statute according special treatment or Government or other public bodies, is challenged on the ground of discrimination, the validity of the statute has to be judged by applying this double test, and it is this double test which we must, therefore, proceed to apply in determining the validity of the impugned provision contained in the two statutes.

23. So far as Ch. VA of the Municipal Act is concerned, and what we say in regard to Ch.VA of the Municipal Act must also apply equally in relation to the Government Premises Eviction Act with the words "Government Premises" substituted for the words "Municipal premises" the Statement of Objects and Reasons for the introduction of this Chapter, as also the provisions contained in it, clearly indicate that this Chapter was enacted to provide to the Municipal Corporation a speedier remedy for eviction of unauthorised occupants from Municipal Premises, as against the ordinary remedy of a civil suit involving expense and delay, so that the Municipal Corporation should be able to carry out effectively "its policy of slum clearance, speedy development of the estates of the Corporation and providing more housing accommodation". Chap. VA of the Municipal Act, no doubt, differentiates occupiers of Municipal premises from occupiers of other premises, but there is a socially valid and legally intelligible differentiation between the two classes of occupiers. So far as Municipal premises are concerned, the members of the public are vitally interested in seeing that such premises are freed from unauthorised occupation as speedily and expeditiously as possible in order that the Municipal Corporation should be able to implement its policy of slum clearance, speedy development of Municipal estates and providing for more housing accommodation, which are projects redounding to public benefit. This element of public interest in speedy and expeditious recovery of possession from unauthorised occupants is absent in case of premises belonging to private parties. The speedy machinery for eviction of unauthorised occupants from Municipal

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

24. The main ground of attack against the constitutionality of the impugned provisions, however, was that even if occupiers of Government or Municipal premises form a class by themselves as against occupiers of private owned properties and such classification is justified on the ground that they require differential treatment in public interest, the impugned provisions discriminate amongst occupiers of Government or Municipal premises inter se and are, therefore, violative of the equality clause. The petitioner - appellants contended that the special procedure for determining the liability to eviction laid down in the impugned provisions is more drastic and prejudicial than the ordinary procedure of a civil suit and both these procedures operate in the same field without there being any guidelines provided in the impugned provisions as to whom one or the other procedure shall be followed with the result that the impugned provisions permit discrimination amongst occupiers of Government or Municipal premises in that some may be subjected to the special procedure while others may be subjected to the ordinary procedure. The occupiers of Government or Municipal premises can be proceeded against under the impugned provisions as also under the ordinary procedure of a civil suit, and there being no principle or policy to guide the authority as to when the special procedure should be adopted, or the case should be dealt with under the ordinary procedure, it would be open to the authority to make a discriminatory choice amongst occupiers of Government or Municipal premises, and this absolute and unguided power of selection, though exercisable within the class of occupiers of Government or Municipal premises, is discriminatory. The vice of discrimination, it was argued, consists in the unguided and unrestricted, power of singling out for being subjected to the special procedure some amongst a class of persons, namely, occupiers of Government or Municipal premises, all of whom are similarly situate and circumstanced, leaving others to be dealt with according to the ordinary procedure. This argument was sought to be supported by the majority decision of this Court in (1967 (3) SCR 399 : AIR 1967 SC 1581). We do not think this argument is sound. The majority decision in (1967 (3) SCR 399 : AIR 1967 SC 1581) has no application in the present case, and in any event, we are of the view that that decision does not represent the correct law.

25. The statute, which came up for consideration before this Court in (1967 (3) SCR 399 : AIR 1967 SC 1581) was the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. This Act laid down a special procedure of eviction of unauthorised occupants from public premises. The constitutional validity of the enactment of this special procedure was challenged before this Court as being violative of Art.14. There were two grounds on which the challenge was based : one was that the Act discriminated unjustly between occupants of public premises and those of private property and the other was that even amongst occupants of public premises inter se, there was discrimination, inasmuch as the special procedure set out in the Act was more drastic and prejudicial than the ordinary procedure of a civil suit and it was left to the arbitrary and unfettered discretion of the Government to adopt the special procedure against some and not against the rest. So far as the first ground is concerned, it was clearly and in so

many terms repelled by Bachawat, J., in the minority judgment, and though the majority, speaking through Shelat, J., did not finally pronounce upon the validity of this ground, they pointed out that there was great force in it as it was possible to say that there was intelligible differentia between occupier of public premises and other occupiers and the differentia had rational nexus with the object of the legislation. It was the second ground which evoked difference of opinion amongst the learned Judges, the majority, speaking through Shelat, J., taking the view that this ground was well founded, while the minority, speaking through Bachawat, J., holding that was not. Shelat, J., speaking on behalf of the majority, referred to the earlier decisions of this Court in (1952 SCR 284 : AIR 1955 SC 13); (1955 (1) SCR 787 : AIR 1955 SC 13); (1955 (1) SCR 448 : AIR 1954 SC 545) and (1963 Supp (2) SCR 760 : AIR 1963 SC 1417) and pointed out that the "principle which emerges from these decisions is that discrimination would result if there are two available procedures, one more drastic and prejudicial to the party concerned than the other and which can be applied at the arbitrary will of the authority".
The learned Judge then proceeded to add:
"if the ordinary law of the land and the special law provide two different and alternative procedures, one more prejudicial than the other, discrimination must result if it is left to the will of the authority to exercise the more prejudicial against some and no against the rest. A person who is proceeded against under the more drastic procedure 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 prejudice than the one under the Civil Procedure Code where the litigant can get the benefit of a trial by an ordinary court dealing with the ordinary law of the land with the right of appeal, revision, etc., as against the person who is proceeded against under S.5 of the Act as his case would be disposed to by an executive officer of the Government, whose decision rests on his mere satisfaction, subject no doubt to an appeal but before another executive officer, viz., the Commissioner. There can be no doubt that S.5 confers an additional remedy over and above the remedy by way of suit and that by providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic procedure under S.5, that section has lent itself open to the charge of discrimination and as being violative of Art.14"
and in that view, held S.5 of the Act to be void. Bachawat, J., delivering judgment on behalf of himself and Hidayatullah, J., (as he then was) held that

"without violating Art.14, the law may allow a litigant a free choice of remedies, proceedings and tribunals for the redress of his grievances".

The learned Judge observed that

"it is not pretended that the proceeding under the impugned Act is unfair or oppressive. The unauthorised occupant has full opportunity of being heard and of producing his evidence. He is not denied the equal protection of the laws because the government has the option of proceeding against him either by a suit or under the Act",

and added:
"an unauthorised occupant has no constitutional right to dictate that the Government should have no choice of proceedings. The argument based upon the option of the Government to file a suit is unreal, because in practice the Government is not likely to institute a suit in a case where it can seek relief under the Act".

The learned Judge concluded by saying that

"*Art.14 does not require a fanatical approach to the problem of equality before law*".and upheld the validity of the Act. We find it difficult to accept the reasoning of the majority as well as the minority decisions. Neither reasoning commends itself to us. We shall presently explain our standpoint in relation to this problem, which arises when there are two procedures laid down by the Legislature, one harsher than the other, and the question is whether the involves violation of the constitutional mandate of equality before law. But one point we wish to make, and we cannot over emphasise it, the Art.14 enunciates a vital principle which lies at the core of our republicanism and shines like a beacon light pointing towards the goal of classless egalitarian socio-economic order which we promised to build for ourselves when we made a tryst with destiny on that fateful day when we adopted our Constitution. If we have to choose between fanatical devotion to this great principle of equality and feeble allegiance to it, we would unhesitatingly prefer to err on the side of the former as against the latter. We should be breaking our faith with the Constitution if we whittle down in any measure this high and noble principle which is pregnant with hope for the common man and which is at once a goal as well as a pursuit, for history shows that it is by insidious encroachments made in the name of pragmatism and expediency that freedom and liberty are gradually but imperceptibly eroded and we should not allow the same fate to overtake equality and egalitarianism in the name of expediency and practical convenience.

26. The first and preliminary answer given by the respondents to the challenge levelled on behalf of the petitioners - appellants that no violation of the Constitutional guarantee under Art.14 is involved where the law gives a free choice of remedies to a person entitled to relief, even if one remedy is more drastic and prejudicial than the other. The respondents relied on the decision of the United Supreme Court in Arizona Copper Co. v. Hammer, (1918) 63 Law Ed 1058 : 250 US 400 in support of this contention. Now it may be noted that the minority decision in (1967 (3) SCR 399 : AIR 1967 SC 1581) also found support in the decision in (1918) 63 Law Ed 1058 : 250 US 400 and on the basis of that decision, held that the law does not violate Art.14 because it gives an aggrieved party the free choice of remedies and proceedings for the redress of his grievances. We cannot accept this broad and unqualified statement of the law as correct and if we scrutinise the decision in (1918) 63 Law Ed 1058 : 250 US 400 closely, we would find that it does not support any such statement. It is, no doubt, true that Mr. Justice Pitney said in this case:

"....it is thoroughly settled by our previous decisions that....election of remedies is an option very frequently given by the law to a person entitled to an action, -- an option normally exercised to his own advantage, as a matter of course".

But this observation must be read in the context of the question which arose for decision in that case and if it so read, it would be clear that what Mr. Justice Pitney had in mind when he made this observation was the existence of several rights to relief arising out of the same act and not the existence of several remedies in enforcement of a single right to relief. Under the laws of Arizona, an employee injured in the course of his employment had open to him three avenues of redress, any one of which he might pursue according to the facts of his case, namely, (1) the common law liability relieved of the fellow servant defense, and in which the defences of contributory negligence and assumption of risk are questions to be left to the jury; (2) the Employers' Liability Law, which applies to hazardous occupations where the injury or death is not caused by his own negligence; and (3) the Compulsory Compensation Law, applicable to

especially dangerous occupation, by which he may recover compensation without fault upon the part of the employer. The question which arose for determination was whether this system denied equal protection to employers because it conferred upon the employee a free choice amongst several remedies. Mr. Justice Pitney answered the question against the employers by saying that it is well settled by previous decisions that the law may give election of remedies to a person entitled to an action. The reference here obviously was to election between different rights to relief given by different laws for the injury suffered in the course of employment. The employee could claim damages under the common law or under the Employees' Liability Law or under the Compulsory Compensation Law. He could elect under what law he would claim damages, -- which right he would enforce depending on the facts of his case. It is not as if he had different procedures available to him for enforcing a right given to him by law. Here in the present case, there are no different rights conferred on the Municipal Corporation or the Government by different laws with choice to the Municipal Corporation or the Government to enforce one right or the other. The only right which is sought to be enforced by the Municipal Corporation or the Government is the right based on title given by the general law of the land, and it is for the enforcement of this right that two alternative procedures are, according to the petitioners - appellants, available to the Municipal Corporation or the Government. That is a totally different situation from the one in (1918) 63 Law Ed 1058 : 250 US 400 and that decision has, therefore, no application in the present case.

27. It is indeed too late and too much now to contend that Art.14 does not forbid discrimination in matters of procedure. A rule of procedure comes as much within the purview of Art.14 as any rule of substantive law, and to quote the words of Mukherjea, J., in (1952 SCR 284 : AIR 1952 SC 75) "it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination". Vide also Weaver's Constitutional Law, page 407. If for determination and enforcement of a liability, two alternative procedures are available, one more drastic and prejudicial than the other and no guiding policy or principle is laid down by the legislature as to when one or the other procedure shall be followed so that either procedure may be indiscriminately adopted against persons similarly situated, the law providing for the more drastic and prejudicial procedure would be violative of the equal protection clause. That was laid down as far back as 1952 in the celebrated case of State of West Bengal v. Anwar Ali Sarkar, (1952 SCR 284 : AIR 1952 SC 75) which was decided by a Bench of seven judges. S.5(1) of West Bengal Act of 1950 was impeached in that case and the majority decision held that section to be wholly invalid. The preamble to the Act merely stated that it was expedient to provide for speedy trial of certain offences and S.5(1) empowered a special Court to try such offences or class of offences or cases or class of cases as the State Government may by general or special order in writing direct. The majority of the judges took the view that the procedure laid down by the Act for trial by the special court varied substantially from that laid down for the trial of offences generally by the Code of Criminal Procedure and no standard was laid down and no principle or policy was disclosed in the Act to guide the exercise of the discretion by the Government in selecting cases for reference to the special court for trial under the special procedure provided under the Act. All that we relied on as indicative of a guiding principle for selection was the object, as disclosed in the preamble of the Act, of providing for the "speedier trial of certain offences", but the majority of the Judges brushed that aside as too indefinite and vague to constitute a reasonable basis for classification. "Speedier trial of offences", observed Mahajan, J.

"*may be the reason and motive for the legislation but it does not amount either to a classification of offences or of cases..In my opinion it is no classification at all in the real sense*

of the term as it is not based on any characteristics which are peculiar to persons or to cases which are to be subject to the special procedure prescribed by the Act".

Mukherjea, J., said

"I am definitely of opinion that the necessity of a speedier trial is too vague, uncertain and elusive a criterion to form a rational basis for the discrimination made. The necessity for speedier trial may be the object which the legislature had in view or it may be the occasion for making the enactment. In a sense quick disposal is a thing which is desirable in all legal proceedings. .... This is not a reasonable classification at all but an arbitrary selection".
Similar observations were also made by Fazl Ali, J. and Chandrasekhara Aiyar, J. The majority judges accordingly held that S.5(1) vested an arbitrary and uncontrolled discretion in the State Government to direct any cases which it liked to be tried by the special Court and it was, therefore, violative of Art.14.

28. It is interesting to compare the decision in (1952 SCR 284 : AIR 1952 SC 75) with the decision of this Court in (1952 SCR 435 : AIR 1952 SC 123). Both these cases were taken up for hearing together, but the Saurashtra case was adjourned to enable the State Government to file an affidavit explaining the circumstances which led to be enactment of the Saurashtra State Public Safety. (Third Amendment) Ordinance, 1949 which was impugned in that case. The Saurashtra case was thereafter heard by the same Bench of seven judges which decided Anwar Ali Sarkar's case, (1952 SCR 284 : AIR 1952 SC 75). S.11 of the Saurashtra Ordinance was in the same terms as S.5(1) of the West Bengal Act and the constitutional objection against the validity of that section was also the same, namely, that it committed to the absolute and unrestricted discretion of the executive Government the power to refer cases to be tried by the special procedure laid down in the Saurashtra Ordinance and the Section was, therefore, discriminatory and void. But this time the conclusion reached by the majority judges was different. The decision in Anwar Ali Sarkar's case was distinguished by three of the learned judges who were parties to the majority decision in that case. Fazl Ali, J., observed:

"*The main objection to the West Bengal Act was that it permitted discrimination without reason or without any rational basis.... The mere mention of 'Speedier trial' as the object of the Act did not 'cure the defect', as the expression afforded no help in determining what cases required speedier trial... The clear recital (in the Saurashtra ordinance) of a definite objective furnishes a tangible and rational basis of classification to the State Government for the purpose of applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and the preservation of peace and tranquillity. Thus under S.11, the State Government is expected only to select such offences or class of offences or class of cases for being tried in a Special Court in accordance with the special procedure, as are calculated to affect the public safety, maintenance of public order etc."*

Mukherjea, J., also, after distinguishing the decision in Anwar Ali Sarkar's case on similar grounds, said:

"In my opinion, if the legislative policy is clear and definite and, as an effective method of carrying out that policy, a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation....In such cases the power given to the executive body would import a duty on it to classify the subject matter of legislation in accordance with the objective indicated in the statute. The discretion that is

conferred on official agencies in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy to effectuate which the discretion is given, and it is in relation to that objective that the property of the classification would have to be tested".

Das, J., also pointed out that in the preamble of the Saurashtra Ordinance there was sufficient indication of policy to guide the executive Government in selecting offences or class of offences or class of cases for reference to the special court and S.11 of the Saurashtra Ordinance did not, therefore, confer an uncontrolled and unguided power on the State Government. The majority judges accordingly held S.11 of the Saurashtra Ordinance to be valid.

29. Though the minority judges in (1952 SCR 435 : AIR 1952 SC 123) observed that the decision of the majority judges in that case marked a retreat from the position taken up by the majority in the earlier case of Anwar Ali Sarkar, 1952 SCR 284 : AIR 1952 SC 75) the majority judges strongly refuted this proposition and pointed out that it was on an application of the same principle which resulted in the invalidation of S.5(1) of the West Bengal Act that the validity of S.11 of the Saurashtra Ordinance was sustained by them. The principle which was applied by the majority judges in Anwar Ali Sarkar's case and Kathi Raning Rawat's case (1952 SCR 435 : AIR 1952 SC 123) was the same and it was stated in these terms by Patanjali Sastri, C.J., delivering the majority judgment of the Court in (1954 SCR 30 : AIR 1953 SC 404):

".....if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the executive authority in accordance with the standard indicated or the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary, and therefore, obnoxious to Art.14. In the case of such a statute it could make no difference in principle whether the discretion which entrusted to the executive Government is to make a selection of individual cases or of offences, classes of offences or classes of cases. For, in either case, the discretion to make the selection is a guided and controlled discretion and not an absolute or unfettered one and is equally liable to be abused, but as has been pointed out, if it be shown in any given case that the discretion has been exercised in disregard of the standard or contrary to the declared policy and object of the legislation, such exercise could be challenged and annulled under Art.14 which includes within its purview both executive and legislative acts".

The statutory provision which was challenged in this case was S.4(1) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. This Act had been passed to provide for the more speedy and more effective punishment of certain offences because the Legislature thought that it was expedient to provide for the more speedy trial and more effective punishment of certain offences which set out in the Schedule annexed to the Act. S.4(1) authorised the provincial Government to allot cases for trial to a special judge by notification as well as transfer cases from one special judge to another or to withdraw any case from the jurisdiction of the special judge or make such modification in the description of a case as may be considered necessary. Patanjali Sastri, C.J., applied the aforesaid principle extracted from the decisions in Anwar Ali Sarkar's case and Kathi Raning Rawat's case and held that S.4(1) of the Act was valid and the Special Court had jurisdiction to try and convict the appellants. This decision might at first blush appear to be unimportant as representing merely one more case falling within one or the other ruling in Anwar Ali Sarkar's case or Kathi Raning Rawat's case, but a little scrutiny will reveal that it furnishes a complete answer to the argument of

discrimination which found favour with the majority judges in (1967 (3) SCR 399 : AIR 1967 SC 1581). We shall deal with that aspect of the decision a little later.

30. We may then refer to the decision of this Court in (1955 (1) SCR 448 : AIR 1954 SC 545). The constitutional validity of S.5(4) of the Taxation on Income (Investigation Commission) Act, 1947 was assailed in that case on the ground that "evasion, whether substantial or unsubstantial, came within its ambit as well as within the ambit of S.34 of the Indian Income Tax Act," and it was, therefore, violative of Art.14. This Court compared the provisions of S.5(4) of the Act with those of S.34(1) of the Indian Income Tax Act and came to the conclusion that S.5(4) dealt with the same class of persons who fell within S.34 of the Indian Income Tax Act and were dealt with in sub-section (1) of that section, and whose income could be caught by proceeding under that section. There was nothing uncommon, observed this Court, either in properties or in characteristics between persons who had been discovered as evaders of income tax during an investigation conducted under S.5(1) of the Act and those who had been discovered by the Income Tax Officer to have evaded income tax. Both these kinds of persons had common properties and characteristics, and therefore, required equal treatment but some of them would, at the choice of the Commission be dealt with under the more drastic and prejudicial procedure for assessment laid down by the Act, while the others would be proceeded against under the ordinary procedure set out in S.34 of the Indian Income Tax Act. This was clearly discriminatory and S.5(4) was therefore held by this Court to be void and unenforceable as offending Art.14.

31. The decision of this Court in (1955 (1) SCR 787 : AIR 1955 SC 13) may also be noted in this connection. In this case it was S.5(1) of the Taxation on Income (Investigation Commission) Act, 1947 which was challenged as constitutionally invalid and the ground of challenge was that after the coming into force of the Indian Income Tax (Amendment) Act, 1954, which introduced S.34(1A) in the Indian Income Tax Act, S.5(1) became discriminatory and void as the newly introduced S.34(1A) operated in the same field as S.5(1). This challenge was upheld in a unanimous judgment and the reasons which weighed with this Court in taking that view may best be stated in the words of Mahajan, C. J., who delivered the judgment of the Court:

"Parliament has by amending S.34 of the Indian Income Tax Act, now provided that cases of those very persons who originally fell within the ambit of S.5(1) of Act XXX of 1947 and who it was alleged formed a distinct class, can be dealt with under the amended S.34 and under the procedure provided in the Income Tax Act. Both categories of persons, namely, those who came within the scope of S.5(1) as well those who came within the ambit of S.34, now form one class. In other words, substantial tax dodgers or war profiteers who were alleged to have formed a definite class according to the contention of the learned Attorney General under S.5(1), and whose cases needed special treatment at the hands of the Investigation Commission now clearly fall within the ambit of amended S.34 of the Income Tax Act. That being so, the only basis for giving them differential treatment, namely, that they formed a distinct class by themselves, has completely disappeared, with the result that continuance of discriminatory treatment to them comes within the mischief of Art.14 of the Constitution and has thus to be relieved against. All these persons can now well ask the question, why are we now being dealt with by the discriminatory and drastic procedure of Act XXX of 1947 when those similarly situated as ourselves can be dealt with by the Income Tax Officer under the amended provisions of S.34 of the Act....in other words, there is nothing uncommon either in properties or in characteristics between us and those evaders of income tax who are to be discovered by the Income Tax Officer under the provisions of amended S.34. In our judgment no satisfactory answer can be returned

to this query because the field on which amended S.34 operates now includes the strip of territory which previously was occupied by S.5(1) of Act XXX of 1947 and two substantially different laws of procedure one being more prejudicial to the Assessee than the other, cannot be allowed to operate on the same field in view of the guarantee of Art.14 of the Constitution".

The same line of reasoning prevailed with this Court in (1955 (2) SCR 1247 : AIR 1956 SC 269) in holding that though S.5(1) of the Taxation of Income (Investigation Commission) Act, 1947 was valid when S.34(1) of the Indian Income Tax Act stood in its unamended form, it became void and unenforceable on the amendment of S.34(1) by the Indian Income Tax and Business Profit Tax (Amendment) Act, 1948 because then S.34(1), as amended operated on the same field as Sec.5(1) and cases which were covered by S.5(1) could be dealt with under the procedure laid down in S.34(1).

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

not constricted by any constitutional dogma or rigid formula. There is an infinite variety of ways in which discrimination may occur. It may assume multitudinous forms. But wherever it is found and howsoever it arises, it is within the inhibition of the equality clause. Where, therefore, as between persons similarly situated, one may be subjected to one procedure while another may be subjected to the other, without there being any rational basis for distinction and one procedure is substantially more drastic and prejudicial than the other, unjust discrimination would result, irrespective of whether the arbitrary choice of initiation of the two procedures is vested in the same authority or not. Indeed to the person subjected to the more drastic and onerous procedure it is immaterial whether such procedure is put into operation by one or the other organ or agency of the Government or the public authority. It is poor comfort to him to be told he is treated differently from others like him, but the differential treatment emanates from one organ or agency of the Government or the public authority as distinct from another. His rejoinder would immediately be that it makes no difference, because, whichever be the organ or agency of the Government or the public authority which initiates the differential treatment against him, it is traceable to the broad source of State power or power of the public authority. The unequal treatment by reason of the adoption of the substantially more drastic and onerous procedure would be meted out to him by the Administration in its larger sense -- may be legally particularised in the shape of different instrumentalities -- and he would suffer all the same. We are here dealing with the common man and when action is initiated against him for determining his liability to eviction, it would be incomprehensible to him to make a distinction between Municipal Commissioner and Municipal Corporation or Collector and Government. It would be nothing short of hypertechnicality to say that action against him is initiated not by the Municipal Corporation or the Government but by the Municipal Commissioner or the Collector. The constitutionality of a statutory provision cannot turn on mere difference of the hands that harm, though both belong to the Government or the Municipal Corporation, for otherwise it would be easy to circumvent the guarantee of equality and to rob it of its substance by a subtle and well manipulated statutory provision vesting the more drastic and prejudicial procedure in a different organ of the Government or public authority than the one in whose hands lies the power to initiate the ordinary procedure. That would be disastrous. We must look at the substance and not the mere form. In fact in Suraj Mull Mohta's case (1955 (1) SCR 448 : AIR 1954 SC 545) and Shree Meenakshi Mills case (1955 (1) SCR 787 : AIR 1955 SC 13) the special procedure under the Income Tax Investigation Commission Act could be initiated by the Central Government while the ordinary procedure under the Income Tax Act could be initiated by an altogether different authority, namely, the Income Tax Officer, and yet it was held that S.5, sub-section (4) in one case and S.5, sub-section (1) in the other were violative of Art.14 since the two procedures one substantially more drastic and prejudicial than the other, operated in the same field without any guidelines being provided by the legislature as to when one or the other shall be adopted. Moresoever, it is not correct to say that it is the Municipal Commissioner who would initiate the special procedure set out in Chapter VA. The Municipal Commissioner would be moved by the Estate Officer of the Municipal Corporation to issue a notice under S.105B, sub-section (2) just as a Civil Court would be moved by the Municipal Corporation to issue process against the occupant. Alternatively, the matter can also be viewed from a slightly different standpoint. When a Municipal Commissioner issues notice under S.105B, sub-section (2) initiating the special procedure against an occupant, he really acts on behalf and for the benefit of the Municipal Corporation -- he seeks to enforce the right of the Municipal Corporation. Therefore, it is really the Municipal Corporation which avails of the special procedure set out in Chapter VA. The scope and content of the aforementioned rule against discrimination in matters of procedure cannot, therefore, be narrowed down or its applicability in the present case obviated on the ground suggested by the respondents.

33. It was then contended on behalf of the respondents that even where two procedures are available against a person, one substantially more drastic and prejudicial than the other, and there is no guiding principle or policy laid down by the legislature as to when one or the other shall be adopted, there would be no violation of the equality clause, if both procedures are fair. The argument was that the special procedure provided by the legislature would not fall foul of the equality clause even if it is substantially more drastic and prejudicial than the ordinary procedure, if it is otherwise fair and reasonable. This argument was sought to be supported by reference to certain observations in the minority judgment in (1967 (3) SCR 399 : AIR 1967 SC 1581). But we do not think this is sound in the context of the guarantee of equality although its relevance to reasonable restrictions under Art.19 is obvious. When we are dealing with a question under Art.14, we have to enter the comparative arena for determining whether there is equal treatment of persons similarly situated so far as the procedure for determination of liability is concerned. Mere fairness of the special procedure which is impugned as discrimination is not enough to take it out of the inhibition of Art.14. The fairness of the special procedure would undoubtedly be relevant if the special procedure is challenged as imposing unreasonable restriction under Art.19(1)(f). It would also be relevant if the special procedure were assailed as being in violation of the due process clause in a country like the United States. But where the attack is under art. 14, what we have to consider is whether there is equality before law, and there the question that has to be asked and answered is whether the two procedures are so disparate substantially and qualitatively as to lead to unequal treatment. Equality before law cannot be denied to a person by telling him:
"It is true that you are being treated differently from others who are similarly situate with you and the procedure to which you are subjected is definitely more drastic and prejudicial as compared to the procedure to which others are subjected, but you should not complain because the procedure adopted against you is quite fair".

The question which such a person would legitimately ask is:

"*Why am I being dealt with under the more drastic and prejudicial procedure when others similarly situate as myself are dealt with under the ordinary procedure which is less drastic and onerous*?"

There would have to be a rational answer to this query in order to meet the challenge of Art.14. It is, therefore, no argument on the part of the respondents to say that the special procedure set out in Chapter VA of the Municipal Act is fair and consequently it does not have to stand the test of Art.14.

34. Having cleared the ground, we may now proceed to apply the principle which we have discussed above and consider whether the impugned provisions in Chapter VA of the Municipal Act and the Government Premises Eviction Act is void and unenforceable as being discriminatory in character. Now as already pointed out, the differentiation of occupiers of Municipal or Government premises from occupiers of other premises for the applicability of the special procedure laid down in the impugned provisions is based on an intelligible principle having a clear and reasonable relation with the object of the legislation, which is to ensure speedy and expeditious recovery of Municipal or Government premises from unauthorised occupiers in public interest and the impugned provisions cannot, therefore, be condemned as invalid on the ground that they make unjust discrimination between occupiers of Municipal or Government premises and occupiers of other premises. But the question is -- and that is the argument we must consider -- whether the impugned provisions permit discrimination amongst occupier of Municipality or Government premises inter se and are on that account invalid. Can

it be said that the special procedure laid down in the impugned provisions and the ordinary procedure of a civil suit operate on the same class of occupier of Municipal or Government premises without any guiding policy or principle being laid down by the legislature as to when one or the other procedure shall be adopted so that within the class of occupiers of Municipal or Government premises, some may, in the arbitrary uncontrolled discretion of the Municipal Corporation or Municipal Commissioner or Government, be proceeded against under the special procedure, while others may be left to be dealt with under the ordinary procedure? Do the impugned provisions vests absolute and unguided power in the Municipal Corporation or Municipal Commissioner or Government to pick and choose some occupiers of Municipal or Government premises for being dealt with under the special procedure set out in the impugned provisions leaving others to be dealt with under the ordinary procedure of a Civil Suit? The majority decision in (1967 (3) SCR 399 : AIR 1967 SC 1581) would seem to suggest that the impugned provisions do suffer from this vice but that is not correct. There is an error from which the majority decision in (1967 (3) SCR 399 : AIR 1967 SC 1581) suffers and that is that it overlooks the distinction between those cases where the legislature itself makes a complete classification of persons or things and applies to them the law which it enacts and others where the legislature merely lays down the law to be applied to persons or things answering to a given description or possessing certain common characteristics and having regard to the impossibility of making a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to persons or things within the defined group, while laying down the standard or at least indicating in clear terms and underlying policy and purpose, in accordance with and in fulfilment of which the administrative authority is expected to select the persons or things to be brought within the operation of the law. It must be remembered that having regard to the manifold complexities of life, an infinite variety of situations may arise which cannot be fitted into strait jacket formulae or classified into rigid inflexible divisions. No classification can be logically complete or accord with the pattern of plumb line precision. Life is not capable of being divided into water tight divisions and categories and it is not possible to force the teeming multiplicity and variety of human activity into a procrustean bed of symmetrical rules. Absolute precision or complete symmetry are unattainable and it is as well that it should be so, for otherwise life would be mechanical and lose its manifold variety. The legislature can, therefore, do not more than define broad categories and indicate the policy and purpose underlying the legislation and leave it to a stated authority to make selective application of the law in accordance with such policy and purpose. That would not be obnoxious to Art.14 because in such a case the discretion to make the selection would be a guided and controlled discretion and not an absolute and unfettered one. Mukherjea, J., pointed out in Kathi Raning Rawat's case (1952 SCR 435 : AIR 1952 SC 123):

".....if the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. After all "the law does all that is needed when it does all that it can indicates a policy...and seeks to bring within the lines all similarly situated so far as its means allow" (Vide Buck v. Bell, (1927) 274 US 206, 208). In such cases, the power given to the executive body would import a duty on it to classify the subject matter of legislation in accordance with the objective indicated in the statute. The discretion that is conferred on official agencies in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy to effectuate which the direction is given and it is in relation to that objective that the propriety of the classification would have to be tested". It is, therefore, not correct to say that merely because the Municipal Corporation, or Municipal Commissioner or Government is not compellable to adopt the special procedure set out in the

impugned provisions against all occupiers of Municipal or Government premises, but is vested with a discretion in the matter, the impugned provisions offend against Art.14. What we have to see is whether there is any standard indicated or policy and purpose disclosed in the impugned provisions in accordance with and in fulfilment of which the Municipal Corporation or Municipal Commissioner or Government is expected to select occupiers of Municipal or Government premises for being proceeded against under the special procedure. If the discretion conferred on the Municipal Corporation or Municipal Commissioner or Government to make selective application of the special procedure is guided and controlled, discretion, the impugned provisions would be free from the vice of discrimination. It is inevitable that when a special procedure is being prescribed for a defined class of persons such as occupiers of Municipal or Government premises, discretion, of course guided and controlled by the underlying policy and purpose of the legislature, must necessarily be left in the administrative authority to select occupiers of Municipal or Government premises to be brought within the operation of the special procedure. There may be endless variations from case to case depending on the peculiar facts and circumstances of each case, and it may be that some cases are such, as for example involving complicated questions of law of fact, where special procedure, which is comparatively of a summary nature, may not be found to be appropriate in the interest of justice. It would indeed be odd and certainly harsh and oppressive to the occupiers of Municipal or Government premises if the Municipal Corporation or Municipal Commissioner or Government were to be compelled to adopt the special procedure is such cases. The nature of the dispute, the complexity of the questions arising for consideration and the legal competence of the adjudicating authority to decide such questions would all have to be weighed alongside with the need for speedy and expeditious recovery of Municipal or Government premises for public uses which is the basic policy and purpose underlying the legislation and the Municipal Corporation or Municipal Commissioner or Government would have to decide in accordance with the guidance furnished by these considerations whether in a given case, the special procedure should be adopted or the occupier of Municipal or Government premises should be proceeded against under the ordinary procedure. There is thus clear guidance provided by the legislature as to when the special procedure should be adopted and when a case should be left to be dealt with under the ordinary procedure and the impugned provisions do not suffer from the vice of discrimination.

35. This view, which we are taking on principle is not something novel or unusual. It reads the beaten path laid out by at least two decisions of this Court. The first is the decision in (1954 SCR 30 : AIR 1953 SC 404). There also an argument was advanced that even if the Scheduled offences and the person charged with the commission thereof could properly from a class in respect of which special legislation could be enacted. S.4(1) of the West Bengal Criminal Law Amendment (Special Court) Act, 1949, was discriminatory and void inasmuch as it vested an unfettered discretion in the Provincial Government to choose any particular case of a person alleged to have committed an offence falling under any of the specified categories for allotment to the Special Court to be tried under the special procedure, while other offenders of the same category would be left to be tried by ordinary courts. It was urged that S.4(1) permitted the Provincial Government to make a discriminatory choice amongst persons charged with the same offence or offences for trial by Special Court and such absolute and unguided power of selection, though it had to be exercised within the class or classes of offences mentioned in the Schedule, was discrimination. This contention urged on behalf of the petitioners was negatived and Patanjali Sastri, C.J., delivering the majority judgment of the Court pointed out:

"The argument overlooks the distinction between those cases where the legislature itself makes a complete classification of persons or things and applies to them the law which it enacts and

others where the legislature merely lays down the law to be applied to persons or things answering to a given description or exhibiting certain common characteristics, but being unable to make a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to persons or things within the defined group, while laying down the standards or at least indicating in clear terms the underlying policy and purpose, in accordance with, and in fulfilment of which the administrative authority is expected to select the persons or things to be brought under the operation of the law. A familiar example of this type of legislation is the Preventive Detention Act, 1950, which, having indicated in what classes of cases and for what purposes preventive detention can be ordered, vests in the executive authority a discretionary power to select particular persons to be brought under the law. Another instance in point is furnished by those provisions of the Criminal Procedure Code which provides immunity from prosecution without sanction of the Government for offences by public servants in relation to their official acts, the policy of the law being that public officials should not be unduly harassed by private prosecution unless in the opinion of the Government, there were reasonable grounds for prosecuting the public servant which accordingly should condition the grant of sanction. It is not, therefore, correct to say that S.4 of the Act offends against Art.14 of the Constitution, merely because the Government is not compellable to allot all cases of offences set out in the schedule to Special Judges but is vested with a discretion in the matter..... Mr. Chatterjee brought to our notice in the course of his argument a decision of the Calcutta High Court in J. K. Gupta v. The State, (56 Cal WN 701 : AIR 1952 Cal. 644) where a Special Bench, (Harries, C. J., Das and Das Gupta, JJ.) inclined to the view that the Act now under challenge did not create a valid class or classes of offences, and held that even if the classification were held to be proper, S.4(1) was ultra vires Art.14 of the Constitution in that a discretionary power was given to the State to allot cases to the Special Court or not as the State Government felt inclined, and thus to discriminate between persons charged with an offence falling within the same class. We are unable to share this view. There may be endless variations from case to case in the facts and circumstances attending the commission of the same type of offence, and in many of those there may be nothing that justifies or calls for the application of the provisions of the Special Act. For example, S.414 and 417 of the Indian Penal Code are among the offences included in the Schedule to the Act, but they are triable in a summary way under S.260 of the Criminal Procedure Code where the value of the property concerned does not exceed fifty rupees. It would indeed be odd if the Government were to be compelled to allot such trivial cases to a Special Court to be tried as a warrant case with an appeal to the High Court in case of conviction. The gravity of the particular crime, the advantage to be derived by the State by recoupment of its loss, and other like considerations may have to be weighed before allotting a case to the Special Court which is required to impose a compensatory sentence of fine on every offender tried and convicted by it. It seems reasonable, if misuse of the special machinery provided for the more effective punishment of certain classes of offenders is to be avoided, that some competent authority should be invested with the power to make a selection of the cases which should be dealt with under the Special Act."

The other decision to which we may refer in this connection is (1955 (2) SCR 1196 : AIR 1956 SC 246). There is the constitutional validity of S.5(1) of the Travancore Taxation on Income (Investigation Commission) Act, 1124 was challenged mainly on the ground that the procedure for assessment prescribed by it was discriminatory as compared with the procedure prescribed under S.47 of the Travancore Act XXIII of 1121. This challenge was repelled on the view that the persons dealt with under S.5(1) formed a distinct class of substantial evaders of income tax who required to be specially treated under the drastic procedure provided by the Travancore Taxation on Income (Investigation Commission) Act, 1124. But it was urged as an alternative

argument that even if the persons who could be proceeded against under S.5(1) formed a distinct class by themselves and
there was rational justification for providing special procedure for assessing them. "*it would be open to the Government within the terms of S.5(1) of the Act itself to discriminate between persons and persons who fall within the very group or category; the Government might refer to the case of A to the Commission leaving the case of B to be dealt with by the ordinary procedure laid down in the Travancore Act, XXIII of 1121*".

This was an identical argument as the one advanced before us and it challenged the validity of S.5(1) on the ground that it was discriminatory as between persons who fall within the capacity of substantial evaders of Income Tax. This Court, however, negatived the argument and N. H. Bhagwati, J., speaking on behalf of the Court observed:

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

The learned Judge then referred to the decisions of this Court in Kathi Raning Rawat's case (1952 SCR 435 : AIR 1952 SC 123) and Kedar Nath Bajoria's case (1954 SCR 30 : AIR 1953 SC 404) and concluded by saying:

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

These passages from the decision in Kedarnath Bajoria's case (1954 SCR 30 : AIR 1953 SC 404) and A. Thangal Kunju Musaliar's case (1955 (2) SCR 1196 : AIR 1956 SC 246) provide the most convincing refutation of the contention of the petitioners / appellants based on discrimination.

36. It may be pointed out that the aforesaid decisions in (1954 SCR 30 : AIR 1953 SC 404) and (1955 (2) SCR 1196 : AIR 1956 SC 246), were not brought to the attention of the learned Judge who decided (1967 (3) SCR 399 : AIR 1967 SC 1581). If their attention had been drawn to these decisions, we have no doubt that the majority Judges would not have come to the decision to which they did. We are of the view that the decision in (1967 (3) SCR 399 : AIR 1967 SC 1581), does not represent the correct law and must be overruled. The challenge against the constitutional validity of Chapter VA of the Municipal Act and the Government Premises Eviction Act must accordingly be rejected.

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

38. We may also observe that there is no magic formula by which it can be said that one procedure is substantially more drastic and onerous than the other. It does not follow that merely because one procedure provides the forum of a civil court while the other provides the forum of an administrative tribunal, the latter is necessarily more drastic and onerous than the former. We cannot accept such a bald proposition. Indeed, not infrequently, the poor man gets lost when he is drawn into a regular suit in a civil court which, it is well known, has a long drawn out expensive and escalating litigative system which often spells ruin to the ordinary man and consequently, by contrast, a prompt and inexpensive instrument, though manned by administrative personnel untrained in the sophisticated court methodology and unaided by long and intricate argument of counsel engaged on onerous terms, may be preferred by many in this country. The procedure of the civil court also suffers from many technicalities. It proceeds on rules of evidence which are sometimes highly technical, receives probative material only when placed on record through prescribed procedures oven though a better appreciation of the situation may perhaps be possible by other means and acts solely on the material brought on record excluding what common sense and experience may sometime suggest as useful in reaching the truth. Again, it function on the basis of adversary system of administration of justice which may bring about inequality where the opposing adversaries are not evenly balanced. It is quite possible that in certain types of cases people may receive better justice where judicial formulism is kept out and the procedure is made informal. The many tiered system of appeals built into the judicial pyramid often results in pyrrhic victory and leads to disenchantment with the end product of delayed justice. We cannot, therefore, accept as an axiomatic exemption or universal generalisation that as between an administrative tribunal and

a civil court, the latter is always functionally better than the former. We have grown up in a system of administration of justice where civil courts have been the primary authority entrusted with the task of determination of disputes and, therefore, whenever a special machinery is devised by the Legislature entrusting the power of determination of disputes to another authority set up by the Legislature in substitution of courts of law, our minds which are conditioned by the historical existence of courts of law and which have, therefore, acquired a certain predilection for the prevailing system of administration of justice by courts of law, react adversely against the establishment of such an authority. We must cast aside our predilection for the existing system of administration of justice which has prevailed over a long period of time and examine the special machinery set up by the legislature objectively and dispassionately, without any pre conceived notion or prejudice against it, and find out whether the special machinery is really and substantially more drastic and prejudicial than the age old machinery of Civil Court. When we say this we do not wish to underscore the high qualities which are the inalienable attributes of administration of justice by Civil Courts, namely, detachment and impartiality, objectivity of approach, sensitivity and regard for natural justice and skill and expertise in shifting of evidence and interpretation and application of the law. But we do wish to point out that the machinery of an administrative tribunal is not necessarily and invariable more drastic and onerous than that of a Civil Court. The two procedures would have to be compared objectively and dispassionately without any predilection or prejudice to determine whether one is really and substantially more drastic and prejudicial than the other.

39. If we examine the question before us in the light of these general observations it will be apparent that the special procedure set out in Chapter VA of the Municipal Act is not substantially more drastic and prejudicial than the ordinary procedure of a civil suit. The initial authority to determine the liability to eviction is no doubt the Municipal Commissioner who is the Chief Executive Officer of the Municipal Corporation and who may not be possessed of any legal training but S.68 of the Municipal Act provides that this function may be discharged by any Municipal Officer whom the Municipal Commissioner may generally or specially empower in writing in that behalf and the Municipal Commissioner can, therefore, authorise a Deputy Municipal Commissioner attached to the Legal Department of the Municipal Corporation, who would be an officer trained in law, to discharge this function and indeed we have no doubt that the Municipal Commissioner, if he is himself not trained in law, would do so. The determination of the liability to eviction would, therefore, really in practice be made by a Municipal Officer having proper and adequate legal training. Then again, the occupant against whom the special procedure is set in motion would have a right to file his written statement and produce documents and he would also be entitled to examine and cross examine witnesses. The Municipal Commissioner or other officer holding the inquiry is given the power to summon and enforce the attendance of witnesses and examine them on oath and also require the discovery and production of documents. The occupant is also entitled to appear at the inquiry by advocate, attorney or pleader. Thus, in effect and substance the same procedure which is followed in a Civil Court is made available in the proceeding before the Municipal Commissioner or other officer holding the inquiry. Then there is also a right of appeal against the decision of the Municipal Commissioner or other officer and this right of appeal is to a senior and highly experienced judicial officer and not to a mere executive authority. The appeal lies to the Principal Judge of the City Civil Court or such other judicial officer in Greater Bombay of not less than ten years standing as the Principal Judge may designate in that behalf and it is an appeal both on law and fact. It is true that a revision application against the appellate order is excluded, but if the judicial officer invested with appellate power has failed to exercise his jurisdiction or acted in excess of his jurisdiction or committed an error of law apparent on the face of the record or the decision given by him has resulted in grave miscarriage of justice,

it is always open to the aggrieved party to bring it up before the High Court for examination under Art.226 or Art.227. The ultimate decision is, therefore, by a judicial officer trained in the art and skill of law and not by an executive officer. It is difficult to see how in the context of the need for speedy and expeditious recovery of public premises for utilisation for important public uses, where dilatoriness of the procedure may defeat the very object of recovery, the special procedure set out in Chapter VI of the Municipal Act -- and this applies equally to the special procedure set out in the Government Premises Eviction Act -- can be regarded as really and substantially more drastic and prejudicial than the ordinary procedure of a civil suit. We do not think that the two procedures are so substantially and qualitatively disparate as to attract the vice of discrimination.

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

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

42. I must also utter a note of caution against the tendency to lightly overrule the view expressed in previous decisions of the Court. It may be that there is a feeling entertained by certain schools of thought, to quote the words of Cardozo, that "the precedents have turned upon us and are engulfing and annihilating us -- engulfing and annihilating the very devotees that worshipped at their shrine. So the air is full of new cults that disavow the ancient faiths. Some of them tell us that instead of seeking certainty in the word, the outward sign, we are to seek for something deeper, a certainty relative and temporary, a writing on the sands to be effaced by the advancing tides. Some of them even go so far as to adjure us to give over the vain quest, to purge ourselves

of these yearnings for the unattainable ideal, and to be content with an empiricism that is untroubled by strivings for the absolute". (see page 9 Selected Writing of Benjamin Nathan Cardozo by Margaret E. Hall).

At the same time, it has to be borne in mind that certainty and continuity are essential ingredients of rule of law. Certainty in law would be considerably eroded and suffer a serious set back if the highest court of the land readily overrules the view expressed by it in earlier cases, even though that view has held the field for a number of years. In quite a number of cases which come up before this Court, two views are possible, and simply because the Court considers that the view not taken by the Court in the earlier case was a better view of the matter would not justify the overruling of the view. The law laid down by this Court is binding upon all courts in the country under Art.141 of the Constitution, and numerous cases all over the country are decided in accordance with the view taken by this Court. Many people arrange their affairs and large number of transactions also take place on the faith of the correctness of the view taken by this Court. It would create uncertainty, instability and confusion if the law propounded by this Court on the basis of which numerous cases have been decided and many transactions have taken place is held to be not the correct law. This Court may, no doubt, in appropriate cases overrule the view previously taken by it but that should only be for compelling reasons. Necessity may sometimes be felt of ridding stare decisis of its petrifying rigidity. As observed by Brandesis, "stare decisis is always a desideratum, even in these constitutional cases. But in them, it is never a command" (See The Unpublished Opinions, page 152). Some new aspects may come to light and it may become essential to cover fresh grounds to meet the new situations or to overcome difficulties which did not manifest themselves or were not taken into account when the earlier view was propounded. Precedents have a value and the ratio, decidendi of the case can no doubt be of assistance in the decision of future cases. At the same time we have to as observed by Cardozo, guard against the notion that because a principle has been formulated as the ratio decidendi of a given problem, it is therefore to be applied as a solvent of other problems, regardless of consequences, regardless of deflecting factors, inflexibly and automatically, in all its pristine generality (see Selected Writings, page 31). As in life so in law things are not static. Fresh vistas and horizons may reveal themselves as a result of impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations. Nobody is so gifted with foresight that he can divine all possible human events in advance and prescribe proper rules for each of them. There are, however, certain verities which are of the essence of the rule of law and no law can afford to do away with them. At the same time it has to be recognized that there is a continuing process of the growth of law and one can retard it only at the risk of alienating law from life itself. There should not be much hesitation to abandon an untenable position when the rule to be discarded was in its origin the product of institutions or conditions which have gained a new significance or development with the progress of years. It sometimes happens that the rule of law which grew up in remote generation may in the fullness of experience be found to serve another generation badly. The Court cannot allow itself to be tried down by and become captive of a view which in the light of the subsequent experience has been found to be patently erroneous, manifestly unreasonable or to cause hardship or to result in plain iniquity or public inconvenience. The Court has to keep the balance between the need of certainty and continuity and the desirability of growth and development of law. It can neither by judicial pronouncements allow law to petrify into fossilised rigidly nor can it allow revolutionary iconoclasm to sweep away established principles. On the one hand the need is to ensure that judicial inventiveness shall not be desiccated or stunted, on the other it is essential to curb the temptation to lay down new and novel principles in substitution of well established principles in the ordinary run of cases and

the readiness to canonise the new principles too quickly before their saintliness has been affirmed by the passage of time. The votaries of the pragmatic idea that principles and rules should be accommodated to ends must also take into account the truth that of the ends to be achieved, defineness and order are themselves amongst the greatest and the most obvious. The distinction between evolution of law which is permissible by process of judicial pronouncements and radical changes in law which can only be brought about as a result of legislation cannot also be lost sight of. As observed by Cardozo, J.:
"*I think adherence to precedent should be the rule and not the exception. I have already had occasion to dwell upon some of the considerations that sustain it. To these I may add that the labour of judges would be increased almost to the breaking point if every past decision could be reopened in every case, and one could not lay one's own course of bricks on the secure foundation of the courses laid down by others who had gone before him. The situation would, however, be intolerable if the weekly changes in the composition of the court, were accompanied by changes in its rulings. In such circumstances there is nothing to do except to stand by the errors of our brethren of the week before, whether we relish them or not. But I am ready to concede that the rule of adherence to precedent, though it ought not to be abandoned, ought to be in some degree relaxed. I think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment. We have had do this sometimes in the field of constitutional law*". (see pages 170 and 171 Selected Writings of Benjamin Nathan Cardozo by Margaret Hall).

43. So far as the question is concerned about the reversal of the previous view of this Court, such reversal should be resorted to only in specified contingencies. It may perhaps be laid down as a broad proposition that a view which has been accepted for a long period of time should not be disturbed unless the Court can say positively that it was wrong or unreasonable or that it is productive of public hardship or inconvenience. Question about the overruling of its previous decisions was considered by this Court in the case of Bengal Immunity Co. Ltd. v. State of Bihar, (1955 (2) SCR 603 : AIR 1955 SC 661) Das, Acting C.J., after quoting from American, Australian and Privy Council decisions observed as under:

"*Reference is made to the doctrine of finality of judicial decisions and it is pressed upon us that we should not reverse our previous decision except in cases where a material provision of law has been overlooked or where the decision has proceeded upon the mistaken assumption of the continuance of a repealed or expired statutes and that we should not differ from a previous decision merely because a contrary view appears to us to be preferable. It is needless for us to say that we should not lightly dissent from a previous pronouncement of this Court. Our power of review, which undoubtedly exists, must be exercised with due care and caution and only for advancing the public well being in the light of the surrounding circumstances of each case brought to our notice but we do not consider it right to confine our power within rigidly fixed limits as suggested before us. If on a reexamination of the question we come to the conclusion, as indeed we have, that the previous majority decision was plainly erroneous then it will be our duty to say so and not to perpetuate our mistake even when one learned Judge who was party to the previous decision considers it incorrect on further reflection. We should do so all the more readily as our decision is on a constitutional question and our erroneous decision has imposed illegal tax burden on the consuming public and has otherwise given rise to public inconvenience or hardship, for it is by no means easy to amend the Constitution. Sometimes frivolous attempts may be made to question our previous decisions but if the reasons on which our decisions are founded are sound they will by themselves be sufficient safeguard against such frivolous attempts. Further, the doctrine of stare decisis has hardly any application to an*

isolated and stray decision of the Court very recently made and not followed by a series of decisions based thereon. The problem before us does not involve overruling a series of decisions but only involves the question as to whether we should approve or disapprove, follow or overrule a very recent previous decision as a precedent. In any case, the doctrine of stare decisis is not an inflexible rule of law and cannot be permitted to perpetuate our errors to the detriment to the general welfare of the public or a considerable section thereof.

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

45. Applying the principle enunciated above also. I am of the view that no sufficient ground has been shown for overruling the view expressed by the majority in Northern India Caterers case (1967 (3) SCR 399 : AIR 1967 SC 1581). It may be that the view expressed by the majority in that case appears to be preferable, but that by itself would not show that the decision arrived at in the Northern India Caterers case was plainly erroneous and as such requires overruling. It also cannot be said that the aforesaid decision has given rise to public inconvenience and hardship. The legislature has in view of the decision in Northern India Caterers case made necessary amendments in many of the enactments so as to bar the jurisdiction of the Civil Courts in matters dealt with by those enactments. No constitutional amendment was required to set right the difficulty experienced as a result of the decision of this Court in Northern India Caterers case.

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