

**MOTION FOR ELECTION TO THE
CENTRAL ADVISORY COMMITTEE
OF THE NATIONAL CADET CORPS,
AND PROGRAMME THEREOF**

THE DEPUTY MINISTER OF DEFENCE
(SARDAR S. S. MAJITHIA): Sir, I beg to move:

"That in pursuance of clause (i) of sub-section (1) of section 12 of the National Cadet Corps Act, 1948, this House do proceed to elect, in such manner as the Chairman may direct, one member from among themselves to be a member of the Central Advisory Committee of the National Cadet Corps for a term of one year."

MR. CHAIRMAN: The question is:

"That in pursuance of clause (i) of sub-section (1) of section 12 of the National Cadet Corps Act, 1948, this House do proceed to elect, in such manner as the Chairman may direct, one member from among themselves to be a member of the Central Advisory Committee of the National Cadet Corps for a term of one year."

The motion was adopted.

MR. CHAIRMAN: I have to inform Members that the following dates have been fixed for receiving nominations and for holding election, if necessary, to the Central Advisory Committee of the National Cadet Corps:—

Number of members	One
10 be elected.	
Last date and time for receiving nominations.	22nd August, 1958 (Up to 3 P.M.)
Last date and time for withdrawal of candidature.	25th August, 1958 (Up to 3 P.M.)
Date and time for election.	26th August, 1958 (Between 3 P.M. and 5 P.M.)
Place of election.	Room No. 29, Ground Floor, Parliament House, New Delhi.
Method of election.	Proportional representation by means of the single transfer- able vote.

**THE PUBLIC PREMISES (EVIC-
TION OF UNAUTHORISED OCCU-
PANTS) BILL, 1958—continued**

MR. CHAIRMAN: We now come back to the original Bill. We have taken nearly two days and still there are six speakers. I hope they will be as brief as possible. Mr. Bisht.

SHRI J., S. BISHT (Uttar Pradesh): Mr. Chairman, I rise to support this Bill. There are only a few points and I hope my hon. friend, Mr. Sapru, if he gets a chance, will help us in clarifying them. I particularly draw your attention to clause 4 which reads as follows:

"(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall—

(a) * * *

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof ..."

And the same thing is repeated in sub-clause (4) where it has been stated that he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed. So what has been troubling me here is this. When you say that every person in occupation should be served with a notice, does it mean—as it apparently means on the face of it—that if there are six adult members

[Shri J. S. Bisht.] in a particular family, then every member has to be served individually with such a notice? The law does not say that only the head of the family or the householder will be served with notice. There may be six persons, or if it is a joint family, there may be ten or twelve members of the family. What you have done here is that you have asked that every person shall individually be served with that notice. Well, that will greatly handicap the estate officer in expeditiously executing the purpose of this measure, that is to say, in getting the possession of the premises that are occupied in an unauthorised manner by these people. As my colleague very well knows, even if there are two or three persons in a family, and you want to serve them with any notice, it is very easy to evade it, because one of them can be absent or one of them can go away on that day, and it will be very difficult to serve all of them with that notice.

SHRI P. S. RAJAGOPAL NAIDU
(Madras): Supposing half a dozen families occupy some Government premises, then it means that all of them will be served with notice ...

SHRI J. S. BISHT: That is what I am saying, because here the words are "The notice shall.... require all persons concerned ...". It is a very wide and comprehensive law and I do not know whether the estate officer will be able to make. . .

THE DEPUTY MINISTER OF LAW (SHRI R. M. HAJARNAVIS) : May I just point out, Sir, that this difficulty apparently will occur only in the case of a joint Hindu family, because in respect of other persons, every one of them is entitled to receive notice if any executable order is to be passed against them. Therefore he will be entitled to receive notice in his own right. So far as the joint Hindu family is concerned, the hon. Member, who is an eminent member of the legal profession, knows that the procedure may take two forms. We can

make all the persons of the joint Hindu family parties to the proceedings. That is number one. Secondly, we may proceed against the Karta as a representative of the Hindu joint family. We might adopt one of the processes, and if the notice is served upon the *Karta* in his capacity as *Karta*, then I believe the order that will be passed will be binding upon the Hindu family . . .

SHRI P. N. SAPRU (Uttar Pradesh) : A family governed by the *Mitakshara* system is quite different from that governed by the *Dayabhaga* system.

SHRI R. M. HAJARNAVIS: It will all depend upon whether we are able to . . .

SHRI H. P. SAKSENA (Uttar Pradesh) : Sir, I happened to be a Member of the Joint Committee, and I could never foresee that there would be a legal quibbling of this nature as my friend, Mr. Bisht, has raised.

SHRI P. N. SAPRU: It is a serious point.

SHRI J. S. BISHT: Sir, I am sorry that my learned friend, Mr. Saksena, calls it 'quibbling'. There is no question of any quibbling. These points are likely to be raised in the law courts in the ordinary course, and maybe, the whole purpose of this measure may be defeated. After all, Sir, this legislation is in substitution of the ordinary law of the land. If the ordinary law of the land were sufficient for our purposes, there would be no necessity for bringing in this law at all. But there are thousands and thousands of cases today where the Government of India is in a fix what to do, because there are people who are in an unauthorised occupation of the Government's property, and in order to clear those people from those premises this special law has been brought forward. Now if this law has been brought in, obviously it must serve its purpose, that is to say, it must be much more expeditious than the ordinary law of the land.

[MR. DEPUTY-CHAIRMAN in the Chair.]

In the case of the ordinary law of the land it may take six years or ten years. It is not after all so easy under that law to evict these people. There can be appeals and other applications. So my difficulty is this that this particular provision will bring about the same delay that you want to avoid, and if you can somehow bring in some clause which will get over this difficulty, I think that will be much better instead of leaving it to the lawyers and to the courts later on and then again coming back with some sort of amendment. So, Sir, this is the only difficulty that I find in it. Otherwise, as my friend, Mr. Sapru, yesterday pointed out, it is a very good improvement no doubt and it is an improvement which gives sufficient security and sufficient guarantee against any arbitrariness on the part of estate officers and against any vindictive action taken against any particular person, and all that has been done here has been done by way of safeguarding the interests of these people, that is to say, the real and genuine interests. Therefore, Sir, I hope that if this particular difficulty is got over, this law ought to come in handy for evicting these large numbers of people who are in unauthorised occupation of the Government's premises.

श्री श्रीकार नाथ (दिल्ली) : श्रीमान् उपसभापति महोदय, इस बिल का दिल्ली में बहुत बड़ा ताल्लुक है इसलिये मुझे भी इस पर कुछ अर्ज करना है। सारे देश में कहीं भी इतने अनग्रथोराइज्ड स्क्वैटर्स नहीं हैं जितने कि दिल्ली में हैं। शायद अब उनकी तादाद करीब १ लाख के है, जैसा कि अखबारों में बताया जाता है। तो अब देखना यह है कि यह ज़ाबिल हमारे सामने है, अर्थात् यह बिल भी पूरी तरह से दिल्ली को हालत पर काबू पा सकेगा या नहीं या जिस तरह से पहले बिलों की हालत हुई है वही हालत इसकी भी होने वाली है। आप देखिये कि इसका नाम पब्लिक प्रेमिसेज बिल तो है लेकिन दरअसल

इसको बहुत महदूद कर दिया गया है और यह सिर्फ़ गवर्नमेंट प्रेमिसेज के लिये ही है। यही नहीं बल्कि इसमें जहाँ डिस्टिक्शन किया गया है प्रेमिसेज एंड प्रेमिसेज और स्क्वैटर्स एंड स्क्वैटर्स के बीच वहाँ गवर्नमेंट प्रेमिसेज में भी डिस्टिक्शन किया गया है। गवर्नमेंट ने, डी० डी० ए० के माफ़त जो ज़मीन लीज़ पर लोगों को दे रखी है, पहले जिन्होंने लाखों रुपया दिया है, उनको तो इसमें इनकलूड कर दिया है लेकिन मेरा खयाल है कि यह एक इतिफ़ाकिया ओपीशन रह गया है कि जो ज़मीन डी० डी० ए० ने फ्री होल्ड दी है उसका मालिक अभी तक डी० डी० ए० ही है मगर agreement to sell होकर खरीदार को कब्ज़ा दे दिया गया है उसको इसमें शरीक नहीं किया गया है। इसका मतलब यह होगा कि वह ज़मीन, वह प्लॉट इस ऐक्ट, इस बिल के मुताबिक़ खाली नहीं कराया जा सकेगा। तो मैं यह चाहता था कि इस चीज़ पर मंत्री महोदय गौर करें कि उनके बारे में क्या होगा। जब सन् १९४७ में यहाँ पर रिफ़्यूजीज आये और उसके अलावा बाहर से बहुत बड़ी तादाद में लोग आये तो उन्होंने ज़मीन पर कब्ज़ा करना शुरू किया मगर हमारे प्रधान मंत्री जी ने अपील की कि किसी को हटाया न जाय। उसके बाद कैबिनेट ने फैसला किया और फिर पुलिस को आर्डर किये गये कि किसी को, स्क्वैटर्स को जो जहाँ बैठे हुए हैं वहाँ से उनको हटाया न जाय। उसके बाद डा० गाडगिल साहब ने हाउस में आइन्वासन दिया कि जिनको हटाया जायेगा उनको दूसरी जगह दी जायेगी। लेकिन ये तमाम चीज़ें होते हुये भी, इसके बावजूद, आज हम इस बिल में यह पाते हैं कि गवर्नमेंट की जो जगह है उसमें से भी कुछ पर से लोग हटाये जायेंगे, कुछ पर से नहीं। दूसरी जगहों पर से लोग खुद हटायें जो कि ट्रस्ट से या डी० डी० ए० से फ्री होल्ड ज़मीन ले चुके हैं वे भी। हालांकि इस बिल में ही इन्हें भी आजाना चाहिये था अभी भी वक्त है आप

[श्री श्रीकार नाथ]

गौर कर ले ताकि आगे चल कर दूसरा बिल न लाना पड़े। आप फ़रमति हैं कि यह सिर्फ़ गवर्नमेंट प्रेमिसेज के लिये है, लेकिन ७ मार्च, १९५८ में ही हमारे मिनिस्टर रिहैबिलिटेशन साहब ने इस सभा में एक बयान दिया था कि जिसमें उन्होंने बताया था :

"According to the survey carried out in June 1952, the total number of displaced families squatting on public and private lands was about 30,000."

आगे चल कर वे फ़रमति हैं।

"The actual number of displaced families at present squatting on Government lands is not known."

७ मार्च, १९५८ तक देहली के अन्दर यह पता नहीं था हमारी गवर्नमेंट को कि सिर्फ़ सरकारी ज़मीनों पर कितने टोटल स्क्वैटर्स हैं। अब आप बतायें कि इस बिल को, इस ऐक्ट को आप किस तरह लागू कर सकेंगे। दिक्कत आज जो हो रही है—इतिफ़ाक़ से मैं डी० डी० ए० में हूँ, और इस बारे में जानता हूँ—कि उन्होंने अभी तक एक अलार्नमेंट कमेटी बनाई है गाडगिल एड्योरेस के अन्दर, लोगों को अल्टरनेट अकमोडेशन देने के लिये। उनकी तादाद देखना नामुमकिन हो गया है। आज भी १९५८ में जो बैठता जायेगा वह भी इस एड्योरेस से गलत फ़ायदा उठा सकता है। वज़ह क्या है? १९५२ की जो सर्वे हुई थी वह आज तक मुकम्मल नहीं हुई। अगर सर्वे लिस्ट है तो उनको कोई नोटिस नहीं है। सन् १९५६-५७ तक ऐसी गड़बड़ रही कि ३०-३५ दुकानें बननी थीं और सैकड़ों अप्लीकेशंस आ गईं और हर शख्स ने कहीं न कहीं से लाकर सर्टीफ़िकेट दे दिया कि रिफ्यूजी हूँ और सन् १९५० से यहाँ बैठा हूँ। जो एड्योरेस दिया गया १९५० तक के बैठने वालों को वह एड्योरेस १९५१ में दिया गया। इस तरह १९५० के बैठने वालों को अल्टरनेट अकमो-

डेशन देने का वायदा किया गया। सर्वे की लिस्ट बनना शुरू हुई १९५२ में। स्क्वैटर्स को जो नोटिस दिये गये थे वह अभी तक मुकम्मल नहीं हुये हैं। सात आठ साल की फ़ेहरिस्त है जो डी० डी० ए० के हाथ में है। उन तमाम लोगों को अब तक नोटिस नहीं दिये जा चुके हैं, उसकी क्या वज़ह है? अगर नोटिस दिये जाते हैं तो उनके पास सबूत हो जाता है। जो आज यह एक बड़ी शिकायत थी, इसलिये कमेटी बनाई गई। आज जो सौ, दो सौ रुपया दफ़्तर में दे दे तो अपना नाम १९५० के स्क्वैटर्स में दर्ज करा सकता है। मैं यह चाहता था कि मिनिस्ट्री इस चीज़ पर गौर करे कि आया जिन दो चीज़ों पर सब से ज्यादा जोर दिया गया है एक इसके दायरे को महदूद रखा जाय दूसरे alternate जगह दी जाय। लेकिन वे लोग जो रिफ्यूजी लोगों की हिमायत में या हरिजनों की हिमायत में गलती से यह कह रहे हैं कि जो स्कूल हैं, धर्मशाले हैं, मसजिद हैं, अस्पताल हैं, तिब्बिया कालिज हैं, इसी तरह के सैकड़ों दिल्ली में पब्लिक प्रेमिसेज हैं जिन में आज स्क्वैटर्स बैठे हुये हैं, और उनको नामर्ल कोर्स में पुलिस द्वारा हटाया जा सकता था यह कह कर कि वे ट्रेसपासर्स हैं, उनको निकाल दीजिये लेकिन वे सब ज़रिये आपने पब्लिक को अलाऊ नहीं किये और उनको अब नहीं हटाया जा सकता। दस साल के बाद यह वादा करने के बाद हमने उनको किसकी भर्सी (mercy) पर छोड़ा। मैं चाहता हूँ कि सरकार इस चीज़ पर गौर करे और एक ऐसा स्क्वैटर्स ऐक्ट लाया जाय जिससे दिल्ली के जितने अन-आथराइज्ड स्क्वैटर्स हैं, वे सब कवर हो जायें। इसमें स्क्वैटर्स की बुराई नहीं है। हमारे माननीय सदस्य यह न समझें कि अगर यह चीज़ आ गई तो उन सबको हटा दिया जायेगा। अगर गवर्नमेंट किसी को हटायेंगी तो उसको अल्टरनेट अकमोडेशन देगी और इसका नतीजा क्या होगा। मामूली कोर्ट में जो कानून है उसके मातहत

अगर हम किसी को हटाते हैं तो उनको alternate accommodation देने का सवाल ही नहीं रहता। जब गवर्नमेंट अपनी ज़मीन से ऑर्डिनरी लॉ के अन्दर लोगों को नहीं हटा सकती तो एक मामूली आदमी एक प्राइवेट आदमी को जितनी दिक्कत पैदा हो सकती है यह आप समझ सकते हैं। जब गवर्नमेंट ऑर्डिनरी लॉ के अन्दर स्क्वैटर्स को नहीं हटा सकती तभी तो गवर्नमेंट की यह ज़रूरत पैदा हुई कि इस नये ऐक्ट को लाया जाय। लेकिन जो प्राइवेट आदमी है वह अपनी ज़मीन से किसी को कैसे हटायेगा? मिसाल के तौर पर एक पांच लाख की इमारत है, किसी स्कूल की या अस्पताल की, और उसमें पांच, सात नॉन रिफ्यूजी स्क्वैटर बैठे हैं तो अगर वह आदमी उनको हटाने के लिये कोर्ट में दावा करता है तो पांच हजार रुपये उसको स्टैम्प में खर्च करने पड़ते हैं, जब कि एक कमरे की लागत भी पांच हजार नहीं। इसलिये मेरा कहना है कि इस प्रकार के स्कूलों से या धर्मशालाओं से खासकर मस्जिदों से जिनके लिये स्वयं राष्ट्रपिता महात्मा गांधी जी ने फास्ट करके, लोगों को वहां से हटाने पर पूरा जोर दिया, तब फिर क्यों न कानून में इसके लिये व्यवस्था की जाय। उस कानून में इस तरह की चीज़ शरीक नहीं है लिहाजा मैं मिनिस्टर साहब से कहूंगा कि वे इस पर गौर करें। जैसा कि इस बिल का नाम है उसके मुताबिक अमल भी होना चाहिये और इसमें तमाम पब्लिक प्रेमिसेज कम से कम ला दी जाय, प्राइवेट को छोड़ दिया जाय और उसके लिये अलग से कानून बने। खास तौर से डी० डी० ए० में जो डिफ़िकल्टी है वह यह है कि उसमें सिर्फ तीन स्कीमें ऐसी हैं जिनके अन्दर ज़मीन फ्री होल्ड दी गई है, जैसा कि शक्तिनगर में है हलांकि प्रॉपर्टी डी० डी० ए० की है। उसमें उनके बारे में जो ओमीशन है उसको पूरा किया जाय। दूसरे पब्लिक की जो चीज़ें हैं, स्कूल हैं, अस्पताल हैं, धर्मशाला हैं बहुत सी चीज़ें हैं जो

इसमें शरीक नहीं हैं उनको शरीक किया जाय वरना लोगों को दिक्कत होगी, उनके मालिकों को भी और squatter को भी जो लोग कहते हैं उनको अपनी जगह पर रहने दीजिये, उसका नतीजा यह होगा कि देहली का डेवलपमेंट नहीं हो सकता है। मिसाल के तौर पर मैं कहना चाहता हूं कि देहली में जो सर्कुलर रोड बना है, यानी लिंक रोड, दिल्ली का बहुत सा ट्रांसपोर्ट उस पर डिपेंड करता है, लेकिन जमुना के पास जाइये, करीब १०० गज का टुकड़ा पड़ा है वहां से लोगों को हटाना आसान नहीं है। अगर वे नहीं हटते तो सारी जो करोड़ों रुपये की सड़क बनी है वह बेकार है क्योंकि ट्रांसपोर्ट की वसेज वहां नहीं जा सकती। वह मामला अभी तक दरपेश है। किसी तरह खुशामद करके, रुपया दे कर, ज़मीन दे कर उनको हटाना पड़ेगा। मैं जानता हूं कि दिल्ली में squatter का मसला दिनोंदिन बढ़ रहा है। आप रोज़ अखबारों में पढ़ते होंगे कितनी तावाद्द में ये बढ़ रहे हैं, अभी पचास हजार थे और रोज़ बाहर से आ रहे हैं और अनअथराइज्ड कंस्ट्रक्शन कर रहे हैं उसको देखते हुये कुछ दिनों में इनकी तादाद् ८० हजार या एक लाख तक पहुंच जायगी। शायद पहुंच गई है। इस वक्त ज़रूरत इस बात की है कि शहर के चारों तरफ हम एक लाख के करीब प्लॉट बनायें। इस समय दस, बारह लाख लोग हैं जिनके पास proper हाउसेज नहीं हैं जो शहर के इर्द गिर्द रहते हैं। अगर आप कभी बम्बई की ट्रेन से या पंजाब की ट्रेन से दिल्ली आयें तो सुबह पांच, छः बजे रेल से सफ़र करते हुये देखेंगे कि रेलवे लाइन के दोनों ओर कितने नंगे हुए लोग अपने को हलका करते हैं। उनका यह दृश्य देखना कठिन हो जाता है। हमको ऐसा चित्र देखने को मिलेगा जो किसी सम्य शहर या सम्य देश के लिये शोभा नहीं देता। मैं इसके खिलाफ़ नहीं कि आल्टरनेट जगह सबके वास्ते मिलनी चाहिये।

[श्री श्रीकार नाथ]

मेरे कहने का यह उद्देश्य है कि ऐसा नहीं होना चाहिये कि जो शस्त्र जहाँ चाहे बैठ जाय। दिल्ली में हालत यह है कि अगर हम किसी को उसकी जगह से हटा देते हैं तो वह कहीं और जगह जा कर स्क्वैट करेगा। यह एक गलत चीज है जो हमें नहीं होने देना चाहिये। इसके लिये पहली चीज यह होनी चाहिये कि जितने भी स्क्वैटर्स हैं उनको रजिस्टर कर दिया जाय और रजिस्टर करने के बाद उनकी तादाद के मुताबिक एक प्रायरिटी लिस्ट बनाई जाय और तब उनको मकानात दिये जायें।

आखिरी चीज मैं यह कहना चाहता था कि तीन दफे यह कानून हमारे पास आ चुका है और तीनों दफे आपने उसमें एक प्रावजन किया है कि डी० डी० ए० के जो प्लाट लीज पर दिये गये हैं वे पब्लिक प्रेमिसेज समझे जायेंगे। सेक्शन २ (बी) में आपने दिया हुआ है

"any premises belonging to the Delhi Development authority, whether such premises are in possession of, or leased out by the said Authority."

यह जो "लीज आउट" लिखा है उस पर मैं जोर देना चाहता हूँ कि इस पर अमल नहीं होता। ऐक्ट बनाते वक्त पहले तो पब्लिक प्रेमिसेज में अलग डिसटिकशन किया गया है और गवर्नमेंट प्रेमिसेज में अलग डिसटिकशन किया गया है। दूसरे, जब ऐक्ट पास हो जाता है तब उसके अमल में भी डिसटिकशन होता है। इसलिये मैं चाहता हूँ कि मंत्री महोदय कम से कम यहाँ यह एश्योरेंस दे दें कि इस सेक्शन में जो "लीज आउट" है उसका पूरी तरह से लीजहोल्ड जमीन पर अमल होने वाला है और ऐसी जमीन पर जो स्क्वैटर्स बस गये हैं उनको हटाने के लिये यह कानून पूरी तरह से काम में लाया जायगा क्योंकि डी० डी० ए० और ट्रस्ट की लीज आउट जमीनों जिनमें

लोगों ने लाख रुपया दिया है, उसमें जो स्क्वैटर्स बस गये हैं उन्होंने कानून की खिलाफ़त की है। जब अदालत में उनको हटाने के लिये जाते हैं तो दूसरे कानूनों के मुताबिक कार्यवाही नहीं की जा सकती और अदालत कहती है तुम जानों, तुम्हारा काम जाने। जिस समय १९४७ का मसला पैदा हुआ उस समय सैकड़ों हजारों मसले पैदा हो गये थे। तो जो पहले से डी० डी० ए० ने जमीन लीज पर दी हुई है उनके मामले में फ़स्ट प्रायरिटी दी जाय, हार्ड प्रायरिटी दी जाय और वहाँ से लोगों को खाली कराने के लिये आल्टरनेट जगह का बन्दोबस्त किया जाय। कम से कम जिस हालात में आप इस ऐक्ट को पास कर रहे हैं यह नाकाफ़ी है और मैं सूझता हूँ कि यह हमारा पूरा परपज सर्व नहीं करता। लेकिन जितना भी यह परपज सर्व करता है उस पर पूरी तरह से अमल होना चाहिये, यह मैं अर्ज करना चाहता हूँ।

SHRI MAHESH SARAN (Bihar): Mr. Deputy Chairman, I am in general agreement with the objects of this Bill. I do feel that a speedy method of evicting unauthorised occupants from public premises is necessary but we should be careful as to the method we should adopt. We should distinguish between a Government and a private person. A private person is anxious to evict an unauthorised person but a welfare state, a Government which looks after the people in its domain, should view it from a different point of view. In order to make my point clear, I wish to analyse who are the people who are in unauthorised occupation. There are the refugees, the labourers who come and beautify your town here and there are some Government servants, ex-Government servants and so on. So far as the Government servants are concerned they know the law and they should not take the law in their own hands. So far as they are concerned, things are different. They should certainly

be evicted; they know that they have to leave and yet are in unauthorised occupation which is wrong. But, what is the condition of the refugees? They came here in suffering, in misery, with no money and with nothing at all. They came here. Some of them were given certain premises which they were occupying but thousands of refugees were roaming about in Delhi and in other places and, when the Government could not make any arrangement, they took possession of certain unoccupied portions that were on the roads and other places. These people were hard hit and they are the people who had nothing to fall back upon. They have been there for a pretty long time and now we want speedy eviction of such people. Is it fair that they should have no other alternative, that they should be thrown out on the streets? I think it is very wrong. Then, take these labourers. They all have come to beautify this city of Delhi. You find beautiful buildings all round and those who built those buildings, you want them thrown on the streets. They have no place. The Delhi authorities should have made arrangements for their stay, but no arrangement was made. They stayed on and at this moment, it is said that they should be evicted. Alternative accommodation is absolutely necessary. Then it is said that an assurance has been given, but what is the use of an assurance? When you are legislating, why can't you enact a legislation to that effect? Why do you feel shy about it? How will the courts work on assurances? They will look to the letter of the law and they will be guided by that. Therefore, my submission is that an assurance like that has absolutely no value. It should have been incorporated in the Bill itself. It is said—I am not so sure; I was not here—that there was an assurance given in 1951 and that assurance has not been given effect to. There was open talk about this and I do feel that a welfare state has the great duty of looking after its subjects; it has to see that they are pro-

perly accommodated. You cannot throw them all on a sudden on the streets. They are very poor people who have no money and nothing to fall back upon.

Then, Sir, comes the point about damages. You want to claim damages from these poor people who cannot even get food to eat every day. From where will they get money to pay for damages? It is enough that they are evicted; it is a most obnoxious clause which has been added and I take strong exception to it because I feel that it is a great hardship. These poor people were not provided with any accommodation; they came and stayed at some place and now, after seven or eight years or even ten years, you not only want to evict them but also want to claim damages from them. You can only take damages from their blood because they have nothing else to give, and I think it is really wrong to ask for damages. Of course, space is required for beautifying Delhi.

SHRI P. N. SAPRU: May I point out that clause 7 (2) is only permissible in character? The estate officer may assess damages.

SHRI MAHESH SARAN: I will come to that later on. Your estate officer is not a judicial officer. You have not made him a judicial officer. If you had made it that the estate officer should be a judicial officer, I should have been very happy.

DR. W. S. BARLINGAY (Bombay): Should not we assume that the law will ordinarily be administered in a humane way?

SHRIMATI SAVITRY DEVI NIGAM: (Uttar Pradesh): Actually damages here means rent. It includes the nominal rent.

SHRI MAHESH SARAN: From where will they give it?

SHRI H. P. SAKSENA: What does my friend say about the pensions of the Government servants who are to be evicted?

MR. DEPUTY CHAIRMAN: Mr. Saksena, all these points have been referred to over and over again.

SHRI MAHESH SARAN: So far as the Government servants are concerned, I have already said something. You have not heard it.

SHRI H. P. SAKSENA: I have heard every single word that you had said.

SHRI MAHESH SARAN: So far as they are concerned, they are liable to pay but you cannot take it from people who have nothing to pay. So, my submission is, although I support the Bill, I do feel, that it should be carried out in a more humane way than the Bill provides.

DR. P. V. KANE (Nominated): Mr. Deputy Chairman, I have not to say much but two points strike me. If you look at the definition of the term "unauthorised occupant" you will find that it is an inclusive definition, it includes the continuance in occupation of any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. This is a definition including many kinds of people. First, there will be persons who are trespassers; then there will be persons who are allowed to occupy probably by a grant or in any other manner and then, thirdly, there will be persons like the displaced persons who have been occupying premises. All these people, all these three are put in one bracket and are defined as in unauthorised occupation. I am not pleading for those who are trespassers. I am particularly struck by the somewhat harsh and unsympathetic treatment of the displaced persons. In the case of the displaced persons, many of them, it was not their fault at all; it was our leaders' who allowed Pakistan to come into being and these people were driven out from Pakistan and, against their wish, they came here. I should

say that the present Government which had its own leaders at that time should regard these people as the soldiers of the freedom movement. They are suffering because of that and they should be treated more leniently than anybody else who come under that definition of unauthorised occupants. What I am particularly driving at is this: If these people were deprived of their inheritance by a foreign Government and if they came here—if the foreign Government arose because of our own leaders' admission—I should say that they should be treated well and sympathetically. Here> there are people who have been in occupation for more than nine years; of course, ordinarily, nine years of occupation is nothing against Government. But the point is, why did you allow them to be there so long? And what are you going to do with them now? I would suggest one or two ameliorative measures. Those who have been in occupation from, say 1950 or before, should be allowed to remain there on payment of some compensation for the land; or they should be given alternative accommodation or something like that. That you must give to those people who have been there very long. I know Government may have its strict rights; but Government should exercise them with equity, especially with reference to persons who have suffered and for whom there is no redress and no future unless you go to their help. Therefore, I ask the Government and the Minister in charge to look into this matter and accept one or two of the amendments suggested, namely, that this should not be applied to those persons who have been there from 1950 or some date that is suggested. I am entirely in sympathy with that amendment which seeks to do that which probably will be moved later on.

Then there is another thing. They may not be in occupation for long. But in this particular case, where are they to go? And where is the damage to come from? Equity helps those who I are vigilant. If the Government had

been vigilant, so much damage would not have accrued. I am not talking about trespassers, those who take possession, unmindful of the law. I am not concerned about them. I am concerned particularly with the displaced persons. I have not specified what should be done. But they should be treated in a different way from those who have taken wrongful possession and who are not displaced persons or government servants who, knowing everything have continued to be in wrongful possession. Displaced persons should not be bracketed with all these others.

Another thing is about these estate officers. Government have not said that they should be judicial officers.

Then you have clause 10 where you will find:

"Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings."

That is rather sweeping. Does it exclude the power of the High Court, given under the Constitution under article 227, of superintendence? This provision here speaks of original suit and application. Does it include revisional application to the High Court or not? If the High Court is to have the power, then it should be expressly stated that "application" here means only application to courts other than the High Court. That is my second point. The first point was about the displaced persons who, I would say, have suffered and suffered in our struggle for independence.

DR. W. S. BARLINGAY: Mr. Deputy Chairman, so far as the principle which lies behind this Bill is concerned, I am in general agreement with the Bill. The Bill is a good one and deserves support. However, it

does seem to me that there are certain difficulties in this Bill which need a little clarification.

First of all, may I very respectfully point out that in the Statement of Objects and Reasons it is stated that the old Act of 1950 was declared invalid by the Allahabad, Calcutta and one other High Court . . .

AN HON. MEMBER: The Punjab High Court.

DR. W. S. BARLINGAY: Yes, the Punjab High Court. And then in paragraph 2 it says that since it was declared invalid by those various High Courts, therefore, the present Bill seeks to achieve the very same object which underlay the old Bill. Obviously, therefore, we ought to have been told in what way this particular Bill differs from the old Bill and how it does not come within the mischief of the various constitutional points raised by the various High Courts, especially article 14 of the Constitution. It is unfortunate that this has not been done. If that had been stated in the Statement of Objects and Reasons that would have helped matters and that would have helped us to understand the position better.

SHRI H. P. SAKSENA: May I know if the hon. Member has read the Report of the Joint Committee?

DR. W. S. BARLINGAY: It is not necessary for me to do so. I was pointing out that it should have been stated in the Statement of Objects and Reasons here in the Bill itself. There are certain observations of the Allahabad High Court. I have got this report . . .

MR. DEPUTY CHAIRMAN: Mr. Sapru has referred to it yesterday. Probably you were not present then.

DR. W. S. BARLINGAY: No, I was not present then.

MR. DEPUTY CHAIRMAN: He has referred to the whole decision.

DR. W. S. BARLINGAY: Very well. He is a very eminent lawyer and I certainly think Mr. Sapru must have clarified the issue quite a lot. Nonetheless, I do think that there are certain points which do actually need clarification. I do not know if Mr. Sapru referred to them yesterday. The point is this. On page 507—I am referring to A. I. R. 1956, I would not bother the House about the judgment, itself but would only read the head-notes so that the points may be made clear. It may be pointed out that the classification sought to be made by the Act in question is not between the State on the one hand and a private individual on the other, but between a private individual occupying government premises on the one hand and another private individual occupying private premises on the other. This is sought to be made here by the Act, as between two private individuals, one of whom happens to occupy private land and the other happens to occupy government land. This really is the criterion on which the whole judgment is based, namely, that here is a distinction made between two kinds of private individuals, a private individual occupying government land and a private individual occupying private land.

MR. DEPUTY CHAIRMAN: Mr. Sapru has referred to it at length and met these points. Mr. Naidu also referred to them. Obviously you have not read the proceedings.

DR. W. S. BARLINGAY: I plead guilty to that charge.

SHRI P. N. SAPRU: I would suggest to the hon. Member to read the whole judgment and not to go by the head-notes only.

DR. W. S. BARLINGAY: Very well. This is the point that I was referring to. The important point is this, that so far as this new Bill is concerned, the old distinction which was based on the old Act still holds good and so

the reason why the old Act was [declared *ultra vires* the Constitution, | that reason apparently still holds good.

SHRI P. N. SAPRU: The old Act was very arbitrary in character and it placed complete and arbitrary powers in the hands of the executive, and even the appeal which was provided by that Act was of an illusory character.

MR. DEPUTY CHAIRMAN: He had fully explained how those difficulties have been met by this measure.

DR. W. S. BARLINGAY: Very well. If the Government is fully aware of them, then I have nothing more to say, so far as that particular point is concerned.

Then I would go on to the other objections which I wish to raise.

Now, hon. Members will kindly compare clause 4(1) and 5(1) and read it along with the clause relating to appeals, *i.e.* clause 9. So far as clause 4 (1) is concerned, the provision is this:

"If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted"

Both these reasons have got to be considered so far as clause 4(1) is concerned. Two conditions have to be satisfied; one is that the person concerned should be in unauthorised occupation and secondly that he should be evicted. That is to say, the mere fact that a person is in unauthorised occupation is not sufficient; there must be good grounds for the eviction of the person concerned. It may be social or any other ground. It may be on the ground of humanity. Now, it is very significant that these words, namely, that they should be evicted are omitted in clause 5(1). There you simply say after giving him a reasonable opportunity of being heard, the estate officer is satisfied that the

public premises are in unauthorised occupation. That is all. This point that he should be evicted, is not there. So this is not a ground under Clause 5 (1) while in clause 4(1) it is there.

SHRI P. N. SAPRU: Anyway the reasons have to be recorded in writing.

SHRI P. D. HIMATSINGKA (West Bengal): The distinction is quite clear.

DR. W. S. BARLINGAY: Whenever an order is given under clause 5(1) the reason need not be that the person concerned deserves to be evicted; the reason can be confined to only one ground, namely, that the person concerned is in unauthorised occupation. Now, please read that along with the clause relating to appeals. That is clause 9. You will find that so far as this officer who is appointed by the Government of India is concerned, under clause 4 he can undoubtedly consider all these points but so far as the appeal is concerned it is confined to only unauthorised occupation; it does not cover the other ground. So far as the District Judge is concerned, he cannot go into this question at all as to whether it is proper that the person should be evicted.

SHRI P. D. HIMATSINGKA: Where is the limitation on his authority?

DR. W. S. BARLINGAY: Because the appeal would lie only against an order passed under clause 5 (1), and clause 5(1) is different from clause 4(1). Therefore the only points which can be gone into by the District Judge in any appeal filed under clause 9 of this Bill would be the grounds mentioned in clause 5(1) and not those mentioned in clause 4(1). Therefore in an appeal the District Judge or whoever he may be will have to confine himself to only one ground, the ground of unauthorised occupation; he cannot go into any other ground. This is a

very serious defect and after all the District Judge is certainly a far more responsible person than a person lower in order to him, that is to say, the estate officer here. I do not see any reason why the discretion should be taken away from the District Judge in such cases.

SHRI P. D. HIMATSINGKA: It has not been taken away.

DR. W. S. BARLINGAY: Well, obviously it is limited. It is all a question of interpretation of this clause. Please take clause 4 and clause 5 and read it along with clause 9. What would be the ordinary interpretation? At any rate what I suggest is—and I suggest this very seriously—there is no reason on earth why the same grounds mentioned in clause 4(1)—and they are very salutary provisions; they are really meant to meet such grounds as have been mentioned only a minute ago by Mr. Saran and others—could not be kept on in clause 5 also. I therefore suggest that clauses 5 and 9 should be suitably amended and the wording of clause 4(1) should be kept as part of clause 5(1). That is my second point.

The third point I wish to mention is this.

Although virtually these are legal proceedings . . .

SHRI SONUSING DHANSING PATIL (Bombay): On a point* of clarification, Sir, . . .

MR. DEPUTY CHAIRMAN: Order, order. Let him finish.

(Interruptions.)

DR. W. S. BARLINGAY: After all, it is open to the High Court or the Supreme Court to interpret it in any way and probably they will interpret it in the right way. But is it not better to make a definite provision

[Dr. W. S. Barlingay.] in the Bill itself rather than leave it to interpretation by courts?

There is another point so far as the appearance of lawyers is concerned. There is no provision for the appearance of lawyers. These proceedings before the estate officer obviously are of a legal nature and I do not see why lawyers should be debarred or why there should be no provision for allowing lawyers to appear before these tribunals if I may say so.

PANDIT S. S. N. TANKHA (Uttar Pradesh): There is no bar.

DR. W. S. BARLINGAY: There is no bar I admit, and if you think that no specific provision is necessary, then I have nothing to say about it.

SHRI P. D. HIMATSINGKA: When they want to prevent lawyers they say so.

MR. DEPUTY CHAIRMAN: The rules will provide for all those things.

DR. W. S. BARLINGAY: What I feel is that ordinarily in these special courts—these are not even courts; these are ordinary bodies . . .

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Though there is no bar, it is more by courtesy than by right.

MR. DEPUTY CHAIRMAN: It is time.

DR. W. S. BARLINGAY: I will go on to another point. I am referring to clause 9(1). The limitation given there is 15 days. Now I feel that our law is already becoming j very complicated and it is very difficult to remember these arbitrary things. Sometimes the limitation is 15 days; sometimes it is 8 days; sometimes it is 30 days; sometimes it is 60 days. It is extremely confusing, if I may say so, to the litigant. When ordinarily the time for appeal is 30 days, I do not see any reason why so far as this particular measure is concerned it should not be j 30 days.

MANY HON. MEMBERS: It is 30 days here.

THE DEPUTY MINISTER OF WORKS, HOUSING AND SUPPLY (SHRI ANIL K. CHANDA): Sir, he is referring to the old Bill.

DR. W. S. BARLINGAY: I am sorry, Sir.

MR. DEPUTY CHAIRMAN: You must refer to the Bill as it has come from the Select Committee.

DR. W. S. BARLINGAY: This is the Bill which has been given to me right here.

MR. DEPUTY CHAIRMAN: It is for the hon. Member to see that he gets the right copy. He cannot put the blame on any body else.

DR. W. S. BARLINGAY: I apologise to you straightway for this. Now, so far as clause 10 is concerned, there are very special observations in the judgement of the Allahabad High Court to which I have referred. Although the whole Act may not be invalid, it is possible that clause 10 may be held as invalid as offending against article 14 of the Constitution, and this aspect of the matter should be looked into. There is a distinction made, if I may point out . . .

1 P.M. SHRI P. N. SAPRU: Under this Bill?

DR. W. S. BARLINGAY: Yes, of course. There was a similar provision in the old Act also and that particular case—the Allahabad case which I mentioned and he also mentioned—specifically makes a distinction between the Act being generally invalid and this particular provision being specifically invalid. This provision itself may be specifically invalid, although the Act itself may be perfectly valid, (*Inter-ruption.*) I am saying all this . . .

SHRI R. M. HAJARNAVIS: Mr. Sapru has already answered this aspect, but I will certainly deal with it.

MR. DEPUTY CHAIRMAN: Unfortunately, he has not read the proceedings.

DR. W. S. BARLINGAY: As I have said, I plead guilty to the charge.

MR. DEPUTY CHAIRMAN: If responsible Members of Parliament go on like this, what about the other Members?

DR. W. S. BARLINGAY: In that case I would ask many of the Members here as to whether they do or do not read the proceedings.

MR. DEPUTY CHAIRMAN: That is no excuse why you should not be correct.

DR. W. S. BARLINGAY: But I have already apologised. So, this is about all that I wanted to say.

MR. DEPUTY CHAIRMAN: Mr. Hajarnavis, do you want to speak?

SHRI R. M. HAJARNAVIS: Yes, Sir.

MR. DEPUTY CHAIRMAN: After lunch. The House will meet again at 2.30 P.M.

The House then adjourned for lunch at two minutes past one of the clock.

The House reassembled after lunch at half past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI R. M. HAJARNAVIS: Mr Deputy Chairman. I am grateful to Mr. Himatsingka, Mr. Patil. Dr. Barlingay to a certain extent, Mr. Rajagopal Naidu, and last but not the least Mr. Sapru, for the very able support extended to this Bill. There is very little for me to add to what has been said. But some of the hon. Members

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have complained that we have not given enough regard to the judgment of the Allahabad High Court. Mr. Sapru who was a distinguished member of the Allahabad Bench and who, by his tradition, by his training and by his temperament, is one of the most uncompromising and valiant champions of the Fundamental Rights, would not have agreed to support the Bill unless he was completely satisfied that all the objections which were raised in the Allahabad High Court judgment were met in this particular measure.

Sir, before I deal with the objections raised particularly by Dr. Kane and Dr. Barlingay, I might make a preliminary observation. That preliminary observation is that this Bill is not a substantive measure. This merely deals with procedural law. It does not create a right where none existed before. It is not as if Government did not have remedies, Government did not have rights, to evict those persons who had, without any right, title or interest, occupied property belonging to Government. The ordinary courts are there, the ordinary proceedings governed by the Civil Procedure Code are always there. Well, I might answer those who say that as soon as this Bill is enacted, this measure will merely be used as a weapon to oust the poor refugees. I want to ask them this question, I want them to consider this aspect as to whether Government were not entitled to evict them by a suit under the Civil Procedure Code, whether they had no right to do so? If they have not done so is it because there was no such Act?

Is it because that Act was declared invalid by the three High Courts that these persons who are entitled to all sympathy—who are getting much more than sympathy from Government—are allowed to continue? I suggest, Sir, that it is confusing the issue to say that as soon as this Bill becomes an Act, the refugees will be without any sympathy from the Government. First of all, Sir, consider the changes made

[Shri R. M. Hajarnavis.] by this Bill. Assuming today that there was no such Bill and Government decided to evict them, all that the Government will have to do would be to file a suit in the court of a Mun-sif. All the trappings of the courts would come into play so far as that particular litigation is concerned. As I said, Sir, the plaint would be written, and that plaint would be a highly technical document. Then there would be the court fee to be paid and other expenses to be incurred. Then, if the person against whom the civil suit is launched has a good claim to adduce, it would certainly be investigated by the court. And then at the end of the trial, where he would incur considerable expense, where because of the technical nature of the proceedings he would not be able to defend himself properly unless he engaged a legal adviser, a counsel, if he has no right to remain in possession of the property, a decree would be passed and he would be evicted. He would be liable to be evicted the moment the decree is passed.

Now, what is the change that has been made by this particular Bill? Instead of a Munsif deciding it, it will be a gazetted officer who will decide it, and there will be no court fee. The proceedings will not be hampered by the technicalities of the Civil Procedure Code. There will be only two issues to be tried, namely, do these premises in respect of which the proceedings have begun belong to the Government or not? Secondly, has the person against whom these proceedings have begun any right to continue in possession? These are the simple issues, and in most cases the persons against whom these proceedings have commenced will probably have no defence because Government will take care to see, where their title is in doubt, where it will require a great deal of evidence to prove that right to possession has accrued to them, I am quite sure that this measure will not be resorted to.

At this stage, Sir, I might reply to the point raised by Dr. Kane. He referred to clause 10 and said that probably the jurisdiction of the Supreme Court or of the High Court is curtailed or sought to be curtailed by this clause. I am clear in my mind as it has been so interpreted authoritatively by the Supreme Court that a clause of this nature cannot take away the jurisdiction either of the High Court or of the Supreme Court. We shall be administering this law under the superintendence of both the High Courts and the Supreme Court. If the proceedings are resorted to, if the proceedings are employed in a case which is not covered by the terms of the power which has been granted to the competent authority, I am quite sure the High Court will set aside those proceedings as being taken without jurisdiction. Secondly, as you know, Sir, he can ask for a writ of *certiorari* where there is an error of law apparent on the face of the record. So, Government are under no illusion when they have brought in clause 10 that they have in any manner abridged the jurisdiction of either the High Court or the Supreme Court; so, that remains. Then, contrasting the two procedures under the ordinary law and the new law, if the defendant is proceeded against under the ordinary law and if he has no defence, he will be liable to costs. He will be liable for mesne profits and then, he will not have been able adequately to defend himself because, as I said, proceedings in the civil court would be much more technical than the informal proceedings that would be before the competent authority under this Bill. The second consideration which I submit before this House is that we are quite aware that we can only apply this measure to cases where two issues can never be in doubt: firstly, that these are premises which belong to Government. Unless that condition is satisfied this law has no operation.

Secondly, the person who is in possession has no right to continue in

possession. Unless that second condition is also satisfied, we will not be able to utilise the purpose of this Act. Therefore, if there is a complaint by any person that this Act is being utilised where either of these conditions is not satisfied, I am quite sure the Civil Court has jurisdiction and will have jurisdiction, and proceedings will be taken to restrain us wherever we try to travel beyond the four corners of the Act. Where a special remedy is created by a special Act, it can only be resorted to where the special conditions on the basis of which that power can be exercised are satisfied. If these conditions are not satisfied, then we are travelling beyond the Act and the exclusion of the Civil Court under clause 10 or any similar clause ceases to operate. The Civil Courts come into their own. As Mr. Rajagopal Naidu yesterday rightly pointed out in such cases, any exercise of power by any authority constituted under the Act and the powers that are granted by the Act will be restrained by the issue of an injunction. As I said, therefore, the Act applies where the title of the Government is not in doubt at all. Secondly, the right to possession is also not in doubt. In such a case, if the matter goes to the Civil Court, the person in possession or the 'defendant' as we might say, will have no defence whatsoever. He will suffer a decree for ejectment immediately and after that, if the decree for possession is executed, he will have to bear not only the costs, but also a decree for mesne profits will also be passed against him.

Under these circumstances, I submit to the House that this proceeding which is devised is convenient not only to the Government, but also to the person because he escapes a long litigation and the cost at the end of it.

Sir, the Government have a duty to perform. They have property to protect. They cannot refuse to protect the property. If we find that there is a trespasser who has illegally taken possession of a property, then we, as

the trustees on behalf of the whole community, on behalf of the whole nation, have to see that the dispossessors or the persons who have ousted Government from their property are proceeded against in accordance with the law. We cannot say that because this is Government property, we refuse to take any action. Let us not confuse the two things—the rehabilitation of the refugees, help to the destitute, and the Government's liability as owner to protect their property. For instance, if we are charged by Parliament with the task of collecting a tax, we have got to collect it. If there is any individual question which comes, which calls for remission, which calls for special treatment, that is done on its own merits on the executive side. That is a different matter altogether. But, as I said, it is their primary duty, as Government, as authority who on behalf of the whole nation are in charge of property, to see that their property is protected. Therefore, let us not, as I said, confuse these two things—firstly, the capacity of the Government as the owner to protect the property and secondly, the responsibility of the Government, with the professed ideal of a Welfare State, to help persons who have no homes and provide them with homes. These two things are different. Suppose today we file a suit under the Civil Procedure Code. Would it be possible for the defendant to say that because he has no other house, therefore his possession should be protected? That right does not exist. As I said, when I began my speech today . . .

SHRI BHUPESH GUPTA (West Bengal): We are not dealing here with the private law. We are dealing here with certain questions of public policy. When we are passing such measures, the interests of those people should be kept in view.

SHRI R. M. HAJARNAVTS: The Leader of the Communist Party has not understood the point that I am making. I am merely saying that we are dealing with the procedure. We are merely changing the procedure by which a trespasser shall be ejected.

[Shri R. M. Hajarnavis.] If he is liable to be ejected, he will still be ejected even if the Bill is not passed. Only the procedure that will be followed will be more cumbersome, more expensive, both to the Government as well as to the dispos-sessor.

SHRI BHUPESH GUPTA: It is not a case of common law. The existing law would be open to them. He could have this thing. The action of the Government can be decided in a court of law.

SHRI R. M. HAJARNAVIS: I have already dealt with the point made out by Dr. Kane about jurisdiction and I am repeating it again. I am conscious of what Shri Sapru said yesterday, namely, that the jurisdiction of the High Court and of the Supreme Court is not excluded at all. Secondly, suppose the Estate Officer makes an error. As I said, the issue before him is exceedingly simple. The clause says that only if the Government are satisfied that they have a clear title, a title in respect of which no one can find any deficiency or lacuna whatsoever, it is only in that case that the Government will be advised to resort to this clause. Otherwise, as I said, it is liable to be challenged by a suit for injunction and it is only when the man has ceased to have a right of possession, that these proceedings will begin. So, what is the question there for the Estate Officer except to decide in what manner that man has to be ejected? The Bill says that he will have 45 days' time. Just as a civil court executing a decree has the discretion to extend the time for ejectment, for dispossession, I do not think that the estate officer will not have that discretion to extend the time. But when we place a limit, that is the lower one. Within this time, we will not evict that man at all. That being so, I do not think any one is going to be discriminated against because this Bill is passed.

Dr. Barlingay made a point. He drew a distinction between sub-clause

(1) of clause 4 and sub-clause (1) of clause 5 and said that under the former sub-section, notice can only be issued after the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted. The basis of clause (4) and clause (5) is entirely different. Their functions are different. In clause (4), all that is said is whether a notice shall issue or not issue. Nothing is decided. A man may be in possession and for reasons which are matters of executive policy, he might continue to be in possession. Just as money may be owed to a person, it may have become due, but, before a suit is launched, the creditor may decide to call for it saying, "Well, I now want the money back." That is regarded as part of his cause of action. He says that he owes him money; it ought to have been paid to him. I have called upon him to pay it. He has not paid it. All these are his cause of action. So, under sub-clause (1) of clause 4, before he issues notice, that is to say, before in a way *lis* commences, what he does is this. The first condition precedent to the issue of notice is that he must be of opinion, that is, he has got to form his own opinion that this is Government property and that this Government property should now be vacated. After that, what does he do? He merely gives notice so that if, after the notice is given, good cause is shown, the notice may be discharged. But by the issue of notice, I do not think that any one has been hurt in any manner, and he can have any right of appeal. Dr. Barlingay made a point that clause (4) is not subject to appeal under clause (9). How can there be right of appeal only because a notice has been issued? If the notice has been issued wrongly, then surely you go and show him that this notice is liable to be discharged because, firstly, these are not Government premises and secondly, your right to possession continues.

S^{TRT} SANTOSH KUMAR BASU (West Bengal: When it is said that " in the opinion of estate officer con-

cerned. . .", is that opinion justiciable in a court of law?

SHRI R. M. HAJARNAVIS: The question is only justiciable under clause 5. We have divided the proceedings in two parts. Firstly, so far as the issue of notice is concerned, he just makes up his mind . . .

SHRI JASPAT ROY KAPOOR: Makes up his mind with regard to what points?

SHRI R. M. HAJARNAVIS: Firstly with regard to the title of the Government, and secondly with regard to the expediency to evict.

SHRI JASPAT ROY KAPOOR: Sir, this is how clause 4 reads:

"If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made."

So these are the two different things. He has to apply his mind to these two different points, firstly, whether it is a public premises, and secondly, whether those who are in unauthorised occupation should be evicted. Now having done that, he issues a notice. Then under clause 5, when he comes to decide the question finally, all that you say is that he should come to the conclusion that that occupation is unauthorised. So far as the propriety or the desirability of eviction is concerned, it is all over under clause 4. That is, I think, Dr. Barlingay's point and it is worth consideration.

SHRI R. M. HAJARNAVIS: If I am the owner of the property, I am entitled to possession the moment I ask for it, and I can ask the trespasser to vacate. My claim to possession of the property does not depend upon whether anyone considers it desirable

or not to evict him. So the right to claim possession is there and it is not connected with the question whether it is desirable to evict him or not.

SHRI JASPAT ROY KAPOOR: That is exactly what Dr. Barlingay says. If you want the estate officers to go into the merits of the question, you must be consistent in both these clauses, clause 4 and clause 5. We are not at the moment concerned as to whether the estate officer will enter into that question or not. We only want to know as to what the Government wants. If the Government wants that the estate officer should not enter into the question of desirability, then for the sake of consistency let the words in clause 4 (1) that they should be evicted be deleted. Either delete these words here or incorporate the corresponding words in clause 5 also. That is what Dr. Barlingay said, and that is worth consideration. You must have these words both in clause 4 as well as in clause 5. Now we leave it to the Government to decide as to what they want.

SHRI R. M. HAJARNAVIS: I do not think, Sir, there is any necessity of changing either clause 4 or clause 5 as they now stand.

MR. DEPUTY CHAIRMAN: Dr. Barlingay's point was this. For issue-notice you should be satisfied with both the conditions, *i.e.* it is unauthorised occupation and there is that desire that he should be evicted. Now supposing you give him notice. After that he adduces his evidence and probably he may contest that he should not be evicted. Then is it not necessary for the estate officer to give a finding that he should be evicted? I think that is the point . . .

SHRI R. M. HAJARNAVIS: I am trying to answer that very aspect.

MR. DEPUTY CHAIRMAN: Suppose he pleads and in evidence shows that he is not liable to be evicted should not the estate officer then give a finding on that issue also?

SHRI R. M. HAJARNAVIS: I will try to make that point clear. There are two things. One is the desire to evict and the other is the right to occupation. If he has got a right to continue occupying the premises, then notice has got to be discharged, because he is not in unauthorised occupation. But if he has no right, then should he still continue to remain in the premises?

SHRI JASPAT ROY KAPOOR: For the time being.

SHRI R. M. HAJARNAVIS: That is a matter of executive policy and full discretion is vested in the estate officer, because even though an eviction order is passed, he may prolong the possession as an executive officer just as a civil court executing a decree for possession always has in equity power to extend the date of possession. Similarly, the estate officer, I am quite sure, will extend the date on which he is to be ejected in reasonable cases. If I ask the trespasser to vacate and if he does not vacate, there the cause of action arises and litigation begins. So, once it is proved objectively that the person in possession of the premises has neither any title to that property, nor is he entitled to remain there, the cause of action begins. These are the two findings to which the estate officer has to come, and after hearing both sides and after considering the evidence that has been produced before him, if he comes to that finding, then, of course, the person concerned is liable to be ejected. And I hasten to add that all these proceedings go before the District Judge in appeal, and in appeal the proceedings begin afresh and the whole proceeding is considered from beginning to end, so that if there is any error committed anywhere, the District Judge is there to correct it. And as Mr. Sapru yesterday pointed out, if the District Judge also commits an error, there is article 226 as also article 227.

MR. DEPUTY CHAIRMAN: You just look at sub-clause (2) (a), the words are "specify the grounds on which the order of eviction is proposed to be made". Now two issues are involved. One is that he should prove that it is the Government's property and the second is that he should decide that he should be evicted—the estate officer . . .

SHRI R. M. HAJARNAVIS: Now, Sir, the first thing is that the Government is the owner of that property, and secondly, the question arises whether the right of the person concerned has come to an end. These will be the two issues involved.

SHRI JASPAT ROY KAPOOR: The two issues will be these. Firstly, who is the owner? Now the respondent or the person on whom the notice is served may at once concede the point and say, "Yes, I am an unauthorised occupant; I admit it; but please do not eject me for the time being or for another year or so because you are not in any genuine need of this particular plot of land on which I have constructed my hut."

MR. DEPUTY CHAIRMAN: That is a different matter. It can only be on humanitarian considerations. Subclause (2) (a) says "specify the grounds on which the order of eviction is proposed to be made." Suppose he adduces his evidence that there is no ground to evict him, it may be that you may not accept it, but should you not as a judicial officer give a finding on that? That is the main point that I think Dr. Barlingay wanted to raise.

DR. W. S. BARLINGAY: Yes, Sir. 3 P.M.

SHRI R. M. HAJARNAVIS: The moment we accept that, we make this Bill into a substantive law and not a procedural law. Suppose we file a civil suit against him and say that we are the owners of the property, that he is a trespasser and he ought to be ejected, will he be able to say that

SHRI R. M. HAJARNAVIS: If he has no right . . .

SHRI P. N. SAPRU: It does not add to his right.

SHRI JASPAT ROY KAPOOR: Does it come under clause 4?

DH. W. S. BARLINGAY: This is administrative law. When you consider these matters, the question of propriety does arise.

SHRI R. M. HAJARNAVIS: I do not at all admit that this is an administrative law. Just as in revenue laws we have proceedings for summary evictions, similarly this is another law, without following the code of civil procedure, for getting possession. If I might remind Dr. Barlingay, there is section 219 under the C. P. Land Revenue Code by which the State Government can by a process shorter than this, reduce into possession any Government property which has been occupied by a trespasser.

SHRI P. N. SAPRU: Another way of looking at the question is this. Questions of propriety raise intangible issues. They raise issues into which a court of law cannot go, or cannot exercise its mind. These are issues of statesmanship and are therefore, outside the sphere of courts.

SHRI JASPAT ROY KAPOOR: Since the

SHRI JASPAT ROY KAPOOR: Since the whole thing is in the melting pot, I don't want to speak

MR. DEPUTY CHAIRMAN: Order, order.

SHRI JASPAT ROY KAPOOR: I don't want to say one word more. All that I want to submit very respectfully is when the whole thing is in the melting pot, when my hon. friend Mr. Sapru said something, if I want to say something, I should not be so unceremoniously asked to ... (*Interruptions.*) We are also persons having some feelings.

MR. DEPUTY CHAIRMAN: STou have tabled amendments.

SHRI R. M. HAJARNAVIS: May I respectfully submit what we mean by the notice to evict? May I explain that here will contain our description of title or what is called, the cause of action showing how this is our property. Next, we shall show that either the defendant was given a lease which has expired or he is a trespasser or he was a licensee and the licence has come to an end. So clause 4(i) as I said, deals with merely an executive decision. It is not capable of being appealed to a Judicial Tribunal. There, if we have merely the beginning of a controversy which is taken to the Estate Officer under clause 5, he passes an order which order must be an appealable one because it is an order which affects the rights of the parties or creates liabilities. That is available under clause 9 and I submit it is a good thing.

Coming briefly to the Judgment,— and I concede I shall be repeating what Mr. Sapru had said—I am quite jatisfied that we have met all objections that the Allahabad Judges found or took against the earlier Act. I might mention to the House that the earliest challenge to the Act was

LShri R. M. Hajarnavis.]

made by the Law Minister. All these objections were mentioned by him and the Act fell to pieces under his hammer-blows in the Calcutta High Court as Counsel. Therefore when this Bill was framed, we gave all possible consideration to the various aspects as to whether we were not again committing the very errors which the Law Minister pointed out. After anxious consideration we satisfied ourselves that we had met all the objections. There, if I understand the judgment of the Allahabad High Court correctly—again I shall be repeating what Mr. Sapru said—the classification between Government property and private property was held to be a reasonable classification. This was admitted by the Judges of the Allahabad High Court, but they further said that the differentiation of the procedure is not related to the classification. The chief difference between the old Act and the new Bill is this that whereas now under the present Bill we will obtain an order for dispossession only on objective fact being established by evidence, firstly before the Estate Officer and only before a District Judge—the objective fact being that we have a title, secondly the defendant has no right to possession—these facts must be established—in the previous Act the whole thing depended upon the subjective impression that the Estate Officer formed about the rights of the property and when the rights of a particular kind of property were to be decided merely on subjective evaluation or title which was not capable of being subjected to a judicial review, the Allahabad High Court pro-ly came to the conclusion that we are making a distinction in the procedure which is wholly unrelated to classification. The classification they had said was itself quite reasonable. Here what we have said . . .

DR. W. S. BARLINGAY: The judgment must always be subjective. What is the element of objectivity there, I don't understand.

SHRI R. M. HAJARNAVIS: I don't think that I am quite capable of crossing swords with Dr. Barlingay in the matter of metaphysics nor do I want to do it but as I understand in the legal sense, the difference is this that the person who forms a subjective judgment writes down that judgment. He does not give any grounds for it nor will he submit those grounds to a judicial review by another judge. Here as I said the evidence will be recorded, the reasons on the basis of which that conclusion is reached will also be there and that order itself will be subjected to the scrutiny by a higher appellate tribunal. This is, as I understand it for my purpose, the difference between the subjective judgment of an officer and the objective conclusions obtained by a judicial process. The chief difference between the ordinary court procedure and procedure under this Act is that instead of a munsif in the first instance deciding the claim in a civil court, here in the first instance the matter is decided by an estate officer. If the munsif comes to a wrong conclusion or a person is aggrieved, he will go to the district court. Here also the appeal will lie to the District Judge. Secondly, the matter can go to the High Court. As I said, if there is at any time a real dispute about title, the matter can always go to the civil court and I am quite sure it will be taken. The Government themselves will be wise in such cases where the title itself is in dispute and will not take the short-cut . . .

DR. W. S. BARLINGAY: In that case will not clause 10 be a bar to that? Clause 10 bars a suit of that kind.

SHRI R. M. HAJARNAVIS: I am quite sure that Dr. Barlingay is aware that where we act beyond the four corners of the Act, the jurisdiction to file civil suit is always there. The Privy Council has held that if a Tribunal tried to give itself jurisdiction on a wrong finding, that jurisdiction is always liable to be challenged in a civil suit. In any case the party

aggrieved can always ask for a writ of certiorari. If we go through the Allahabad judgment itself, it itself arose out of a suit.

DR. W. S. BARLINGAY: May I say that the only question which would be decided in that sort of a suit would be the question of jurisdiction and not the question of legality of the findings. If you will read clause 10 very carefully you will find this:

"Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings."

Now when you have this sort of a clause, do you still suggest that you can file a title suit against the Government?

SHRI R. M. HAJARNAVIS: May I refer Dr. Barlingay to the Allahabad Judgment itself where, in spite of a similar clause, a suit was launched and successfully launched?

SHRI P. D. HIMATSINGKA: If the order is illegal.

SHRI R. M. HAJARNAVIS: If it is within the Act it is not invalid but if it travels beyond and if we try to take premises which could be demonstrated as not government premises . . .

SHRI P. N. SAPRU: Finality so far as the Act is concerned.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI R.M. HAJARNAVIS: I believe, Sir, in regard to the policy and other matters, my colleague will >ly, I have nothing more to add.

SHRI ANIL K. CHANDA: Mr. Deputy Chairman, I rise to reply to the general debate on this Bill. I feel my task has been considerably lightened by the fact that three hon.

Members of this House, Shri Jaspat Roy Kapoor, Shri Patil and Shri Himatsingka by their lucid expositions and constructive suggestions on (he Bill . . .

SHRI BHUPESH GUPTA: On a little point of order, Sir. What was the other speech? Was it a reply or an intervention?

MR. DEPUTY CHAIRMAN: He explained the legal and constitutional point.

SHRI BHUPESH GUPTA: Do I understand that two Ministers can reply to the debate? I can understand one Minister intervening in the debate.. Which, was that?

MR. DEPUTY CHAIRMAN: It was an intervention.

SHRI BHUPESH GUPTA: Therefore, he should not have said that the other points will be replied by the other Minister.

SHRI ANIL K. CHANDA: I was saying, Sir, that Shri Jaspat Roy Kapoor, Shri Patil and Shri Himatsingka by their very lucid expositions on this Bill have made my task really very light. So far as the legal aspects of this case is concerned, I am rather in' an unenviable position of being a law-maker without being a lawyer myself but fortunately I had the able assistance of my colleague, Mr. Hajarnavis, who came to my rescue with regard to these very abstruse legal points raised by the distinguished lawyer-philosopher from Nagpur.

SHRI BHUPESH GUPTA: Why do you get into distress?

SHRI ANIL K. CHANDA: With regard to the judgments of the Allahabad, Calcutta and East Punjab High Courts which really have been the cause of this new amending Bill, Mr. Sapru, who had been, apart from the fact of his being a very distinguished lawyer, a member of the same Bench, Allahabad, has, in his learned dissertation explained that

[Shri Anil K. Chanda.]

this Bill, as it stands today before the House meets the difficulties which had been raised by the Allahabad High Court. Also, we are considerably strengthened by the fact that the Solicitor-General, when he appeared before the Select Committee, categorically stated that so far as he understood the law, this Bill meets all the difficulties which had been referred to earlier by the Calcutta, Allahabad and the East Punjab High Courts.

I will now try to answer some of the criticisms made by various Members of this House. As could have been expected, the main speech of opposition to this Bill has been by my friend, Mr. Bhupesh Gupta, but I feel that in the exuberance of his eloquent verbosity he had forgotten that he was contradicting himself in several places.

SHRI P. D. HIMATSINGKA: He always does.

SHRI ANIL K. CHANDA: For instance, he begins by saying that a large number of people who, for no fault of their own, have been uprooted from their homes and thrown in the streets, people who have come from the other side of the frontier in quest of life and have settled down in places like Delhi, etc., etc., etc. Soon after, he says that, as far as the displaced persons are concerned, there is a feeling in Delhi that perhaps it is these people who constitute the bulk of those who are regarded as unauthorised occupants. He does not speak of the many out of these who have been found alternative accommodation or whose occupation has been regularised. Therefore, Sir, whereas at the beginning he makes his case on the basis of appealing to the sentiments of this House, sympathy for the refugees, later on he says that it is not really speaking the refugees but the poor people, who, in

the course of earning their livelihood, have come and settled down in this place.

Then, Sir, with regard to the various assurances given by Shri Gadgil when he piloted the first Bill, whether those assurances have been honoured or not has been a moot question before this House. Mr. Bhupesh Gupta is not willing to put any credence on the testimony of the Assurances Committee of this House who have categorically stated that the assurances given by Shri Gadgil have been implemented but Mr. Gupta says that the people who are concerned directly with these assurances have been repeatedly telling him and other Members of this House and also through the press that the Government have kept these promises only by violating them. In another place he says, "Any refugee will tell you that the promise that Shri Gadgil made has not been kept up by those who stepped into his shoes". Now, Sir, with regard to this, I would like to say that so far as the Assurances Committee which made this report to Parliament was concerned, there was in that Committee a Member of his own Party.

SHRI BHUPESH GUPTA: But that was made in the Provisional Parliament, I think. We were not in that Parliament.

SHRI ANIL K. CHANDA: Yes, Sir, but when the Committee looked into the assurances and enquired into the matter as to whether those assurances have been implemented or not, that Committee contained a very distinguished Member of his Party and therefore I should have thought that it would have been more graceful if he had had greater reliance on the Report submitted by the Assurances Committee of Parliament than what he heard from some stray people in the streets.

Then, Sir, Shri Gupta, in the course of his speech, said that the Delhi Municipality has certain laws or

rules which provide even for 15 months' notice in some cases. He said, "Here is a municipality which for very good reasons has to provide 15 months' notice before it could put into effect certain eviction orders but here, when it comes to Government, it is only 45 days". I have tried my level best to find out the particular rule or law which prescribed 15 months' notice to be given by the Municipality. I would refer to the various relevant sections of the Delhi Municipal Corporation Act. Section 343 of the Delhi Municipal Corporation Act provides for 30 days notice for demolition of unauthorised structures; section 368 of the Act lays down 30 days notice for demolition of buildings unfit for human habitation; section 30 of the Delhi Development Act, 1957, provides a period of two months for buildings constructed in contravention of "the plan of development or without permission of the Delhi Development Authority. Section 7 of the Slum Areas (Improvement and Clearance) Act, 1956, provides that the building which is in a slum area and is unfit for human habitation shall be vacated within a specified period being not less than thirty days from the date of the order and that it shall be demolished within six weeks after the expiration of that period. I have nowhere found the reference . . .

SHRI BHUPESH GUPTA: My friend is a literary man and law is not his subject but surely he understands the difference between eviction and demolition.

MR. DEPUTY CHAIRMAN: Could you help him with the section?

SHRI BHUPESH GUPTA: I have been informed. I will try to find it but he is talking about demolition, not about eviction. One rule applies with regard to eviction and another with regard to demolition.

SHRI P. N. SAPRU: Demolition is much worse than eviction.

SHRI BHUPESH GUPTA: He has been riding the wrong horse.

SHRI ANIL K. CHANDA: He said, there is a provision for the assessment of damages according to principles but that the principles are not laid down in the measure. He wanted to know what the principles were on the basis of which rules would be framed for the assessment of damages. These rules will, of course, be laid before Parliament and will be subject to any modification which Parliament may desire. Now, Sir, it is well known that so far as Government buildings are concerned, there are certain well-defined rules with regard to rent, etc., prescribed under the Fundamental Rules, what is known as F.R. 45A and the other is known as F.R. 45B.

In so far as Government buildings are concerned, the principles are already laid down in the Fundamental Rules. The normal rule is that 6 per cent of the capital cost of the building including the cost of the site and its preparation is assessed as rent under F.R. 45-B. One-twelfth of this is the monthly rent. Recovery of rent from Government servants is limited to 10 per cent, of their emoluments but in case the officer is not required or permitted to reside at the station *e.g.*, in case of retirement, dismissal or cancellation of allotment due to breach of terms etc. the Government is permitted to recover rent in excess of this limit. A private person is charged rent under F.R. 45-B plus departmental charges and charger for ordinary and special maintenance and repairs.

The principles regarding assessment of damages will be laid down in the Rules to be framed under clause 13 of this Bill. The Rules will be laid before each House of Parliament and will be subject to such modification as the Parliament may make.

[Shri Anil K. Chanda.]

Generally, the following factors will have to be taken into consideration in assessing damages:—

(a) the purpose and the period for which the Government premises were in unauthorised occupation;

(b) the nature, size and standard of the accommodation available on such premises;

(c) the rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation;

(d) any damage done to the premises during the period of unauthorised occupation.

I mentioned the amount of the loss or damages as about a crore and forty-two lakhs and the hon. Member wanted to know how this big amount was allowed to accumulate. Obviously it is not possible for me to go into the details of all the innumerable cases which have gone to make up this figure of Rs. 1,42,00,000. But I can give the House a typical example. There is a house in Calcutta, No. 167 Rash Bihari Avenue which had been requisitioned during the war. Later on it was hired by Government and it was then converted into a lease. During the great killing of 1946, Hindus from Muslim areas sought shelter there and even today refugees are still occupying it. Whether the same families are in occupation or whether they have gone out and some others have come in, I do not know. But the damages for this one particular building alone have come to nearly Rs. 3 lakhs out of this sum of Rs. 1,42,00,000.

SHRI BHUPESH GUPTA: How do you calculate that?

SHRI ANIL K. CHANDA: Then Mr. Bhupesh Gupta said that the land belongs to Government, but the man has spent for the construction. He has put in labour and money. When he is evicted, where is the provision for compensation? "He may

have been technically in unauthorised occupation of the land, but the construction that he has made certainly is not an unauthorised construction. It is fully authorised construction." That is Mr. Gupta's case. Sir, he is a distinguished member of the English bar. If somebody walks into my property though he has no right to it whatsoever, and if he builds a construction there does it become authorised? Can he not even be challenged as a trespasser? A trespasser has no equity in his favour.

SHRI P. N. SAPRU: Sir, on a point of order. Can an hon. Member opposite read a newspaper in the House?

SHRI BHUPESH GUPTA: Oh, I was just reading something which may relate to this business.

SHRI ANIL K. CHANDA: Well, then in passing, Mr. Gupta who has a very kind heart said that this particular measure is a very harsh one. If he had read the previous law he would have seen that this law is certainly a much more humane legal enactment than what it was in the past. Speaking for myself, I would say that I would have been very unhappy in the position that I hold today, if I were to act on the previous law. But in view of the very great improvement which has been brought about in this law by the Joint Select Committee, I have no moral qualms with regard to the working of this law in the Ministry.

Then, with regard to this matter, naturally, Mr. Gupta would not lose an opportunity of bringing in the land of his spiritual inspiration and possibly of political guidance—Russia. He said . . .

SHRI BHUPESH GUPTA: That is not my homeland. I brought in London.

SHRI ANIL K. CHANDA: He said:

to the public. And this is not the only case where the Government has sought power in a special manner. This is not the first instance where Parliament has given such special powers to the Government. There are a number of provisions in the land revenue codes, the Income-tax Acts where Government is armed with special powers.

Dr. Gour referred also to cases where there may be disputes about the ownership of the land. Now, wherever there is any dispute with regard to the title, on behalf of Government I give this assurance, we will give executive directions to our estate officers not to take any action but to refer the matter to the Government. It is only where the legal title is absolutely clear and certain that the estate officer will take steps for eviction on the basis of this law.

Shri Jaspat Roy Kapoor who has considerable knowledge of the working of the previous law wanted that the assurances given by Mr. Gadgil should be repeated before this House. I want to make this clear about the assurances which had been given by Mr. Gadgil. The assurances given by Mr. Gadgil do not cover any and every squatter. They do not even give protection to every refugee. Definitely, anyone who has squatted on Government property after the 1st January, 1951 would have no relief. He gets ten days' notice and he has to quit. Anyone who has squatted on Government property between the 15th August, 1950 and the 31st December, 1950 will have three months' notice to clear out. He will not get any compensation. Only if somebody has squatted before the 15th August, 1950, he will be covered by the assurance given by Mr. Gadgil, and on behalf of the Government I have indicated it in the Select Committee and I repeat it here, it is our intention that we shall faithfully carry out in letter and in spirit the assurance given by Mr. Gadgil. The reason which makes it not possible for

[Shri Anil K. Chanda.] us to incorporate it in the Statute itself has been explained by Mr. Sapru yesterday.

Then Mr. Kapoor said that it would be desirable to appoint as estate officers persons who have experience in judicial work.

None would be happier if we were in a position to categorically say that the estate officer would be a judicial officer or in each and every case he will be an officer who would have legal knowledge or he would be a law graduate and so on. But he is not merely for the purpose of working this law; his main function is to manage Government properties in different parts of the country. He allots Government properties and he collects the rent. It is only when the question of eviction arises that we have made him by statute the competent authority. Therefore, his main function is really not judicial work. And therefore it is not possible for us to appoint in every case a man with judicial experience. As far as possible we will certainly like him to be a man with legal knowledge, but as Shri Sapru suggested yesterday in his speech the difficulty mainly arises from the Defence Ministry. The Defence Ministry has considerable properties and as I had narrated when I moved this Bill, more than a thousand Defence Ministry properties have been squatted upon and they indicated to us that they would find it difficult to have officers with judicial experience or legal knowledge in every case. But as far as possible we would naturally, for our own convenience, like to have only such people as estate officers who have either judicial experience or who have legal knowledge.

Shri Himatsingka and Shri Prasad Rao have mentioned the case of Government servants about to retire, particularly if they are displaced persons. With regard to this I do not know why special favours should

be shown to retired Government servants. The Government servant on his retirement gets his pension; he gets his gratuity.

SHRI V. PRASAD RAO (Andhra Pradesh): You want to show favours only as long as he is serving you and not after that?

SHRI ANIL K. CHANDA: He collects his provident fund money if he has contributed, and so far as Government is concerned he becomes an ordinary private citizen. Supposing this pious wish of Shri Prasad Rao were really to be incorporated in this measure, what would be the position of the Government in Delhi itself? Here in Delhi—I am speaking subject to correction—well over 40,000 Government officials are without Government accommodation and many of them are displaced persons either from East Pakistan or from West Punjab. Therefore it is not possible for Government to show any special favour to a retired Government officer so far as Government accommodation is concerned. But it may be within the knowledge of the House that Government have a scheme under which Government servants can borrow money for house building purposes, and so far as the lower category of Government officials are concerned, there is the low income group housing scheme under which they may take loans. And, moreover, retirement is not an unforeseen calamity; it comes in the natural course of things. The man in Government service knows that on a certain day he will have to retire; maybe he will get extension for one or two years. Any Government servant knows that a day will come when he will cease to be a Government servant and he will lose the benefits which come to him by virtue of his holding a Government office. In most cases the Government servants try to make their own arrangements long before they are due to retire. With regard to the scheme under

which we loan out money to the Government servants, practically every month 30 to 40 cases are sanctioned, the amounts varying from Rs. 1,500 to Rs. 25,000, for house building loans.

Now, Mr. Kapoor just made a mistake; he referred to the Assurance Committee's Report, dated December, 1951. It is not so; it is December, 1956.

My friend, Shri Amolakh Chand, in his speech quoted from the Audit Report for Railways of 1957, that heavy arrears in the recovery of rent for railway lands leased out to outsiders were due. He said that it had been stated that none of the railway officers had yet been appointed as competent authority under the Public Premises (Eviction) Act, 1950, and the railway is not empowered to execute summary eviction of any plot holder. The Railway Ministry have already written to us that when the Bill is passed the General Managers and Deputy General Managers of the Railways concerned should be appointed as estate officers for the purpose of this legislation. Of course, they are not people with judicial experience but they are technical officers. We shall do that and the Railway Ministry will have no difficulty about it.

SHRI H. P. SAKSENA: Do you hold out a promise to them that you will necessarily do it?

SHRI ANIL K. CHANDA: So far as railway properties are concerned they know everything about their properties and naturally we will be happy to designate some of their own officers.

SHRI H. P. SAKSENA: They can be taken only when other things are equal, and not because they happen to be railway officers and so they should be taken.

SHRI ANIL K. CHANDA: Mr. Saksena is making a mistake. With regard to lands which normally belong to the general pool, they will not be estate officers. It is only with regard railway properties that railway officers would be appointed as estate officers.

Then Shri Amolakh Chand referred to clause 2, sub-clause b(ii):

"Any premises belonging to Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority"

Now he says this. I am quoting his words:

"Now I know of numerous cases where D.D.A. leased out their plots to various persons and handed over possession also but on account of the fluid condition in Delhi in the years '47 and '48 and with the influx of displaced persons, many persons took possession of those vacant plots which were to be constructed by these persons who had taken the lease. Now the trouble would be whether this provision would apply to them or not. I do not know, Sir, in such circumstances whether this measure would be applicable or not."

I believe my friend, Shri Onkar Nath also made this point. The law is very clear on this point. The lands of the D.D.A. leased out by them to private individuals would be covered by this law.

Shri Prasad Rao said that 90 per cent, of them were refugees coming from West Pakistan. He said: "I wish the honourable Minister had given a break-up of the figure of 11,000 which he quoted yesterday." According to the recent figures supplied by the field staff of Delhi Development Authority there are some thing like 11,864 encroachments on Improvement Trust and *Nazul* lands, 5,120 out of these are by locals and 6,744 only by displaced persons. Again 9,277 of

[Shri Anil K. Chanda.] these places are being used by the squatters for residential purposes and 2,587 are under commercial use. With regard to squatting I find that no less than 12 of the M.P.s' quarters have been squatted upon and *kucha* structures have been put up. Members have written to me but I cannot help them. No action can be taken to chuck them out because I have no powers.

SHRI P. N. RAJABHOJ (Bombay): What about scheduled castes and scheduled tribes?

SHRI ANIL K. CHANDA: Several hon. Members, and particularly Shri Rajabhoj have spoken very feelingly about Harijans and other backward people involved in this problem. The problem posed, namely, provision of alternative accommodation to Harijans and construction labour in the event of their huts being demolished has already received consideration in connection with the passing of the Slum Areas (Improvement and Clearance) Act, 1956 and it was decided that executive instructions should issue to the Delhi Development Authority to ensure that slum evictees are provided with alternative accommodation as far as possible. This has been done. The Government of India have also agreed in principle to subsidise the rents of the tenements constructed for poor class persons and suitable subsidies are being allowed wherever admissible. A large number of tenements and shopping centres, etc. are being constructed for re-housing poor class slum dwellers, particularly Harijans in A-mrit Kaur Puri, Kilokri, and Jhilmila Tahirpur etc. The Government are also acquiring land for the re-housing of the evictees from slum areas in Delhi. Substantial grants-in-aid are being paid to the Municipal authorities for providing the essential basic amenities in construction labour camps pending finalisation of the schemes for providing alternative accommodation to the squatters. A

site has been developed at the junction of Ring Road and Kitchner Road for the construction of huts for labourers engaged on building construction. The House is aware that in Delhi a number of unauthorised and unsightly structures have been constructed on vacant plots and abandoned graveyards. The Municipal Corporation of Delhi have already a phased plan to clear the urban areas of these eyesores. The plan includes removal of unauthorised constructions and envisages development of sites near to the periphery of such localities where labour colonies could be established at a cheap cost but with amenities like water, electricity and sanitary conveniences. I have no doubt that in due course Delhi Corporation will emulate the example of Bombay where more than 10,000 squatters were rehoused in a concerted drive to make the localities clean and tidy. The Government are thus taking concrete steps to show their sympathy with the Harijans and construction labour and it is unnecessary therefore to make a statutory provision for giving them alternative accommodation. Before I conclude, I hope Shri Patil will not mind my quoting a sentence of his because that very succinctly characterises this Bill now before this House. The object of this Bill is most sound and most necessary and the problems need immediate attention at the hands of the House.

Thank you.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters, as reported "by the Joint Committee of the Houses, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clause 2.—Definitions

SHRI BHUPESH GUPTA: Sir, I move:

1. "That at page 2, lines 11 to 16, the words 'and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever' be deleted."

(The amendment also stood in the names of Dr. R. B. Gour and Dr. A. Subba Rao)

SHRI JASPAT ROY KAPOOR: Sir I move:

13. "That at page 2, at the end of line 16, after the word 'whatsoever' the words 'but does not include occupation of public premises by displaced persons from before 16th August, 1950,' be inserted."

MR. DEPUTY CHAIRMAN: The clause and the amendments are before the House.

SHRI BHUPESH GUPTA: I would like here first of all to seek a clarification as to what these words in the portion that I want to be deleted actually imply, *viz.*, "(whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever". Now, I want the deletion of these words for the simple reason that they will broaden the scope of operation of this law and many people would be regarded as being in unauthorised occupation whose cases need to be sympathetically treated. Unauthorised occupation may be of various types. One type is those who have been *ab initio* in unauthorised occupation. The second type is initially one who has been in rightful, lawful occupation, but after that the land has been acquired by the Government or

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requisitioned and the Government has served some notice. His position may change. This is another type of case. Sometimes it happens that the land is leased and then it is transferred and the transferee takes action. In this case, it will be the Government and it appears here in this measure "determined for any reason whatsoever". Now, if the measure is meant to cover certain specific cases, it should not be so broadly defined as has been done here. We have just heard what the hon. Minister was saying. He was trying to find out contradictions in my speech, but he did not answer the points that I had made and the example that he gave in this connection makes one apprehensive. For instance, he cited the example of 167, Rashbehari Avenue, the premises in which I lived.

SHRI ANIL K. CHANDA: I uope he paid the rent all right.

SHRI BHUPESH^ GUPTA: It is a block of fiats, small tenements. I know the hon. Minister was fortunate in living somewhere else. Now, after the Calcutta rioting took place, that house was lying vacant, belonging to a landlord. Then many people entered that house. They did a very good thing. Mr. Chanda's friends who are in the Government there tried to evict them. We prevented the eviction. You see in Calcutta things cannot be done like that. We prevented the eviction and they continue there. It is all to the good. Now, he makes an aspersion that they remain there or some people have come. Big people always think that the poor man is doing some fraud on the land or something else. That is their habit. Now, the Government has taken it. All these people would be regarded as if in unauthorised occupation and the hon. Minister

SHRI ANIL K. CHANDA: He says 'now'. By 'now' what does he mean?

SHRI BHUPESH GUPTA: I would simply say . . .

MR. DEPUTY CHAIRMAN: Mr. Bhupesh Gupta, you know, as a lawyer, how a right is determined.

SHRI BHUPESH GUPTA: I thought I knew, but from what the clause says and from the ways of the Government all my legal education has been a colossal waste. (*Interruption*). I am not sponsoring this Bill.

MR. DEPUTY CHAIRMAN: As a lawyer, barrister, you know what determination of right means in law.

SHRI BHUPESH GUPTA: Here are specific cases. Now, I forget that I am a lawyer unless you remind me.

MR. DEPUTY CHAIRMAN: But I have to constantly remind you because you are passing a law here.

SHRI BHUPESH GUPTA: No, Sir. This is a subject I studied, but I never took a particular liking for it. As you know, I never went that way.

MR. DEPUTY CHAIRMAN: It is time you are up-to-date.

SHRI BHUPESH GUPTA: Now, what will happen. They will all of them be regarded as being in unauthorised occupation. When they went there they were not in unauthorised occupation as far as the Government is concerned. Probably they were discussing that certain terms should be arrived at between the landlords and others. Now, I am giving an example. That is not a particular case that I want to make special mention of. All of them or people in similar places may be evicted by a subsequent acquisition by the Government regardless of how the occupation by the other parties came about. That is what we do not like. I would not enter into the legal quibble, because the people would be evicted. They have neither the time nor the money to have the luxury of settling these things in a court of law. I want this to be clearly indicated so that such legal quibbling has no place and the people's rights

are protected. Therefore, I want these things to go; otherwise, it will be an engine of oppression and it is no use telling me about the Assurances Committee. I have got all respect for the Committees that go into such matters, but then the fact also remains that assurances are violated. And when you are appointing an estate officer and giving him this particular clause to administer, or section to administer after it is made an Act, there is every danger that it would be arbitrarily and ruthlessly exercised against these people. This is the position. This is exactly what is happening

today. Therefore . . .

MR. DEPUTY CHAIRMAN: That will do.

(*Time bell rings.*)

SHRI BHUPESH GUPTA: No. Do not cut me out. Let me develop. We will meet in the Business Advisory Committee.

MR. DEPUTY CHAIRMAN: You have spoken at length, Mr. Gupta. We must finish this Bill today.

SHRI BHUPESH GUPTA: You have allowed two Ministers to speak, make out all kinds of legal cases, unheard of things . . .

MR. DEPUTY CHAIRMAN: You have spoken at length.

SHRI BHUPESH GUPTA: I stand on my right to speak. You cannot shut me out. You have allowed the Deputy Minister of Law to come to his rescue and he said he came to his rescue.

MR. DEPUTY CHAIRMAN: You make out your points. Do not repeat

SHRI BHUPESH GUPTA: I do not like to make my points if constantly interrupted by the ringing of the bell.

MR. DEPUTY CHAIRMAN: Order, order. I am here to see to the order.

SHRI BHUPESH GUPTA: I am trying to make the points as far as I can. What you may think, to be a point I may not think it as a point and *vice versa*.

MR. DEPUTY CHAIRMAN: I have to decide it, not you.

SHRI BHUPESH GUPTA: Let me proceed with it. I do not think it is very right . . .

MR. DEPUTY CHAIRMAN: Please go on.

SHRI BHUPESH GUPTA: I shall continue to develop these things and very slowly if you ask that way. Anyway, I think that this matter calls for very serious reconsideration by the Government for the reasons I have stated, because it is nowhere made clear either by a proviso or by other definitive clauses, as to what all these mean. For whatever reasons this sweeping aspersion is made, let him explain it and if he can satisfy the House, it will be passed, I know. But if he cannot satisfy the House, I would ask the hon. Members not to support this kind of thing and it is no use trying to depict a picture that ten M.Ps' houses have been squatted upon, in order to appeal to the M.Ps. Everybody knows that the problem is not one of protecting the M.Ps' houses. The main problem is one of protecting those people who had been forced into such occupation because they do not find any other alternative accommodation. That is the problem. Let us face it. It is no use trying to cast aspersion on the other parties and things like that. He said that constructions and other things are there in other countries because there is no opposition . . .

MR. DEPUTY CHAIRMAN: Order, order. You speak on your amendment.

SHRI BHUPESH GUPTA: Anyway, I think that the whole clause needs to be reconsidered and I would like to

hear the reply of the Government and clarification on this particular clause.

SHRI JASPAT ROY KAPOOR: Sir, the only purpose of my tabling this amendment was to bring the question of displaced persons to the forefront. In view of the fact that the hon. Minister has been pleased to reiterate the assurance given by Mr. Gadgil, my purpose is amply served, and therefore, I beg leave of the House to withdraw my amendment.

SHRI ANIL K. CHANDA: Sir, I am afraid I cannot accept the amendment proposed by Shri Bhupesh Gupta and three others for the simple reason that Government cannot accept the proposition that a person who originally enters with authority can never become unauthorised.

MR. DEPUTY CHAIRMAN: The question is:

1. "That at page 2, lines 11 to 16, the words 'and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever' be deleted."

The motion was negatived.

♦Amendment No. 13 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—Appointment of Estate Officers

DR. R. B. GOUR (Andhra Pradesh) : Sir, I move:

•For text of amendment, see col. 495 supra.

[Dr. R. B. Gour.]

2. "That at page 2, lines 19-20, after the word 'Government' the words 'with legal experience' be inserted."

(The amendment also stood in the name of Dr. A. Subba Rao).

SHRI BHUPESH GUPTA: Sir, I move:

3. "That at page 2, lines 19-20, for the words 'gazetted officers of Government' the words 'officers belonging to Judicial Service' be substituted."

(The amendment also stood in the names of Dr. R. B. Gour and Dr. A. Subba Rao.)

MR. DEPUTY CHAIRMAN: The clause and the amendments are before the House.

DR. R. B. GOUR: Sir, on this question it is quite clear that the matter was before the Select Committee also, and the problem was raised in the Select Committee as it appears from the minutes. But the Select Committee thought fit—I do not know why—to confine itself to a recommendation to the Government that "as far as possible" the officer appointed as the estate officer must have judicial experience. Now, Sir, "as far as possible", in my opinion, is a phrase which will lead to all the mischief that the recommendation itself seeks to avoid. 'As far as possible' would mean that the appointing authority would come forward with an explanation that it was not possible for them to get a person with judicial experience. The Bill itself suggests that he should be a person of the rank of a gazetted officer. Therefore, our amendments want to make it clear that in no case will the estate officer be a person without any judicial experience.

Now, Sir, this is very serious because as I have already said in my original speech in the First Reading, Government is taking extra powers under this law to evict the so-called, according to them, unauthorised occu-

pants of their premises. They have already created a law which gives a distinguished position for the Government in relation to their own premises. Here they do not want even to give us a guarantee under the law that the estate officer who is going to decide the right or title or otherwise of the occupant of the premises concerned will not even be compulsorily a judicial authority. This phrase "as far as possible", and that too coming as a sort of recommendation by the Select Committee, will not satisfy us. Therefore, when the estate officer is called upon to decide the title to the premises, when he is called upon to decide the ownership problem, the occupancy right, etc., when he is called upon to decide the main recommendation itself, it should be an official with judicial experience, and a mere recommendation by the Select Committee, and that too—I must be pardoned for saying that—a cryptic recommendation which is phrased "as far as possible" would undo even the main recommendation itself.

I very strongly urge that the estate officer must be a judicial officer compulsorily. Government must be obliged under the law to appoint a person with judicial experience.

SHRI BHUPESH GUPTA: Sir, I would like only to add that his amendment says "with legal experience", whereas mine is an alternative one which says "officers belonging to Judicial Service". All officers are gazetted officers that way, but we want to tie the hands of the Government because we feel that in such matters it is the judicial officers who are less likely to be influenced by, shall we say, some people in the administration occupying high positions, in the executive. They are likely to have a human approach. I am not saying that an executive officer does not necessarily have such a human approach or that a judicial officer always has such an approach. Generally in such matters it is essential that at least natural justice is kept in view, at least it should be seen that the laws are so applied and

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administered and interpreted that they do not injure the interests of the people against whom they are directed, i The gentlemen of the executive who | have no judicial experience, who look up always the gazette to see when, they are getting promotions, are naturally interested in seeing this or that Minister, and they are guided by this kind of extraneous considerations. Therefore, I say, Sir, here is a legal matter. Here certain powers are being given which are legal powers, certain things are being done which normally would be justiciable in a court of law. In such cases it is essential that the Government should appoint a man with a judicial mind.

Now, it is surely not the contention of the Government that there are no people available from the judicial service. It is possible to get such people. We can divert people from the judicial service. If we can divert people from the executive side for such assignments, surely we can divert also people from the judiciary. We can recruit, if necessary, more people in order to entrust them with this responsibility. Therefore, I suggest that it is essential that people with legal experience—better if you have them from the judiciary itself— should be made the estate officers. Otherwise they will be at the most executive officers of whom people are always frightened.

SHRI V. PRASAD RAO: Sir, it has been agreed on all sides that the powers to be exercised by the estate-officer are by no means only executive powers as such but they are to exercise judicial powers also. So, the Select Committee thought fit to recommend to the Government that, as far as possible and whenever it is possible, a judicial officer should be appointed to this post of estate officer. Here it will be all the more necessary because of the fact that there will not be any appeal against the decision of this estate officer, excepting a judicial review that is provided. Otherwise the actions of

either the estate officer or the one above him who is reviewing this thing are not called in question in any court.

MR. DEPUTY CHAIRMAN: An appeal is provided under clause 9.

SHRI V. PRASAD RAO: Clause 10 specifically says: "Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings."

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MR. DEPUTY CHAIRMAN: Subject to clause 9.

SHRI V. PRASAD RAO: I know that.

MR. DEPUTY CHAIRMAN: Clause 9 provides for appeal.

SHRI V. PRASAD RAO: But here the officer is not only just passing any order as a matter of routine. He is deciding the fate of a person who has been supposed to be in unauthorised occupation. I can perfectly understand the position of the Government that he should only be a gazetted officer if thousands of such judicial officers are to be appointed. So, here it is not the case. Hardly two thousand officers may be appointed at the most. Are we to understand that the Government cannot appoint these two thousand judicial officers? Are we to understand that there is a dearth of judicial cadre to be appointed for this estate officer's rank? Or else, I do not understand what objection could there be for this. He does not exercise only the executive functions as such, but also the judicial functions. So, I think the Government even at this late stage would consider this proposal and accept this very reasonable amendment of ours.

SHRI BHUPESH GUPTA: Why should you say that section 9 . . .

MR. DEPUTY CHAIRMAN: He says that is provided.

SHRI BHUPESH GUPTA: You say, clause 10 is subject to clause 9. Clause 9, according to me, does not at all lay down any judicial proceedings.

SHRI V. PRASAD RAO: There is no judicial officer.

SHRI BHUPESH GUPTA: It is appeal.

MR. DEPUTY CHAIRMAN: It provides for an appeal against the order of the estate officer.

SHRI V. PRASAD RAO: It is a judicial review.

SHRI BHUPESH GUPTA: It deals . . .

MR. DEPUTY CHAIRMAN: The appeal is to the district judge.

SHRI BHUPESH GUPTA: The district judge. . .

SHRI ANIL K. CHANDA: Sir, amendments Nos. 2 and 3 are taken together. I am afraid I cannot accept either of them for the simple reason that I have explained the difficulty of the Government. If the estate officer were an officer engaged only for the purpose of deciding cases of eviction category, I would have said that we will appoint judicial officers. But I have explained my difficulty. The estate officer is to administer the Government estates. It is only when a case of eviction arises, that he would act as the Government of India's representative with regard to the operation of this law. I have also said that the Government of India have considerable properties which are under the control of the Defence Ministry and the Defence Ministry has said that it is not possible for it to have another judicial cadre of people or people with legal training for estate officers. But I have said, as far as possible if only to facilitate

our own work, we will try to appoint only such people as estate officers who have at least some legal knowledge. Then there is the appeal before the district judge. There is a sort of judicial review. It is not, as it was in the previous Act, as if it was the subjective decision of the competent authority, as it has been said. In view of this, I am afraid I cannot accept it.

SHRI V. PRASAD RAO: May I ask one question? How many estate officers are going to be appointed? What will be your requirements of them under this Act?

SHRI ANIL K. CHANDA: Quite a number of estate officers are scattered all over the country. It may be that in the district of Jullundur, one particular piece of Government property has been squatted upon, and I want it to be vacated. Am I going to appoint a judge specially for the purpose of deciding that one case?

MR. DEPUTY CHAIRMAN: The question is:

2. "That at page 2, lines 19-20, after the word 'Government' the words 'with legal experience' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

3. "That at page 2, lines 19-20, for the words 'gazetted officers of Government' the words 'officers belonging to Judicial Service' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4—Issue of notice to show cause against order of eviction

SHRI BHUPESH GUPTA: Sir, I beg to move:

4. "That at page 2, line 38, for the word 'issue' the word 'service' be substituted."

5. "That at page 3, after line 11, the following proviso be inserted, namely: —

'Provided that every notice so served shall state the purpose for which the premises are proposed to be used and for which the eviction is sought'."

(The amendments also stood in the names of Dr. R. B. Gour, Dr. A. Subba Rao and Shri J. V. K. Vallabharao.)

DR. R. B. GOUR: Sir, I beg to move:

6. "That at page 3, after line 11, the following proviso be inserted, namely: —

'Provided that in bona fide cases of displaced persons, retired government servants and persons belonging to the Scheduled Castes and Scheduled Tribes, it shall be incumbent on the Estate Officer to provide suitable alternate accommodation to the person or persons affected.'"

(The amendment also stood in the names of Dr. A. Subba Rao and Shri J. V. K. Vallabharao.)

MR. DEPUTY CHAIRMAN: Amendment No. 12 is out of order. It means some expenditure and it requires the President's sanction.

SHRI BHUPESH GUPTA: I understand, but can it be held over till we try to get his sanction?

MR. DEPUTY CHAIRMAN: I am sorry. It is ruled out.

SHRI J ASP AT ROY KAPOOR: Sir, I beg to move:

14. "That at page 2, line 27, after the words 'and that' the words 'it is in the public interest that' be inserted."

SHRI P. N. RAJABHOJ: Sir, I beg to move:

18. "That at page 3, after line 11, the following proviso be inserted, namely: —

'Provided that the order of eviction so made shall not be effected unless suitable accommodation is found by or for the persons belonging to the Scheduled Castes and Scheduled Tribes'."

MR. DEPUTY CHAIRMAN: The clause and the amendments are open for discussion.

SHRI JASPAT ROY KAPOOR: Sir, my reading of clause 4 is that it has been conceived in a very liberal and generous spirit. And I do not know whether the hon. Minister piloting this Bill was feeling happy when his overzealous colleague, the hon. Deputy Minister of Law, was limiting its implications to a very large extent which, I am sure, was never the intention of the framers of this clause. Let us read clause 4.

"(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice. . ."

The hon. the Deputy Minister of Law tried to limit the implication of this clause by suggesting that all that it meant was that the estate officer shall have to consider only whether a particular premises was a

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public premises or not and then, whether the person occupying it was in I unauthorised occupation of it or not. Obviously, Sir, the implication of clause 4 is that, having come to the two conclusions, firstly with regard to the question whether it is a public premises or not and then, whether it is unauthorisedly occupied or not, he must further apply his mind to the advisability of the premises being made vacant by a notice of ejection upon the unauthorised occupant. So far as these two questions are concerned, we have prescribed, under clause (2), a specific direction under which the estate officer should work. We have described what public premises are. We have also defined what 'unauthorised occupation' is. But then, so far as the subsequent question is concerned as to whether the estate officer should consider that the premises should be vacated or not, we have not prescribed anywhere as to what should be the basis on which the estate officer should come to such a conclusion' or decision.

SHRI H. P. SAKSENA: There is no need for it. I submit it is the corollary of the first two conditions.

SHRI JASPAT ROY KAPOOR: It is not all obvious. If it is a necessary corollary of the first two conditions, then these words become absolutely redundant. But, as I said initially, it seems to be very generous and in a very reasonable manner, consistent with the policy of the Government while dealing with the question of eviction.

SHRI P. N. SAPRU: These words will lead to much legal trouble.

SHRI JASPAT ROY KAPOOR: I am not suggesting that they should be deleted. All that I am suggesting is that, when you are retaining it and rightly so, you must say something in the Act.

MR. DEPUTY CHAIRMAN: You want something to be inserted in the public interest?

SHRI JASPAT ROY KAPOOR: Exactly.

MR. DEPUTY CHAIRMAN: Public property should be used in the public interest.

SHRI JASPAT ROY KAPOOR: it shall always be used in the public interest. But the question is whether at a particular time, it will be in the public interest that the person should be asked to vacate it. That is entirely a different question and if the Government had not the propriety of this question in view, they would not have inserted these words. My only submission is that you must put herein some guiding principles for the estate officer. Do you want to leave it to the whims and fancies and caprices of the estate officer when lie is deciding the matter. Public interest should be taken into consideration by him. Therefore, obviously, I think that your intention is that the public premises should be vacated only when they need it for a public purpose, and therefore, you must specifically put it down here.

श्री पा० ना० राजभोज : उपसभापति महोदय, इस पर मैंने जो अमंडमेंट दिया है उसका उद्देश्य यह है कि जो हमारे शोड्यूल्ड कास्ट्स और शोड्यूल्ड ट्राईब्स के लोग हैं उनका संरक्षण दिया जाय ।

MR. DEPUTY CHAIRMAN: It is self-explanatory.

श्री पा० ना० राजभोज : मेरे अमंडमेंट का सचमुच यही भाव है । इन्हीं लोगों के ऊपर ज्यादा से ज्यादा इस बिल का असर होने की संभावना है । मिनिस्टर महोदय ने कहा है कि हम इन गरीबों के लिये बहुत कुछ कोशिश करेंगे। लेकिन मुझे इस बात की

बहुत जबरदस्त शंका है कि यदि एस्टेट ऑफिसर को बहुत अधिकार दिये गये तो उसका बुरा असर इनके ऊपर जरूर होगा। इसलिये इनको बचाने के लिये और मकानों का प्रश्न सॉल्व (solve) करने के लिये मैंने यह अमेंडमेंट दिया है।

मैं केरल में कटमपल्ली गया। कटमपल्ली में करीब करीब ६०० लोग जेल गये थे। कटमपल्ली में एक जगह गवर्नमेंट की थी और उसी जगह करीब करीब ६०० लोग जेल गये। वहां हरिजनों के १३ मकान थे और वे मकान गवर्नमेंट की जगह पर थे। हमारी केरल गवर्नमेंट ने उनको वहां से हटा दिया और उनके ऊपर लाठी मार हुआ। इससे उनको बहुत तकलीफ हुई। फिर हिन्दू मुसलमानों ने वहां पर सत्याग्रह करके उनको बचाने की कोशिश की। इसलिये मैंने यह अमेंडमेंट आपके सामने रखा है क्योंकि जो सरकारी जगह है जहां हमारे लोग रहते हैं उनके ऊपर अन्याय और जुल्म होने की संभावना है। एक वर्ष पहले यह बात केरल में हुई। वहां बहुत अन्याय हुआ, बहुत मारपीट हुई और केरल गवर्नमेंट में ऐसा होना दुःख की बात है। इसलिये मेरी प्रार्थना है कि ऐसा दूसरी जगह नहीं होना चाहिये। सरकारी जगहों पर हमारे बहुत से लोग कई जगह रहते हैं। दिल्ली में भी कई जगह हमारे ये गरीब लोग रहते हैं। रेफ्यूजी लोगों की प्रॉब्लम जरूर सॉल्व होनी चाहिये। हमारे महामहोपाध्याय काणे साहब ने कहा कि हमारे राष्ट्रीय नेताओं ने हिन्दुस्तान को बचाने के लिये पाकिस्तान बनवाया। यह गलत बात है। उस समय परिस्थिति ही वैसी थी। पाकिस्तान कैसे बना उसका एक लम्बा किस्सा है। जो साम्प्रदायिक लोग हैं वही रेफ्यूजीज का प्रश्न उठाते हैं। रेफ्यूजी तो हजारों वर्षों से हम लोग हैं। उन रेफ्यूजीज की हालत उनका मंत्रालय बनाने से इतनी सुधर गई है कि मैं क्या कहूं।

41 RSD—6.

कुछ लोग पोलिटिकल दृष्टि से उनके नाम का उल्लेख करते हैं लेकिन सच्चे रेफ्यूजी शैड्यूलड कास्ट्स और शैड्यूलड ट्राइब्स के लोग हैं और उनके संरक्षण की बहुत आवश्यकता है। कटमपल्ली में जो कुछ हुआ और बम्बई में जो कुछ हुआ, उसी की दृष्टि में रख कर मैंने यह अमेंडमेंट रखा है। गवर्नमेंट को बचन देना चाहिये। मिनिस्टर महोदय इधर ध्यान दीजिये। आप बात कर रहे हैं।

श्री उपसभापति : सुन रहे हैं।

श्री पां० ना० राजभोज : मैं बतलाना चाहता हूं कि उन्होंने जवाब दिया है लेकिन गोलमोल जवाब दिया है।

DR. R. B. GOUR: Mr. Deputy Chairman, Sir, my amendment is very simple. It is No. 6. Now I should request Shri Rajabhoj to carefully listen to what I say and then try to support me in spite of the whip, if he has got any courage. My amendment runs as follows:

"Provided that in *bona fide* cases of displaced persons, retired government servants and persons belonging to the scheduled caste and scheduled tribes, it shall be incumbent on the Estate Officer to provide suitable alternate accommodation to the person or persons affected."

Now, Sir, the problem is very simple. I have actually qualified my entire amendment in two ways, firstly, it should be suitable alternate accommodation to be decided by the estate officer, and secondly, only in *bona fide* cases. The person concerned can come and tell you his difficulties, and then only suitable alternate accommodation should be provided. So it is very plain. Now my friend, Shri Rajabhoj, has brought in the question of Kattampalli. The situation was exactly the same in Kattampalli. Suitable alternative accommodation was shown.

SHRI P. S. RAJAGOPAL NAIDU: It was not shown.

DR. R. B. GOUR: It was shown. Anyway, let us not quarrel over facts. The matter can be enquired into. What you wanted was the same site. You did not want to shift. Now the same political party which carried on agitation there and organised *satyagraha* there that *Harijans* should not be evicted from the State Government's property, that same political party has come forward now with a proposition here that they should be evicted . . .

SHRI R. M. HAJARNAVIS: May I know under what provisions of law that eviction took place?

DR. R. B. GOUR: Well, they have got their own State laws.

SHRI R. M. HAJARNAVIS: Is there an amendment like this in the State law?

DR. R. B. GOUR: It is a Government land, Sir. Now my problem is this. I would request my friend, Mr. Rajabhoj, who had gone to Kattam-palli, to also go to the Minister's lobby and try to find out why this amendment is not being accepted. Anyway, Sir, the problem will be very serious. And I have qualified my amendment by saying "in bona fide cases". After all there can be *mala fide* cases also, and there can be any type of cases. In this connection, Sir, I would like to give one or two examples . . .

MR. DEPUTY CHAIRMAN: Not necessary.

SHRI BHUPESH GUPTA: Sir, I would like to know whether he will *accept* our amendment without any examples being given.

MR. DEPUTY CHAIRMAN: We have taken three days for this Bill. I want your co-operation.

DR. R. B. GOUR: Yes, Sir. But the problem is . . .

SHRI BHUPESH GUPTA: How can you say, Sir, that this example is not necessary and we should cut short our discussion? That is not good.

MR. DEPUTY CHAIRMAN: Let him finish.

DR. R. B. GOUR: Supposing a Government servant is out of service in the month of June. Now his children are staying there, and they are studying in a particular school or a particular college. In a particular year that student cannot be shifted to another school or another college or university. That student cannot be shifted to another place, and he has necessarily to stay here for some period.

SHRI H. P. SAKSENA: But in the month of June universities are closed.

DR. R. B. GOUR: Now, Sir. I think that my friend, Mr. Saksena, must have undergone some university education and he must be knowing that a student of LL.B. cannot go anywhere unless he finishes his final LL.B. also. So it is quite possible that he may want to be here until his examinations are over. He may be a first year student of the medical college . . .

SHRI P. D. HIMATSINGKA: In that case the estate officer will not issue any notice.

DR. R. B. GOUR: I am sorry the law does not take into account the requirements of the occupants. It takes into consideration the requirements of the Government only. You may need the house and your requirement of that house compels you to remove that person even with force, if necessary. But his requirements are never the guiding principle behind this law. Take for instance the case of a medical student. His term expires at the end of five years. Of course, there is another problem. Majority of students do not pass M.B., B.S. within

five years. I am not stressing that. But the real problem is that of Government servants, and you can look into each and every case and find out whether it is *bona fide* or not.

You should take the obligation of giving an alternative site. That is all. Therefore I don't see why such amendments are not going to be accepted. The very fact that they are not going to accept them creates an impression in our minds as to the motives with which the Bill is being brought. With these words I very strongly press on the House the acceptance of this amendment even though the whip might be there.

SHRI V. PRASAD RAO: Mr. Deputy Chairman, as has been pointed out by my colleague here, this is a very genuine demand which if accepted by the Government, we would have no objection on our part to accept the whole Bill. It has been pointed out very clearly that here in this specific proviso we want protection not for *mala fide* squatters as such but only for *bona fide* occupants of particular lands.

MR. DEPUTY CHAIRMAN: Are you speaking on the same amendment?

SHRI V. PRASAD RAO: Of course. That I have mentioned in my Minute of Dissent also.

MR. DEPUTY CHAIRMAN: This has been spoken of even in the first stage and even now by Mr. R. B. Gour.

SHRI V. PRASAD RAO: This is our bone of contention. If only this proviso is accepted, we are prepared to accept the whole Bill without any discussion as such.

MR. DEPUTY CHAIRMAN: Don't repeat the arguments.

SHRI V. PRASAD RAO: I am not repeating. If I may remind the House, the people and the leaders belonging to the same Party that is sitting here in power, as has been

pointed out by my friend there, it is they, who have fought for such a thing to be incorporated in Kattam-palli. There we did not . . .

SHRI BHUPESH GUPTA: It shows their *mala fides*.

SHRI V. PRASAD RAO: There it is a question of *mala fide* occupation. In the case of Kattampalli some people who belong to the same party, had fought not even for alternative accommodation as such. There the Government was prepared to give them or show them alternative accommodation but they wanted the very same accommodation. We don't want to adopt the same unreasonable attitude.

SHRI P. S. RAJAGOPAL NAIDU: What is the law that had been applied by the Kerala Government to evict them?

SHRI V. PRASAD RAO: I will be prepared to request the Kerala Government to accept . . .

MR. DEPUTY CHAIRMAN: He wants to know the law.

(Interruptions)

SHRI V. PRASAD RAO: They did provide alternative accommodation before they were removed from those places.

MR. DEPUTY CHAIRMAN: He wants to know the law.

DR. R. B. GOUR: The Kerala Government has not passed any law. The law that existed during earlier Congress and P.S.P. regimes continues. That is the position.

SHRI V. PRASAD RAO: It is implemented in such a way that no *bona fide* occupant of even Government land was evicted without being shown alternative . . .

SHRI S. PANIGRAHI (Orissa): It is . . .

(Interruptions)

MR. DEPUTY CHAIRMAN: I find two or three Members standing together and going on speaking. That is not proper.

SHRI V. PRASAD RAO: The laws framed by the previous Governments were so implemented by the present Government of Kerala that no bona fide occupant of even Government lands was evicted without being shown alternative accommodation as such.

MR. DEPUTY CHAIRMAN: We are not concerned with that now.

SHRI V. PRASAD RAO: That has been raised by the Deputy Minister himself.

MR. DEPUTY CHAIRMAN: We need not go into that question here.

SHRI V. PRASAD RAO: Since the Minister raised—Mr. Hajarnavis . . .

SHRI P. S. RAJAGOPAL NAIDU: I would like to know . . .

MR. DEPUTY CHAIRMAN: I am sorry, Mr. Naidu.

SHRI V. PRASAD RAO: We have a right to reply to that. Anyway we are not crying for the moon. We are just demanding such things as we have been implementing where we are in actual power. It is not as if we are asking something that is extraordinary but what is being implemented in Kerala, we are asking the Government here to implement, only in bona fide cases and not for anything else. If this is accepted, we will consider the acceptance of the whole Bill.

DR. R. B. GOUR: On a point of explanation because the Deputy Minister has raised it.

MR. DEPUTY CHAIRMAN: What is the explanation?

DR. R. B. GOUR: In April 1957 the Kerala Government issued an order that no person occupying any premises will be evicted and subsequently that passed through the Legislature.

SHRI T. S. PATTABIRAMAN (Madras) : That is made applicable only to Communist Party Members and sympathisers.

SHRI V. PRASAD RAO: He is at liberty to go and squat there. I know you are allergic.

SHRI B. D. KHOBARAGADE (Bombay) : Sir, I support the amendment particularly in respect of Scheduled Castes and Scheduled Tribes. We know that the Scheduled Castes are already undergoing hardships. Therefore it is essential to give the persons some sort of protection, particularly to Scheduled Castes and Scheduled Tribes and to the displaced persons. As far as Scheduled Castes are concerned, their position is rather peculiar and more difficult than displaced persons, Government officers or other privileged persons because due to the stigma of untouchability they do not find it easy to get alternative accommodation anywhere. So if they are evicted from Government premises, it will be rather difficult for them to get alternative accommodation. Moreover we always have been noticing that the persons belonging to Scheduled Castes and Scheduled Tribes are extremely poor. It is not possible for them to pay higher rents and get alternative accommodation in other localities and therefore I would like to support the amendment of Dr. Gour and would request the Government that this particular amendment be accepted.

SHRI BHUPESH GUPTA: Sir, I am speaking on the amendment.

MR. DEPUTY CHAIRMAN: On which amendment?

SHRI BHUPESH GUPTA: No. 5. Even if I had no amendments, I have a right to speak.

MR. DEPUTY CHAIRMAN: No repetition.

SHRI BHUPESH GUPTA: Now we have moved here a number of amendments and some have spoken on them. I want to support them. Now we have moved an amendment and naturally it has been called in question, particularly amendment No. 6 where we want protection against eviction in case of *bona fide* cases of occupation. I can understand the hon. Members' anxiety because we are also in Government in a particular State. How we are behaving and why we are doing it? I am not afraid of this. It is a very legitimate question to ask. We are a ruling party in a particular State. Naturally we should be asked with what ideas and with what norms in view we moved such an amendment. You can allow that but the only thing is that the hon. Minister the Deputy Minister—of Law and the friends who supported him overshot the mark. Here we are seeking protection for only *bona fide* cases and if the story of Kattampalli is to be told, it does not speak well of the Congress Party. There the Government decided to distribute Government lands to the poor people, agricultural labour and to *Harijans*. But then there are certain people who wanted to liberate Kerala and they thought the way to liberate was to occupy these places and they got some people from outside and dumped them there so that the Government would be handicapped from distributing the land to the *bona fide* claimants and in order to prevent it, this was done. It has nothing to do with genuine cases at all. People were brought in by the liberators on behalf of the Congress Party—liberators of Kerala—(Interruptions). Naturally Government took action because the Government land was to be distributed.

And some people were brought in so that *casus belli*, an occasion for war as we call it in international law, could be created. It did not succeed very well and that is the story of

Kattampalli. I hope my hon. friend who has gone there would not, in future if he goes there, give us this aspect of the matter. We are not concerned with the liberation of Kerala or the liberation of Delhi. We are concerned with the case of *bona fide* occupants on what is called government properties. Here, we want protection to be given and it is for the Government to decide who is *bona fide* and who is *mala fide*. We are not saying that we shall decide it but if a case is made out that the occupant is a *bona fide* displaced person, he should not be evicted. That is all that we demand. If the Congress demands in Kerala that *bona fide* people should not be evicted from their places, well Mr. Panampalli will have many things.

MR. DEPUTY CHAIRMAN: Enough of that, Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: I hope the Kattampalli mystery is cleared by now. I say, we play the rules of the game. We do not advocate one thing and do another thing elsewhere. This thing we leave for the other side

I say this with regard to my amendment number 5, "Provided that every notice so served shall state the purpose for which the premises are proposed to be used and for which the eviction is sought". All things should be stated for a number of reasons; firstly, the people of the locality would know as to why you want this eviction to be done; secondly, it will be a guarantee that the original purpose, if there is any original purpose, for which you are carrying out this eviction stands even after the eviction has taken place; thirdly, it will be open for Members of Parliament and others, Municipal Councillors, etc., to look into the reasons behind the Government action. Government should lay its cards on the table on all such matters. You cannot on the one hand say that you are acting in the public interest and then try to get things done behind the back of the public. We do not like this kind of method. Look at it in the front; enter the house by the

[Shri Bhupesh Gupta.] front door and get out of the house by the front door. That is all we want. Therefore, all things should be stated. I stress this amendment because Government makes big declarations when the evictions are to be carried out, but, after the eviction is over, it does not make use of the land for the purpose for which the land had been acquired. It has been found so in many cases. Land is taken; Government property is needed for something which seems very laudable, ostensibly very good but then it is given to some other gentlemen belonging to the Government party and to some such people.

SHRI ANIL K. CHANDA: Is he referring to Kerala?

SHRI BHUPESH GUPTA: There, fore, we want to play the straight game in this matter; we do not want any backhand deals in such cases. That is very important and there should be no objection to this. If your heart is clean and if your hands are also clean, there is no reason why you should not be in a position to tell the world why you are vacating people from their occupation and from their land. This should be done.

By another amendment of mine, I want the word "service" to be substituted for the word "issue" because they want to count the days from the date of issue. I say that it should be from the date of service. You may issue a notice but there is a lot of conflict as to the definition when the issuance is actually made. Suppose the notice gets into a file, gets wrapped up in brown paper in the various departments, the person for whom it is meant might not get it in time; he may get it just two days before the expiry of the notice or seven days before the expiry of the notice and he will be asked, on the strength of this notice, to quit. It will be unreasonable notice and people should not be made to act on such unreasonable notice. Therefore, I say that the word "service" should be substituted here. These are my suggestions and I think

should serve the purpose in each and every *bona fide* case.

SHRI ANIL K. CHANDA: I am sorry I cannot accept any of these amendments.

MR. DEPUTY CHAIRMAN: What do you say for amendment No. 4. I think that seems to be reasonable.

SHRI ANIL K. CHANDA: In that amendment he says that instead of "issue", we should have the word "service". This is a very difficult matter so far as I am concerned because, sub-clause (4) says, "Where the estate officer knows or has reasons to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed". The whole thing may be made infructuous if he is just evading to take the notice.

MR. DEPUTY CHAIRMAN: If it is served on the last day?

SHRI R. M. HAJARNAVIS: I also thought that probably this could be changed but then the real object is only this. This only prescribes the minimum period. There is a general notice and then, hearing shall not be within ten days from the issue of general notice. But then the estate officer will surely, in order to enable the person proceeded against to make an effective defence, give him a date later on which could never be less than ten days which is the minimum period.

MR. DEPUTY CHAIRMAN: The question is:

4. "That at page 2, line 33, for the word 'issue' the word 'service' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

5. "That at page 3, after line 11, the following proviso be inserted, namely:—

'Provided that every notice so served shall state the purpose for which the premises are proposed to be used and for which the eviction is sought'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

6. "That at page 3, after line 11, the following proviso shall be inserted, namely:—

"Provided that in *bona fide* cases of displaced persons, retired government servants and persons belonging to the Schedule Castes and Scheduled Tribes, it shall be incumbent on the Estate Officer to provide suitable alternative accommodation to the person or persons affected'."

The motion was negatived.

* Amendment No. 14 was, by leave, withdrawn.

श्री पा० ना० राजभोज : मुझे मंत्री महोदय ने अपने पहले भाषण में जो आश्वासन दिया है ।

MR. DEPUTY CHAIRMAN: Do you want to press it or not?

श्री पा० ना० राजभोज : मैं विद्वती करना चाहता हूँ ।

MR. DEPUTY CHAIRMAN: Has he the leave of the House to withdraw his amendment?

SEVERAL HON. MEMBERS: No.

*For text of amendment, *see* col. 508 *supra*.

MR. DEPUTY CHAIRMAN: Then I put it to vote. The question is:

18. "That at page 3, after line 11, the following proviso be inserted namely: —

'Provided that the order of eviction so made shall not be effected unless suitable accommodation is found by or for the persons belonging to the Scheduled Castes and Scheduled Tribes'."

(After a count) Ayes—8; Noes—28.

The motion was negatived.

MB. DEPUTY CHAIRMAN: The question is:

"That clause 4 stand part of the Bill"

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5—Eviction of unauthorised occupants

MR. DEPUTY CHAIRMAN: There are three amendments to clause 5.

SHRI BHUPESH GUPTA: Sir, I move:

7. "That at page 3, after line 28, the following proviso be inserted, namely: —

'Provided that in cases where such persons, not being government employees, have been in continuous occupation for a period exceeding three years, the Estate Officer, shall, on the application of persons sought to be evicted, extend the period of forty-five days to three months or more having regard to the specific circumstances of the occupants.'

(The amendment also stood in the names of Dr. R. B. Gour, Dr. A. Subba Rao and Shri J. V. K. Valla-bharao.)

SHRI J. ASP. AT ROY KAPOOR: Sir, I move'

15. "That at page 3, at the end of line 22, after the word 'premises' the words 'and publish it in such other manner as may be prescribed' be inserted."

MB. DEPUTY CHAIRMAN: Then there is one amendment of Mr. Kapoor received at 1.48 P.M. If the House has no objection, I will allow it.

(No hon. Member objected.)

SHRI JASPAT ROY KAPOOR: I move:

20. "That at page 3, line 16, after the words 'unauthorised occupation' the words 'and that there should be eviction therefrom' be inserted."

MR. DEPUTY CHAIRMAN: That is the point raised by Dr. Barlingay. The clause and the amendments are before the House.

SHRI JASPAT ROY KAPOOR: Sir, there are two amendments that stand in my name. I will speak first on my amendment No. 15 which is a very small amendment and I hope it will not be difficult for the hon. Minister to accept it. After all, he has been dealing with the whole measure in a very liberal and S£"£5⁰ ^{u^^j^} and I think this small toampaiues may be readily agreed to. The implication of this amendment of mine is that when the final order of ejection is passed, then not only as is already prescribed in this clause a copy of the order is to be affixed to the outer door or some other conspicuous part of the public premises, but it may be served—and if possible this may be so prescribed by rules made under this Act—on each of the individual occupants of those premises, if that be possible. I am only explaining the implication that may arise after the acceptance of my amendment. I do not suggest specifically any particular manner in which that order should be conveyed. I

leave it to the Government itself to consider and decide what would be the best, thing to do, while framing the rules in this behalf. This appears to be a very formal thing. It does not commit the Government to anything in particular. They can consider it at leisure while framing the rules, and they can decide whatever is considered best in the circumstances of a particular case or even generally.

Next I will deal with my second amendment.

MR. DEPUTY CHAIRMAN: That point has been discussed at some length and also replied to. I think no speech is necessary.

SHRI JASPAT ROY KAPOOR: Well, Sir, I hope I will be able to convince the Chair also that some little thing still remains to be said about it. At least I hope so, though I do not know whether my hopes will be belied.

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All that I want is that this provision here and the provision in clause 4(1) should be consistent. One little thing that has to be considered coolly and calmly is whether the discretion that you are giving to the estate officer at the time of issuing the notice should be taken away from him while he is passing the final order. My hon. friend Shri Himatsingka just now quoted the instance of a student who might be in unauthorised occupation of public premises. His examination might be coming up in six months time. The estate officer, not knowing the fact that the person who is in unauthorised occupation is a student, in his ignorance of that circumstance, initially issues a notice. When the student appears before the estate officer, he brings to the officer's notice the fact that he is a student and after six months it will not be difficult for him to go away from that place. A new question arises at this stage. A new circumstance having been brought to the notice of the estate officer, which if it had been in

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the knowledge of the estate officer initially, that notice would not have been issued at all, because it is presumed that he will act in a humane way. Should his hands be tied down by the phraseology of clause 5? It will not be open to him later on to cancel his notice, obviously. Surely that is not your intention. Therefore I want the hands of the estate officer to be kept free, the discretion of the estate officer which you have rightly given to him at the initial stage should not be taken away when he has to pass final orders, in view of the various new circumstances that have now been brought to his notice. I beg the hon. Minister to calmly and coolly consider this. Do you want to fetter the discretion of the estate officer at the later stage? When the evidence comes before him . . .

MR. DEPUTY CHAIRMAN: That will do.

SHRI JASPAT ROY KAPOOR: . . . you don't give him this discretion? I would therefore, submit that in order to be consistent, in order to be able to properly carry out the purpose of this measure and in order to properly implement what you really intend to do under clause 4, it is necessary that my amendment should be accepted. And then it would read like this:

"If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard," . . .

Obviously he will put in evidence in support of his contention why the initial notice should not have been sent out, because of the various circumstances, that is to say, that he is a student and so on:

"... and after giving him a reasonable opportunity of being heard,"

[Shri Jaspat Roy Kapoor] Where is the fun in hearing the person on this question and recording evidence on a point on which you

cannot ultimately base your judgment?

"the estate officer is satisfied that the public premises are in unauthorised occupation, and that there should be eviction therefrom,"

That is what I suggest and I hope the hon. Minister would be pleased to accept it.

DR. R. B. GOUR: I am sorry I have to submit to you that amendment No. 12 was not voted upon—it is in List No. 2—and we have passed on to clause 5.

MR. DEPUTY CHAIRMAN: It is ruled out.

DR. R. B. GOUR: Why?

MR. DEPUTY CHAIRMAN: I told you it requires recommendation of the President. It involves expenditure.

SHRI BHUPESH GUPTA: I do not understand how amendment No. 12 requires recommendation of the President. Do not confuse with the other amendment. That amendment involves expenditure.

MR. DEPUTY CHAIRMAN: This also involves expenditure.

SHRI BHUPESH GUPTA: How?

MR. DEPUTY CHAIRMAN: We are on clause 5 now. You speak on clause 5.

SHRI BHUPESH GUPTA: You do not say why it has been ruled out.

MR. DEPUTY CHAIRMAN: I told the House that the amendment is ruled out.

SHRI BHUPESH GUPTA: I want to know why it has been ruled out.

MR. DEPUTY CHAIRMAN: You want three Members of Parliament,

three persons representing the Government of India, two members of Delhi Administration, three Members of the Delhi Municipal Corporation and two representatives of displaced persons to come and meet in a committee. That requires expenditure by the Government.

SHRI BHUPESH GUPTA: How do you know it? I have not said it.

MR. DEPUTY CHAIRMAN: You need not say it. They would not come for the mere asking.

SHRI BHUPESH GUPTA: But, Sir, you are

MR. DEPUTY CHAIRMAN: Anyway I have given the ruling.

SHRI BHUPESH GUPTA: The ruling is a ruling but I want a little reason.

MR. DEPUTY CHAIRMAN: The reason is quite clear.

SHRI BHUPESH GUPTA: I am very sorry that it has been disallowed because it does not mean that expenditure is involved. You may say that it involves expenditure but the text does not say so. There may be some good people who would meet without charging anybody anything.

Now, with regard to clause 5 I want the period of notice to be extended from 45 days in certain cases to three months or more. This is my contention and I have said:

"Provided that in cases where such persons, not being government employees, have been in continuous occupation for a period exceeding three years, the Estate Officer shall, on the application of persons sought to be evicted, extend the period of forty-five days to three months or more having regard to the specific circumstances of the occupants."

I think this meets the requirements of natural justice. As far as the Government officers are concerned, I

"have excluded" them for the simple reason that they have to be replaced and the fresh people coming in will have to be given accommodation and their places will have to be made available to newcomers but in cases where people are not being in Government service have been in occupation for a period of three years of more than three years, 45 days' notice would be very harsh on them for the simple reason that it may not be possible for them, even with all the good intentions, to vacate the place. They would not like this eviction law to come down upon them. They would very much like to vacate but then the time is so very short—45 days. First of all, some arrangements have to be made. Secondly, alternative accommodation has to be found. And if the premises are used for business, some other business somewhere else may have to be started. All these things cannot be done within 45 days. When I said this the hon. Minister cited the Delhi Municipality and he gave all examples of demolition.

MR. DEPUTY CHAIRMAN: You have not asked for 15 months.

SHRI BHUPESH GUPTA: I got it from the municipal people but I could not get the law but I will try to get it and pass it on to him. But then it may be too late. Anyway this particular amendment of mine is based on merits and I think all will agree that there are a number of cases where 45 days' notice would be regarded to be inadequate notice. Why can't it be extended to three months? Nothing will be lost. The Government will say they have to carry out their plans and development schemes and therefore they have to act promptly. When it is a question of eviction the Government always say that they are acting promptly but we have seen what they did with the Jaundice Enquiry Committee's Report. They have shelved it for over three years now, have slept over it for three years.

MR. DEPUTY CHAIRMAN: Order, Order. Do not go to the Jaundice Enquiry Committee now.

SHRI BHUPESH GUPTA: Well, my eyes are not jaundiced and therefore I will go to it. Recommendations are made that they should do certain things—certain constructions to be made. It may imply taking over properties, requisitioning of properties. In such cases the Government may say, "we have to do it; give us powers for getting this done in 30 days." But then we know that in such cases they do not act so quickly. Therefore it is no use telling us that for the development of Delhi or for the development of other cities it will be necessary to provide for such short notice. Give them reasonable time. If we can wait for 45 days, we can just as well wait for another 45 days. Construction will not be held up because of this reason. Therefore that argument does not hold water.

The other argument that we sometimes get is there are military reasons and other things. That I can understand, cases of emergency where things have to be cleared at very short notice but normally such short notice is not in practice. It is no use quoting various authorities. See what has happened in Delhi. So many thousands of people are in occupation which according to you is unauthorised occupation. If you apply the 45 days principle in the matter of notice, in the first instance you issue an order of eviction which in itself is wrong. Secondly, you administer this measure harshly against these persons. That also is wrong. We do not want this kind of thing. In law also we find—a former Judge of the High Court is here and he can tell us—there are many cases where a longer notice is given and the court permits longer notice. So why in such cases this cannot be accepted, I do not know. I would therefore ask the Government to accept it with good grace.

SHRI ANIL K. CHANDA: May I have your permission to refer to Mr. Bhupesh Gupta's amendment No. 12 which you have disallowed?

MR. DEPUTY CHAIRMAN: We are not concerned with it now. You come to clause 5 now; amendment No. 7.

SHRI ANIL K. CHANDA: So far as Mr. Bhupesh Gupta's amendment in respect of the period of notice is concerned . . .

MR. DEPUTY CHAIRMAN: Yes; he wants 90 days' notice.

DR. R. B. GOUR: Not 90 days' notice; discretion to extend the period of notice.

SHRI ANIL K. CHANDA: In that amendment if he takes out the words "or more" after three months, I will be prepared to accept that.

SHRI BHUPESH GUPTA: Thank you very much. That will be all right.

MR. DEPUTY CHAIRMAN: The other amendments you are not accepting?

SHRI ANIL K. CHANDA: No, Sir.

MR. DEPUTY CHAIRMAN: The question is.

7. "That at page 3, after line 28, the following proviso be inserted, namely: —

'Provided that in cases where such persons, not being government employees, have been in continuous occupation for a period exceeding three years, the Estate Officer shall, on the application of persons sought to be evicted, extend the period of

forty-five days to three months having regard to the specific circumstances of the occupants'."

The motion was adopted.

*Amendment No. 15 was, by leave, withdrawn.

SHRI JASPAT ROY KAPOOR: About my amendment (No. 20) may I appeal to the hon. Minister to extend the acceptance equitably between the Opposition and this side? If he is pleased to accept one amendment from the Opposition side, he should accept one from this side.

SHRI R. M. HAJARNAVIS: We accept amendments only on the basis of merits.

'Amendment No. 20 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Clause 6 was added to the Bill.

MR. DEPUTY CHAIRMAN: New clause 6A is out of order because you want compensation to be paid.

DR. R. B. GOUR: Even otherwise we would have withdrawn it, Sir.

MR. DEPUTY CHAIRMAN: This House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five of the clock till eleven of the clock on Thursday, the 21st August 1958.

*For text of amendments, see col. 526 *supra*.