

mentioned, I am unable to agree with the view that s. 9 (1) (c) prescribes a period of limitation and is not in form and substance a condition on the strict compliance of which alone a petition for adjudication can be maintained. In my view, s. 9 (1) (c) does not prescribe a period of limitation for presentation of a petition by a creditor but sets out a condition precedent, and by applying the rule contained in s. 14 of the Limitation Act a petition filed after the expiry of three months cannot be made to conform to the strict requirement of s. (1) (c) of the Provincial Insolvency Act.

It is true that the petition for adjudicating the respondent an insolvent was lodged in the Insolvency Court at Broach on April 23, 1951, but that Court had no jurisdiction to entertain the petition. The Broach Court having no jurisdiction to entertain the proceedings, the proceeding taken in the Insolvency Court at Borivali cannot be regarded as a continuation of the proceeding filed in the former Court, and the petition must be regarded as presented on November 15, 1951. The petition having been presented more than three months after the date on which the act of insolvency is grounded occurred, it must be regarded as not complying with the requirement of s. 9 of the Provincial Insolvency Act. The learned District Judge, therefore, was in my view, right in dismissing the petition.

The rule is, therefore, discharged with costs.

Rule discharged.

K. B. S.

APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

BAPURAO DHONDIBA JAGTAP (ORIGINAL ACCUSED) PETITIONER v.
THE STATE OF BOMBAY.*

Bombay Police Act (Bom. XXII of 1951), s. 37 (3)—Constitution of India, art. 19 (1) (b) & (d), (3), (5)—Whether s. 37 (3) ultra vires of the Constitution—Whether it imposes unreasonable restrictions on fundamental rights—Commissioner of Police issuing order under s. 37 (3) and extending its duration by another order before expiration of original order—Whether extension of order valid—Whether principles of natural justice could be imported in considering validity of administrative order.

Section 37 (3) of the Bombay Police Act, 1951, is not *ultra vires* of the Constitution of India inasmuch as the restriction imposed by s. 37 (3) upon the freedom guaranteed to the citizen under art. 19 (b) and (d) is in the interests of the general public and the restriction is a reasonable one.

The Commissioner of Police, Greater Bombay, issued an order under s. 37 (3) of the Bombay Police Act, 1951, prohibiting for a period of fifteen days any procession of five or more persons in Greater Bombay.

*Criminal Application No. 55 of 1956.

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The order was extended from time to time. The order was challenged on the ground (i) that s. 37 (3) of the Act imposed an unreasonable restriction inasmuch as there was no limitation as to time during which an order issued under it could continue except that the State Government must sanction its continuation beyond a period of fifteen days; (ii) that the provision was bad because it did not afford any opportunity to the person affected by the order to show cause against it; (iii) that the fundamental right to move freely was made dependent upon the uncontrolled subjective opinion of an executive officer; (iv) that the restrictions imposed by the section were excessive as any assembly and procession could be prohibited and that too over any area, (v) that the section did not provide for the publication of the order and was on that ground unreasonable, (vi) that the sub-section constituted delegated legislation and was therefore void; (vii) that the impugned order was not valid as it banned only a procession and not an assembly and if an assembly was lawful it could not be prevented from forming into a procession, and (viii) that the impugned order, being an extension of an earlier order, was not valid;

Held, (i) that although the duration of the order issued under s. 37 (3) of the Act may be indefinite the Legislature had provided the safeguard that the continuation of the order depended upon the authority being satisfied that it was necessary for the preservation of the public order;

(ii) that the order made under s. 37 (3) of the Act was an administrative order and the principles of natural justice could not be imported into the consideration of the said order;

(iii) that s. 37 (3) of the Act dealt with an emergency and the power to be exercised by the authority to meet and deal with the emergency, and therefore it could not be made subject to judicial corrective or to some Appellate authority as it would stultify the object of the Legislature in conferring those powers upon the authority;

(iv) that the Legislature had laid down the test that only that assembly or procession should be prohibited where the prohibition was necessary for the preservation of the public order and the extent of the area over which the order should have application depended upon considerations of public order;

(v) that the question whether there was proper promulgation of the order or not had no relevancy to the question whether the restrictions imposed were reasonable or unreasonable;

(vi) that an order to be issued under s. 37 (3) of the Act could not constitute legislation and it could not be said that the legislature had delegated its legislative function to the Commissioner of Police;

(vii) that as the Commissioner of Police had the power to prohibit both an assembly and a procession, the larger power included the smaller power of prohibiting a procession;

(viii) that under s. 21 of the Bombay General Clauses Act, 1904, the power to make an order includes the power to amend it and the Commissioner of Police, in extending the order merely amended the duration of the earlier order.

Emperor v. Jeshingbhai Ishwarlal,⁽¹⁾ referred to.

CRIMINAL Application under Art. 228 of the Constitution of India.

On September 28, 1955, the Commissioner of Police, Greater Bombay, issued an order under s. 37 of the Bombay Police Act, 1951, prohibiting for a period of fifteen days any procession of five or more persons in Greater Bombay. On October 12, 1955, the Commissioner of Police issued another order extending for

a period of one month the order issued on September 28, 1955. This order stated that it was made with the previous sanction of the Government of Bombay. On November 12, 1955, he again issued an order extending for a period of one month the order issued on September 28, 1955, and stated in the order that it was made with the previous sanction of the Government of Bombay.

One Bapurao (accused) was charge-sheeted in the Court of the Chief Presidency Magistrate, Greater Bombay, for contravening the order of the Commissioner of Police.

The accused applied to the High Court under art. 228 of the Constitution of India for transfer of the case to the High Court on the ground that it involved a substantial question as to the interpretation of the Constitution.

The application was heard.

R. B. Kotwal, with V. H. Kamat, for the Accused.

M. P. Amin, Advocate-General, with H. M. Choksi, Government Pleader for the State.

Chagla C. J.—The petitioner has been charge-sheeted in the Court of the learned Chief Presidency Magistrate for having contravened an order passed by the Commissioner of Police under s. 37 (3) of the Bombay Police Act on November 12, 1955, and he has come before us under art. 228 of the Constitution contending that the case before the learned Chief Presidency Magistrate involves a substantial question as to the interpretation of the Constitution and, therefore it should be transferred to this Court and this Court should decide that substantial question of law.

Section 37 (3) of the Police Act empowers the Commissioner of Police by an order in writing to prohibit any assembly or procession whenever and for so long as he considers such prohibition to be necessary for the preservation of public order. There is a proviso to this sub-section to this effect :

“Provided that no such prohibition shall remain in force for more than fifteen days without the sanction of the State Government.”

Acting under this sub-section the Commissioner of Police issued an order on September 28, 1955, and by that order he prohibited for a period of fifteen days any procession of five or more persons in Greater Bombay. He exempted from this order marriage processions, funeral processions and Ganpati processions, and he also directed that the order should be published by affixing copies of the same in conspicuous public places in Greater Bombay and by proclaiming the same with beat of drums in Greater Bombay. On October 12, 1955, he extended the duration of this order for one month. On November 12, 1955, he extended it for a further period of one month, and the allegation against the petitioner is that it was this order that he contravened on November 21, 1955.

What is urged by Mr. Kotwal on behalf of the petitioner is that s. 37 (3) of the Police Act is *ultra vires* of the Constitu-

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tion in that it infringes the petitioner's fundamental rights secured to him by art. 19 (1) (b) and (d). Article 19 (1) provides that all citizens shall have the right, among others, to assemble peaceably and without arms and to move freely throughout the territory of India. These rights are not absolute or unqualified rights. Sub-clause (3) of art. 19 provides :

"Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

And sub-cl. (5) provides :

"Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe."

Therefore, it is competent to the Legislature to circumscribe any of these freedoms in the interests of public order or in the interests of the general public, but in circumscribing these freedoms the Legislature must not over-step the limit laid down by the Constitution, and the limitation laid down by the Constitution is that the restriction which can be imposed by the Legislature upon the freedom of the citizen guaranteed under art. 19 (1) must be a reasonable restriction and, as has been pointed out, it is for the Court to decide whether a particular restriction imposed by the Legislature is or is not a reasonable restriction. Article 19 and the sub-clauses of that article really attempt to provide a mean between the interests of the State, the interests of law and order, the interests of security, and the rights of the citizens. It is not always easy to reconcile these conflicting claims. A citizen in a free country rightly asserts that he should be permitted to exercise his freedom. But a free country equally requires law and order and security, and, therefore, the Constitution while emphasising the rights of citizens has also emphasised the interests of the State, and, therefore, in appreciating and understanding Mr. Kotwal's arguments we have to keep in mind these conflicting claims of the citizen and of the state. It is true that we must not forget that we are constituted the custodian of the citizen's freedom and his fundamental rights and we must be vigilant in seeing that the right or freedom is not unduly or unnecessarily circumscribed or limited.

It is pointed out in the first place that there is no limitation as to time during which an order made under s. 37 (3) can continue. It is pointed out that the Commissioner of Police may make an order the duration of which may be indefinite and all that is necessary is that the State Government should sanction the continuation of the prohibition beyond a period of fifteen

days. If that sanction is obtained, then the order under s. 37(3) can continue indefinitely. In putting forward this argument what is overlooked is that the very jurisdiction to make an order, the very basis of the order, is the preservation of the public order. An order made under s. 37 (3) cannot continue and should not continue for more than even one minute beyond the time that is necessary for its continuation for the purpose of preservation of public order. The key words of s. 37 (3) and the words emphasised by the Legislature are that the order should be made whenever the authority considers such prohibition to be necessary for the preservation of the public order and only for so long as it considers such prohibition to be necessary for the preservation of the public order. That, therefore, is the greatest safeguard that the citizen has that although the duration is not fixed and although the duration may be indefinite, the continuation of the order depends upon the authority being satisfied that it is necessary for the preservation of the public order. It is no argument, when we are discussing the vires of the Act, to suggest that the Commissioner of Police may, armed with this vast power, continue an order although there may be no necessity for doing so, because the validity of a statute cannot be tested on the basis of those who are called upon to exercise certain powers exercising those powers dishonestly or arbitrarily. The validity of a statute must be judged rather on the assumption that those who are called upon to exercise those wide powers will exercise them honestly and *bona fide*.

It is then urged that this provision of the law is bad because it does not afford any opportunity to a party or a person affected by the order to show cause against it. It is said that the Commissioner of Police can make an order without hearing any party who might be affected by it. Not only that but even after the order has been made the Commissioner of Police is not bound to hear any representation by any party so as to persuade the Commissioner of Police that there is no further necessity for the continuation of the order. Now, the order complained of and the order that has got to be made under s. 37 is clearly an administrative order and it would be erroneous to import into the consideration of an administrative order the principles of natural justice. When the Legislature requires an authority to adopt the judicial process and the judicial approach, then undoubtedly any order passed by such an authority without hearing the party to be affected by it would be clearly bad because it would violate a fundamental principle of natural justice. But when we are dealing with an administrative order the approach must be different. Mr. Kotwal is right that when a citizen is deprived or is about to be deprived of his fundamental right, ordinarily he should be heard in his defence before such an order is passed. A fundamental right is so valuable and the Constitution has attached such a great

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importance to it that the Court will not permit the Legislature to pass a law depriving a citizen of that right in ordinary circumstances without at least giving an opportunity to that citizen to say what he wants to say in the defence of that right. But it would be equally erroneous to suggest that in every case where a fundamental right is sought to be taken away by the administrative order, the provision of the law would be bad because it did not give the citizen the right to make a representation with regard to the deprivation of that right. It must depend upon the particular right which is being taken away, it would depend upon the circumstances and the conditions under which the authority is empowered to take away the right, and it also depends upon the safeguards provided by the Legislature.

Mr. Kotwal strongly relied on a judgment of this Court in *Emperor v. Jeshinbhai Ishwarlal*.⁽²⁾ In that case we were dealing with the Bombay Public Security Measures Act and we were dealing with particular provision in that Act which permitted an externment order to be passed and that Act permitted the constituted authority to extern a person without giving that person an opportunity to make a representation in his own defence. It should be noted that the person could only be externed provided the authority was satisfied that he was acting or is acting or is likely to act in a manner prejudicial to public safety, the maintenance of public order, or the tranquility of the province or any part thereof, and it is in this context that the following observations were made by me at p. 550 :

“But what is much more important, and to my mind what is fatal to the validity of the restriction placed by the Legislature, is the fact that the person against whom an order of externment is to be made has no right whatever to be heard in his defence before he is asked to leave his home and hearth and go and reside in some other place. There is no obligation upon the authority to tell him what he is charged with or what are the grounds against him which make it incumbent upon the Government to ask him to leave his home town. Nor is there any obligation upon the authority to hear the person against whom the order is intended to be made in his defence before the order is made.”

Further on in the judgment it is pointed out that it was difficult to understand the discrimination made between an order of detention under that Act and an order of externment under that very Act. In the case of an order for detention the right was given to the party to be detained to make a representation; in the case of an order of externment no such right was given. It was because of these considerations that the majority of the Judges hearing that case came to the conclusion that this particular provision in the Bombay Act was *ultra vires* of the constitution.

The facts here are entirely different. There is no allegation against any one in the order made by the Commissioner of Police. Therefore, no question arises of any representation be-

ing made by any person in his own defence against any charge levelled against him. It is difficult to understand what is the representation that Mr. Kotwal suggests should be permitted to be made by the persons affected by this order. In the first place, the whole city of Bombay is affected by this order because every citizen living in Greater Bombay is prohibited from forming a procession. Mr. Kotwal undeterred by this difficulty says that the mere fact that something is not practicable or causes inconvenience cannot affect the validity of an argument. But even assuming that provision should be made for representation to be made by all the citizens of Greater Bombay, it is still difficult to understand on what point or issue that representation should be made, because the Legislature has left it to the satisfaction of the Commissioner of Police as to whether there is an emergency which calls for the issuing of such an order for the preservation of the public order. It is not any one else's satisfaction, it is not any one else's judgment, that has to determine or to decide whether such an order should be issued or not. It is only the opinion and the decision of the Commissioner of Police that is conclusive in the matter. What Mr. Kotwal says is that opportunity should be given to the public of Bombay who are affected by this order to satisfy the Commissioner of Police that there is no need for the continuation of this order or that there is no emergency and no threat to public order which would justify this order continuing. In our opinion, it would be an impossible state of affairs to bring about if the question as to whether there was an emergency or not and the question whether public order was threatened or not could only be decided by what ultimately must amount to a public debate between the Commissioner of Police on the one hand and the citizens of Bombay on the other. In an emergency power must be vested in some authority, power can only be exercised by that authority, and it must be left to his decision and judgment when and how that power should be exercised. That is precisely what the Legislature has done under s. 37 (3), and, therefore, what Mr. Kotwal suggests as wanting in this section is not the right to meet a charge or to meet allegations, but the right to satisfy the Commissioner of Police that something which he has to decide should be decided differently from the manner in which he decided it.

The next contention urged by Mr. Kotwal is that the enjoyment of this fundamental right is made dependent upon the uncontrolled subjective opinion of an executive officer. It is urged that there is no corrective whatsoever, either judicial or otherwise, which could correct the Commissioner of Police in the event of his going wrong in appraising the situation that may exist at a particular time. When it was pointed out to him that the sanction of the State Government was required if the prohibition under s. 37 (3) was to remain in force for more than fifteen days, Mr. Kotwal's contention was that there was

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not much to choose between the State Government and the Commissioner of Police, both being executive authorities. Undoubtedly it is a very salutary principle that when discretion is vested in an authority the exercise of which may affect the property or person of a citizen, that discretion should not be an uncontrolled discretion. Either the Legislature should lay down directive for the exercise of that discretion or the discretion should be capable of being corrected by a higher authority. But that principle applies when you are dealing with day to day administration, when licenses are to be issued at the discretion of an authority or permits are to be given for the carrying on of a particular business. But when you are dealing with an emergency as s. 37 (3) clearly deals with, and when power is conferred upon the authority to meet and deal with that emergency, then it is futile to suggest that the power to be exercised by that authority should be controlled or corrected by a higher authority. The safeguard, as we have already pointed out, imposed by the Legislature is that the Commissioner of Police from time to time should satisfy himself that the conditions are present which require the continuation of the order. But he being the person on the spot and being in a position to judge the situation can be the only authority who could decide as to the necessity of the order to be issued under s. 37 (3). It cannot possibly be a matter of judicial determination as to whether there was necessity for the issuing of the order. Therefore, to suggest that there should be a judicial corrective or some appellate authority to sit in judgment over the Commissioner of Police would completely stultify the object of the Legislature in conferring upon the Commissioner of Police those wide powers.

It is then urged that the restrictions in any view of the case are excessive and it is pointed out that as the section stands any assembly and any procession can be prohibited. No indication is given by the Legislature as to the type of assembly or the type of procession which should be prohibited under this sub-section. It was impossible for the Legislature to indicate the exact nature of the assembly or the procession which should come within the ambit of s. 37 (3). Again, the only test which the Legislature could lay down and which the Legislature has laid down is that only that assembly or that procession should be prohibited were the prohibition was necessary for the preservation of the public order. It is difficult to see how, apart from laying down this test, the Legislature could have given any more details in indicating the nature of the assembly or the procession. It is also said that there is no restriction as to the area over which the order could have application. It is said that the Commissioner of Police could issue an order for the whole of Greater Bombay or he could issue it in respect of any part of the City of Bombay, and here again it is urged that the Legislature has imposed no limits upon the power of the

Commissioner. The answer to this contention must be the same. The extent of the area over which the order should have application or operation must again depend upon considerations of public order. If public order demands that the order should apply to the whole city of Bombay then it would be the duty of Commissioner of Police to apply the order to that large area. If, on the other hand, considerations of public order do not require such wide application of the order then it would be equally the duty of the Commissioner of Police to restrict this application to the particular areas which would require this particular order.

It is then urged that s. 37 (3) does not provide for the publication of the order and in contrast to this it is pointed out that the order which can be issued under s. 37 (1) requires that it should be by a notification publicly promulgated or addressed to individuals. In the case of sub-s. (3) all that is necessary is that it should be an order in writing. Therefore, according to Mr. Kotwal, a person might be affected by an order in writing issued by the Commissioner of Police under this sub-section without that order being promulgated at all and that according to him is an unreasonable restriction. It is difficult to understand how this particular contention has any bearing on the question of reasonable or unreasonable restriction. It may have undoubtedly an important bearing on the merits of the case. It may be open to the petitioner—we express no opinion on it—but it may be open to the petitioner to urge when the case goes back to the learned Chief Presidency Magistrate that he had no knowledge or notice of this order, that the order was not properly published or promulgated, and, therefore, he cannot be affected by that order. If in law the petitioner cannot be held guilty of having infringed the order if the order was not properly promulgated, then he must be acquitted of the offence with which he is charged. If, on the other hand, in law a party can be affected by an order without due publication of that order and although that order constitutes something which was not an offence into an offence, then the petitioner would be held guilty if in fact he has infringed the order. But whatever may be the true position in law, it certainly does not in any way have any relevancy to the question we are now considering as to whether the restrictions imposed by the Legislature are reasonable or unreasonable.

Mr. Kotwal also suggested that the impugned sub-section constituted delegated legislation and, therefore, on that ground also it was void. It seems difficult to appreciate the contention that an order to be issued under s. 37 (3) by the authority mentioned in that section in order to preserve public order can constitute legislation. But even if it does constitute legislation, the Legislature has by no means abdicated itself. It has laid down the policy and indicated the ground on which the order can be issued and has also placed limitations upon the

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issuing of that order. Therefore, in no view of the case can it be urged that the Legislature has delegated the legislative function to the Commissioner of Police.

In our opinion, therefore, sub-s. (3) of s. 37 is a restriction imposed by the Legislature in the interests of public order and in the interest of the general public upon the freedom guaranteed to the citizen under art. 19 (1) (b) and (d), and in our opinion that restriction is a reasonable restriction, and, therefore, this provision of the law cannot be said to contravene the provisions of the Constitution so as to render it void.

It is then urged by Mr. Kotwal that even if the impugned legislation was held to be valid, the order itself issued pursuant to s. 37 (3) was not a valid order. Two grounds are urged why the order should be held to be bad. The first, which is rather difficult to understand, is that the order does not ban assembly of persons but only procession of persons. As we have already noticed, s. 37 (3) empowers the Commissioner of Police to prohibit both an assembly and a procession. In issuing the order in question he has chosen not to prohibit an assembly but only a procession. In other words, five or more persons could assemble anywhere in Greater Bombay and not infringe the order, but when that assembly starts moving and moving in a formal or solemn manner and constitutes itself into a procession, it would come within the mischief of the order, and what is urged by Mr. Kotwal is that it is not competent to the Commissioner of Police to ban the movement of an assembly which is a lawful assembly. The argument of Mr. Kotwal is put this way that if you have an unlawful assembly then you can prevent that unlawful assembly from forming itself into a procession, but if you have an assembly which is lawful then you cannot prevent that lawful assembly from marching in procession. One should have thought that the larger power conferred upon the Commissioner of Police would include the lesser power. If the Commissioner of Police could prohibit both an assembly and a procession, it is difficult to understand why he cannot prohibit only a procession. It is true that as the order stands an assembly would not be an unlawful assembly, but why is the Commissioner of Police prevented from saying that :

"In my opinion a mere assembly of persons will not prejudice the preservation of public order but when that assembly starts moving in a procession it is likely to affect the preservation of public order and therefore while not banning the assembly I will ban the procession."

In our opinion, there is not much substance in that contention.

It is then urged and with considerable force that the Commissioner of Police has no power under s. 37 (3) to extend an order made by him, and inasmuch as the order in question is an extension of an earlier order it is not a valid order. As we have already pointed out, the original order was passed on September 28, 1955, and there were two extensions, one on

October 12, 1955, and the second on November 12, 1955, and we are concerned with the second extension of the original order. It is pointed out that s. (3) does not confer upon the Commissioner of Police any power to extend an order already made by him and even the sanction that the State Government has to give is not to the extension of the order but to a continuation of the prohibition for more than fifteen days. But it is urged that even when the State Government gives the sanction there must be a valid order made by the Commissioner of Police to which the sanction given by the State Government can apply, and it is said that in the order passed on November 12, 1955, all that is recited is the previous sanction of the Government of Bombay and the Commissioner of Police then proceeds to extend the order which he has already made. It is further said that when the Commissioner of Police made the original order of September 28, 1955, he applied his mind and came to the conclusion that that order should continue for a fortnight. Now that could possibly not be the basis of the order of November 12, 1955. Mr. Kotwal says that it is essential that the Commissioner of Police should apply his mind again and on the materials available to him he must come to the conclusion that there is a case made out for a further prohibition and if he is satisfied he must make a fresh order, and according to Mr. Kotwal, having failed to pass such an order the mere extension of the original order is invalid in law. Under s. 21 of the Bombay General Clauses Act :

“Where, by any Bombay Act, a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notification orders, rules or by-laws, so issued.”

Therefore, the power to make an order under s. 37 (3) must include a power to add to, amend, vary or rescind such an order, and the question is whether in effect and in substance the Commissioner of Police has amended the original order passed by him on September 28, 1955. The duration of the original order was fifteen days and on October 12, 1955, the Police Commissioner by extending its operation for a month in effect amended the order by altering its duration from fifteen days to November 12, 1955, and again when on November 12, 1955, he further extended the period till December 12, 1955, he again amended the duration contained in the original order of September 28, 1955. It is true that even when the power to amend is exercised the power must be subject to the same conditions and to the like sanction as the power to make the original order and, therefore, when the Commissioner of Police passed the two orders on October 12, 1955, and November 12, 1955, we must be satisfied that in passing these orders, although we may look upon them as amending the original order, he had the authority and the competency to pass these orders

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within the ambit of s. 37 (3). Therefore, it would be necessary for the Commissioner of Police when he extended the duration both on October 12, 1955, and November 12, 1955, to be satisfied that the preservation of the public order required the extension of the original order. It should also be borne in mind that both on October 12, 1955, and November 12, 1955, the original order was subsisting and had not come to an end. If the order had come to an end then the order could not have been amended and a fresh order had to be made, but if before the order of September 28, 1955, came to an end the Commissioner of Police extended its duration, as we have just said, the effect of that extension was to amend the original order and substitute in place of fifteen days contained in the original order the period November 12, 1955. It may also be pointed out that the original order has been amended in another particular and that is that whereas the original order exempted marriage processions, funeral processions and Ganpati processions, the order of November 12, 1955, has omitted Ganpati processions from the exemption. We put to Mr. Kotwal the view that it would be open to the Commissioner of Police to amend an order passed under s. 37 (3) from time to time by altering the territorial application and Mr. Kotwal had difficulty in resisting that view. If that be the true position and if the territorial application of the order could be altered or amended, we see no reason in principle why the temporal effect of the order in the sense of the duration cannot equally be amended by a subsequent order passed by the Commissioner of Police.

In our opinion, therefore, the challenge made either to s. 37 (3) on the ground of it being void under the Constitution or to the order passed by the Commissioner of Police on the ground that it was *ultra vires* the section must fail. The result is that the petition fails and the rule is discharged.

Rule discharged.

K. B. S.

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Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.
 CHHANUBHAL KARANSANG, PETITIONER v. SARDUL MANSANG,
 OPPONENT.*

Bombay Tenancy and Agricultural Lands Act (Bom. LXVII of 1948), s. 34 (2) (a)—Whether the expression 'other land' restricted to land in State of Bombay—Construction.

The expression 'other land' occurring in s. 34 (2) (a) of the Bombay Tenancy and Agricultural Lands Act, 1945, is restricted to land in the State of Bombay.

*Special Civil Application No. 2255 of 1955.