CIVIL WRIT

Before Bishan Narain, J.

MAJOR S. ARJAN SINGH AND ANOTHER,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 476 of 1957

1958

Feb., 25th

Land Acquisition Act (I of 1894)—Section 6(3)—Constitutionality of qua Article 31 of the Constitution of India —Declaration under—Whether conclusive—Persons whether can be deprived of their property in accordance with the Land Acquisition Act—"Public purpose"—Meaning of—Acquisition of land for establishing an institute of technology by private agency—Whether for a public purpose—Land Acquisition Act (I of 1894)—Section 17—Whether contravenes Article 14 of the Constitution—"Urgency" and "Emergency"—Difference between—Necessity of establishing technical institutes—Whether urgent.

Held, that the Land Acquisition Act was enacted in 1894 long before the Constitution of 1950 came into force. The Legislature at that time had made the declaration under section 6(1) conclusive evidence that the land was needed for a public purpose or for a company. This provision of law is saved by Article 31(5) from the operation

of Article 31(2) as the Land Acquisition Act is "an existing law" within its meaning having regard to the definition of "existing law" in Article 366(10) of the Constitution. Article 31(2) of the Constitution has no application to the Land Acquisition Act. The claimants can, therefore, be deprived of their property, in accordance with the provisions of the Land Acquisition Act as laid down in Article 31 of the Constitution This law lays down in section 6(3) that the opinion of the Government that the acquisition of the land is for public purpose is conclusive. In the circumstances, it must be held that section 6(3) of the Land Acquisition Act is not rendered void or invalid by Article 31 or Article 31(2) of the Constitution.

Held, that the expression "public purpose" is not capable of precise and comprehensive definition which may be considered to be of universal application. The concept of public purpose is not static. It changes in accordance with the conditions prevailing in the country and in the world. Broadly speaking its objective is to promote the public health and general welfare.

Held, that the acquisition of land for establishing an institute of technology to give technical education is a public purpose. It is well known that there is acute shortage of qualified engineers and technicians in our country and they are urgently required to implement the Five Year Plan. In fact, the industrial progress of the country is being adversely affected and retarded by the lack of qualified engineers and technicians in sufficient number. In these circumstances any scheme that imparts technical education must be held to be for public purpose.

Held also, that neither Land Acquisition Act nor the Constitution provides that the public purpose can be served only through government agency and not through private agency. Cases can be easily imagined where the acquisition of land for the use of an individual may be reasonably regarded as for public purpose. A public purpose does not cease to be so simply because incidental benefit will ensure to private individuals, nor does it cease to be so on the ground that private persons are being paid out of public revenues. The establishment of technical institute would obviously serve useful purpose even when it is established by a quasi-autonomous trust.

Held further, that section 17, Land Acquisition Act, can be applied only in those cases in which the Government is of the opinion that the land is urgently required. When a piece of land is urgently required, then the legislature has provided that in the matter of possession and the issue of notification under section 6, the case should be treated differently from those in which there is no such urgency. This is a reasonable classification and serves more effectively the purpose of acquisition. The power to determine whether there is urgency or not is obviously wide power. It is, however, not necessarily arbitrary power. It is to be used to further the object of acquisition. This power has been given to the Government itself and not to any petty official. This assures fair use of the power. If this power is, however, abused, then the aggrieved party may seek remedy in courts of law but on that ground section 17 cannot be considered *ultra vires* of the Constitution.

Held also, that there is not much difference between "urgency" and "emergency" when they are being used in connection with acquisition of land. "Urgency" relates to a situation demanding prompt action while "emergency" indicates a situation suddenly arising and demanding prompt action. "Emergency" is a stronger word than "urgency". The necessity of establishing technical institutes is an urgent one at the present time.

Shrimati Lila Vati Bai v. *State of Bombay* (1), *Brij Nath Sarin* v. *Uttar Pradesh Government and another* (2), *Srinivas Khedwal* v. *The State of West Bengal* (3), *State of Bombay* v. *R. S. Nanji* (4), *The State of Bihar* v. *Sir Kameshwar Singh* (5), *Clark* v. *Nash* (6), *Hamabai Framjee* v. *Secretary of State for India* (7), *Budhan Choudhry and others* v. *The State of Bihar* (8), *Metajog Dobey* v. *H. C. Bhari* (9), *and Leach & Company Ltd.* v. *Messrs Jardine Skinner and Company* (10) *relied upon.*

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(1) A.I.R. 1957 S.C. 521
(2) A.I.R. 1953 All. 182
(3) 57 C.W.N. 719
(4) A.I.R. 1956 S.C. 294
(5) A.I.R. 1952 S.C. 252
(6) (1905) 198 U.S. 361
(7) I.L.R. 39 Bom. 279
(8) (1955) 1 S.C.R. 1045
(9) A.I.R. 1956 S.C. 44
(10) A.I.R. 1957 S.C. 357

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, order or direction be issued quashing the notifications under sections 4 and 6 of the Land Acquisition Act, 1894, and Pepsu Acquisition Act, 1954 issued by respondent No. 1 and the two awards dated 5th October, 1956 given by respondent No. 2 and further praying that respondent No. 3 be restrained from taking possession of the land.

ATMA RAM AND RAMKARAN DAS BHANDARI, for Petitioner.

L. D. KAUSHAL, DEPUTY ADVOCATE-GENERAL AND J. N. KAUSHAL, for Respondents.

ORDER

Bishan Narian. J.

BISHAN NARAIN, J.—The erstwhile Pepsu State acquired certain lands measuring about 250 acres for the purposes of establishing an institute of Technology at Patiala. Almost all the owners whose lands have been acquired have filed separate writ petitions under Article 226 of the Constitution in this Court challenging the validity of acquisition and also challenging the validity of proceedings taken thereafter culminating into awards under section 11 of the Land Acquisition Act. These writ petitions have been filed through different counsel and on different grounds. As every ground raised applies equally to all cases, I have decided to treat all these grounds as having been raised by all the applicants. In the circumstances it will be convenient to decide all these petitions (Civil Writs Nos. 476, 477, 478, 524, 560, 561, 562, 567, 601, 568, 569, 570, 571, 572, 573, 615, 655, 883, and 1132 of 1957) by this judgment.

The facts relevant for the decision of these petitions are not in dispute. The Pepsu Government entered into an agreement on 16th August, 1955, with the trustees of the Mohini Thapar

Charitable Trust (alleged to be a public trust) to establish an Institute of Engineering and Technology (hereinafter called the institute) in Patiala with a view to encourage and promote technical education in the State. Under this agreement the parties agreed to create jointly a public charitable trust for the establishment of the institute within six months. It was agreed that its board of trustees will consist of seven members, one of whom will be Shri Karam Chand Thapar, and six others would be selected in the first instance by the Chief Minister, Pepsu, and Shri Karam Chand Thapar after mutual consideration and thereafter vacancies will be filled by the trustees themselves from amongst eminent public men. The Government agreed to provide about 250 acres of land free of cost to this institute, and further the Government and the Mohini Thapar Charitable Trust agreed to subscribe Rs. 30,00,000 each to the institution. This agreement was modified by another agreement of 9th April, 1956, whereby the period fixed for establishing this trust was extended to 9th January, 1957. On the same day, i.e., 9th April, 1956, another agreement was executed. In this agreement the trust was named as "Patiala Education Trust". A board of trustees consisting of seven members was constituted. The land which was to be provided free of cost by the Government and the amount of Rs. 60,00,000 to be contributed equally by the Government and the Mohini Thapar Charitable Trust were agreed to constitute the trust property. It is not necessary to give further terms of this agreement for the present purposes.

On 19th September, 1955, i.e., about a month after the first agreement with the Mohini Thapar Charitable Trust the Pepsu Government issued a notification under section 4 of the Land Acquisition Act, as then in force in that State, declaring

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that lands measuring 250 acres and specified in the schedule were likely to be required for public purposes. In this notification it was stated that on grounds of emergency section 17 would apply and therefore, proceedings under section 5A would not apply to this acquisition. On 29th October, 1955, another notification under section 6 of the Land Acquisition Act was issued acquiring the land mentioned in the previous notification. The notification describes the purpose of acquisition in these words:—

> "The land is required to be taken by Government on the public expense for a public purpose, namely, for the establishment of an Institute of Technology at Patiala."

It then proceeds to direct "the Collector (Land Acquisition Officer)" to take orders for the acquisition of the said land. At that time Sardar Dalip Singh was the Collector under the Land Acquisition Act. In due course he took the necessary orders, and it appears that possession of a major portion of the acquired land was taken. It is stated that the institute is functioning with about 300 students. Sardar Dalip Singh was placed under suspension but the date of the order of suspension is not traceable from these petitions. On 5th September, 1956, the Government appointed Shri Babu Ram, Tehsildar, as "officiating Land Acquisition Officer, Public Works Department, vice Sardar Dalip Singh". Babu Ram then issued notices under sections 9 and 10 of the Act. He made inquiries and gave his award in all cases on 5th October, 1956, under section 11 of the Act. The claimants did not accept these awards and got the Collector to refer the matter to the District Judge. While the proceedings were going on before the District Judge, all these petitions were

filed at different times in this Court during May and June, 1957.

The petitioners' grievance is that the acquisition of their lands was invalid and further that Babu Ram was not 'Collector' under the Land Acquisition Act and, therefore, he was incompetent to take proceedings under sections 9, 10 and 11, and accordingly the award given by him is invalid.

A preliminary objection was raised on behalf of the Institute that these petitions having been filed after inordinate delay should be dismissed on that ground alone. It is pointed out that the notification under section 6 was issued on 9th October, 1955, and the impugned award was given on 5th October, 1956, and yet these petitions were not filed till May/June, 1957. The petitioners' reply is that Babu Ram purported to take all proceedings as Collector and he signed all the notices and orders in that capacity and it was for this reason that the petitioners did not know that Babu Ram had not been a properly appointed Collector. This knowledge they got about three weeks before the writ petitions were filed. This may be so, but this explanation does not explain why the validity of the notification under section 6 was not challenged earlier. However, I propose to decide these petitions on merits.

There is no limitation provided for filing writ petitions, and it depends on the circumstances of each case whether the Court should entertain a writ petition under Article 226 of the Constitution on merits, even if it has been filed after considerable delay. In the present case it appears to me that it will be for the benefit of all parties concerned if these writ petitions are decided on

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merits. The facts which are relevant for the decision of these petitions are not in dispute. If the owners are compelled to file civil suits, then it would only cause further delay in the matter and that would not be to the benefit of anybody. It will be particularly advantageous to the Institute if the dispute is decided expeditiously.

The petitioners challenge the validity of the notification under section 6 on the following grounds:—

(1) that section 6(1) of the Land Acquisition Act is unconstitutional as it violates the provisions of Article 31 of the Constitution;

(2) that section 6(3) is unconstitutional as it violates Article 31(2) of the Constitution;

(3) that the notification under section 6 is invalid as the land has been acquired for private purposes of an institute which is a private body and not for a public purpose. It is also urged in this connection that compensation is not payable partly or wholly from the public revenues;

(4) that the acquisition being for a private body, it is invalid as the provisions contained in Part VII were not complied with before the acquisition proceedings were taken;

(5) that section 17(1) is unconstitutional as it violates Article 14 of the Constitution;

(6) that section 17(4) is also unconstitutional as it violates Article 14 of the Constitution; and

(7) that application of section 17 to the present acquisition is invalid as it has been used in a case of 'emergency', while the section applies only to cases of 'urgency'.

I shall deal with all these grounds in seriatim.

Taking the first ground, the petitioners' contention is that section 6(1) enables the Government to acquire land for a public purpose or for a company while Article 31(2) of the Constitution prohibits acquisition of property for any purpose other than a public purpose, and Article 31(2A) lays down that no property shall be acquired unless it is to be transferred to a State or to a corporation owned and controlled by the State. It is urged that the Trust in the present case for whose benefit the land has been acquired cannot be considered to be a corporation owned or controlled by the State. It is, therefore, contended that section 6(1) so far as it enables the Government to acquire land for a company contravenes Article 31(2) and Article 31(2A) of the Constitution and is to that extent invalid. This question, however, need not be decided in this case. Land under section 6(1) can be acquired either for a public purpose or for the purposes of a 'company'. The word 'company' is defined in section 3(e) of the Land Acquisition Act. This definition has been extended to certain industrial concerns which are not companies under the Act by virtue of section 38A of the Act. Assuming that in the present case this land has been acquired for the technical institute as distinct from public purpose, as was argued by the petitioners' counsel, it is clear that this institute does not fall within the expression 'company' as defined in section 3(e) of the Act, nor is it an industrial concern within

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section 38A of the Act. Therefore, the acquisition in the present case cannot be held valid on the ground that it has been acquired for a 'company'. The acquisition can be held to be valid only if it is for a public purpose. That being so, it is not necessary in the present case to decide whether or not section 6(1), so far as it relates to companies, violates Article 31(2) and Article 31 (2A) of the Constitution. I may add that as the acquisition in the present case is not for a company as defined in the Act, Part VII of the Land Acquisition Act is not applicable. In this view of the matter, it follows that the validity of the notification under section 6 cannot be challenged on the ground that the provisions contained in Part VII were not complied with before the said notification was issued.

This brings me to the ground challenging the constitutionality of section 6(3) of the Land Acquisition Act. This section reads:

> "6(3). The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

The effect of this section is that no evidence can be produced to show that the declaration made in the notification under section 6(1) is not correct (*vide* section 4, Indian Evidence Act). The contention is that, if this provision is allowed to be effective, then the fundamental right guaranteed by Article 31 of the Constitution will become illusory as it will be left to the executive authorities to determine whether a purpose for which

acquisition has been made is or is not a public purpose. I find myself unable to accept this contention. The Land Acquisition Act was enacted in 1894, long before our Constitution of 1950 came into force. The Legislature at that time had made the declaration conclusive. Article 31(1) of the Constitution of India lays down that no person shall be deprived of his property save by authority of law. Obviously the Land Acquisition Act is that authority of law. Article 31(2), however, lays down, *inter alia*, that no property shall be acquired except for public purpose. The Constitution does not lay down that the declaration of the Government that the property is required for a public purpose would be conclusive. The Spureme Court in *State of Bombay* v. *R. S. Ranji* (1), held:—

> "*Prima facie* the Government is the best Judge as to whether 'public purpose' is served by "issuing a requisition order, but it is not the sole judge. The Courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a 'public purpose'."

It follows, therefore, that if the Court after giving due weight to the notification under section 6(1) comes to the conclusion that the purpose stated in the notification has no real and rational relation to public purpose, then, it may declare the notification to be void and invalid. The presumption, however, always is that the notification is valid and constitutional. It is, therefore, clear that the Courts of law can enquire whether or not the acquisition was for public purpose, and the provisions of section 6(3) would be void to the extent that it would preclude such an enquiry. The Constitution, however, has provided

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an exception to Article 31(2) and that is found in Article 31(5). Article 31(5)(a) reads—

> "Nothing in clause (2) shall affect the provisions of any existing law other than a law to which the provisions of clause (6) apply, or"

Article 31(6) has no application to the Land Acquisition Act, as it was passed long before our present Constitution came into force. Therefore Article 31(2) has no application to the Land Acquisition Act, if it is held to be "an existing law" within Article 31(6). Article 366(10) defines an existing law as meaning any law passed before the commencement of the Constitution by any legislature. Under this definition the Land Acquisition Act must be held to be an existing law and, therefore, Article 31(5) is applicable to it. It follows that Article 31(2), then, has no application to the Land Acquisition Act. The claimants can, therefore, be deprived of their property in accordance with the provisions of the Land Acquisition Act as laid down in Article 31 of the Constitution. This law lays down in section 6(3) that the opinion of the Government that the acquisition of the land is for public purpose is conclusive. In the circumstances, it must be held that section 6(3) of the Land Acquisition Act is not rendered void or invalid by Article 31 or Article 31(2) of the Constitution. This conclusion is in consonance with the views expressed in *Smt. Lila Vati Bai* v. *State of Bombay* (1), *Brij Nath Sarin* v. *Uttar Pradesh Government and another* (2) and *Srinivas Khedwal* v. *The State of West Bengal* (3).

As in the present case the notification specifically states that the land has been acquired for a

(1) A.I.R. 1957 S.C. 521
(2) A.I.R. 1953 All. 182
(3) 57 C.W.N. 719

public purpose, it must be held that it has been acquired for that purpose. It has been observed by the Supreme Court in *Smt. Lila Vati Bai* v. *State of Bombay* (1):—

> "The Legislature in its wisdom has made those declarations conclusive and it is not for this Court to question that wisdom."

These remarks fully apply to the present case.

The petitioners' counsel then argued that on admitted facts it cannot be said in the present case that the acquisition has been made for a public purpose. The contention is that the declaration is, in reality, a fraud upon the Act and, in fact, the land has been acquired for the Patiala Education Trust as distinct from a public purpose. It is, however, not open to me to scrutinize the matter in view of section 6(3) of the Act. In any case there is no substance in this contention. The petitioners' case in this respect is this. The land in the present case has been acquired for the benefit of Patiala Education Trust which has been established by agreements between the Government and the Mohini Thapar Charitable Trust. This is a private body. Acquisition of land for a private body cannot possibly be considered for a public purpose. Now, the acquisition in the present case is under section 6(1) of the Land Acquisition Act. It reads:—

> "Subject to the provisions of Part VII of this Act when the appropriate Government is satisfied, after considering the report, if any, made under section 5-A, subsection (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to

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that effect under the signature of Secretary to such Government or of some officer duly authorized to certify its orders;

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority."

It empowers the Government to acquire land for public purpose subject to the condition that the compensation is payable partly or wholly out of public revenues. The expression "public purpose" is defined in section 3(f) of the Act. This definition, however, is of no assistance in determining its scope. It merely states that provision of village sites in certain circumstances would be included in the definition of "public purpose". The expression "public purpose" is not capable of precise and comprehensive definition which may be considered to be of universal application, and no useful purpose would be served to make an intent to so define it. It appears to me that the concept of public purpose is not static. It changes in accordance with the requirements of the society from time to time and in accordance with the conditions prevailing in the country and in the world. Broadly speaking, its objective is to promote the public health and general welfare. The Supreme Court in *State of Bombay* v. *R. S. Ranji* (1), has held that in each case all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established. In the present case, the land has been acquired for establishing an institute of technology to give technical education. This is

(1) A.I.R. 1956 S.C. 294

obviously a public purpose. It is well known that there is acute shortage of qualified engineers and technicians in our country and that they are urgently required to implement the Five-Year Plan. In fact, the industrial progress of our country is being adversely affected and retarded by the lack of qualified engineers and technicians in sufficient number. In these circumstances, any scheme that imparts technical education must be held to be for public purpose. This was not seriously contested by the petitioners' counsel.

It was, however, argued that it would not be a public purpose if such education is imparted by a private body. I see no force in this argument. It is true that ordinarily the Government has no right to acquire private property to give it to private persons even on payment of compensation *vide* observations of Mahajan. J., in *The State of Bihar* v. *Sir Kameshwar Singh* (1). One can however, visualize circumstances where such an acquisition would serve public purpose, and in that case there is nothing in the Land Acquisition Act, or in the Constitution to make the acquisition illegal. Neither the Land Acquisition Act, nor the Constitution provides that public purpose can be served only through Government agency and not through private agency. Cases can be easily imagined where the acquisition of land for the use of an individual may be reasonably regarded as for public purpose. There might be exceptional times and circumstances in which the public welfare could be gained by acquiring a person's land and by giving it to another person. A private body may be engaged in a work of public utility, and circumstances may arise when assistance to that body may attain public welfare and if that be so I do not see any reason why acquisition for that

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purpose cannot be made. In America land of a person was acquired to give to another person to enable the latter to irrigate his otherwise arid land and in the circumstances of that case it was held that it served public purpose (vide *Clark* v. *Nash* (1)]. A public purpose does not cease to be so simply because incidental benefit will ensure to private individuals (Nichols on Eminent Domain, Volume 2, Section 7.222), nor does it cease to be so on the ground that private persons are being paid out of public revenues. The Judicial Committee in *Hamabai Framjee* v. *Secretary of State for India* (2). held that land acquired to erect houses for Government servants for their private residence served a public purpose. In the present case the establishment of a technical institute would obviously serve useful purpose even when it is to be established by a *quasi*-autonomous trust. Its funds are trust funds and no trustee as such derives any benefit therefrom. The Government is contributing Rs. 30,00,000 towards its establishment and maintenance. It is also providing the acquired land free of cost to the institute. It must, therefore, be held that in the present case the land has been acquired for a public purpose. There is no force in the contention that the Government is not paying compensation from its revenues. The notification expressly states that the land is being acquired at public expense. The agreements between the Government and the Mohini Thapar Charitable Trust also show that the Government has undertaken to provide about 250 acres of land free of cost and at its own expense. It is always open to the Government to spend money out of public revenues in aid of general welfare and for a public purpose even when money is to be paid to private individuals or to a private

(1) (1905) 198 U.S. 361
(2) I.L.R. 39 Bom. 279

body as long as it promotes public welfare. The compensation for this land will, therefore, be paid by the Government and then the land will be transferred to the institute.

For these reasons I am of the opinion that the notification issued in the present case under section 6(1) of the Land Acquisition Act acquiring the land in dispute is valid and constitutional.

This brings me to the petitioners' contention that section 17 of the Act contravenes Article 14 of the Constitution. Section 17(1) and (4) reads:—

"(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, subsection (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon (vest absolutely in the Government), free from all encumbrances.

Explanation.—This subsection shall apply to any waste or arable land, notwithstanding, the existence therein of scattered trees or temporary structures, such as huts, pandals or sheds.

* * * * * *

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of subsection (1) or subsection (2) are applicable, the appropriate Government may direct that the

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provisions of section 5-A shall not apply, and, if it does so direct, a "declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, subsection (1)."

According to these provisions, the Government, in case of an urgency, may direct the Collector to take possession of the land for a public purpose or for a company even before the award has been made. It is also open to Government to provide in cases of urgency that the provisions of section 5-A should not apply to that particular acquisition. It appears that in the present case possession of the major portion of the land that has been acquired has been taken and that the institute is already functioning after considerable buildings have been erected on that land. The petitioners urge that this power vesting in the Government is unregulated which enables the Government to select any particular case of acquisition and apply section 17 to it and thereby prevent the owners of the land from showing cause under section 5-A of the Act. In my view, there is no substance in this argument. Section 17 can be applied only in those cases in which the Government is of the opinion that the land is urgently required. When a piece of land is urgently required, then the legislature has provided that in the matter of possession and issue of notification under section 6, the case should be treated differently from those in which there is no such urgency. This appears to me to be a reasonable classification and serves more effectively the purpose of acquisition. *Budhan Choudhry and others* v. *The State of Bihar* (1). It was then argued that the word 'urgency' is no

(1) (1955) 1 S.C.R. 1045

classification at all, and it is open to Government to apply the provisions of section 17 to any case arbitrarily. I am unable to accept this suggestion. In certain circumstances, namely, the cases of urgency, the Government has been empowered to take possession of the land within a short time without complying with the provisions of section 5-A, etc. This power to determine whether there is urgency or not is obviously wide power. It is, however, not necessarily arbitrary power. It is to be used to further the object of acquisition. It is to be noticed that this power has been given to the Government itself and not to any petty official. This assures fair use of the power. If this power is, however, abused, then the aggrieved party may seek remedy in Courts of law, but on that ground section 17 cannot be considered to be *ultra vires of* the Constitution vide *Metajog Dobey* v. *H. C. Bhari* (1), and *Leach and Co., Ltd.*, v. *Messrs Jardine Skinner and Co.* (2). In the present case, it is not the petitioners' case that in fact there was no urgency in the matter, nor was it alleged that section 17 was applied with an ulterior motive. Obviously the necessity of establishing technical institutes is an urgent one at the present time. This contention of the petitioners, therefore, also fails.

It was then argued by one of the learned counsel that the notification under section 4 purports to apply section 17 in view of "emergency" and not because of "urgency". It appears to me that in substance there is not much difference between the two words when they are being used in connection with acquisition of land. "Urgency" relates to a situation demanding prompt action while "emergency" indicates a situation suddenly

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(2) A.I.R. 1957 S.C. 357

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arising and demanding prompt action. As far as I can see "emergency" is a stronger word than "urgency". In any case, at best it may be stated that the word "emergency" occurring in the notification under section 4 is an inapt or wrong word, but it is clear that the authorities intended to convey the idea that a situation had arisen which required prompt acquisition of land and in no case an owner or claimant was misled by the use of that word in the notification. I, therefore, hold that the use of the word "emergency" in the notification in section 4 does not invalidate it.

This concludes all the arguments of the petitioners' counsel challenging the validity of the acquisition in the present case and, as stated above, I am of the opinion that there is no force in any one of them.

This brings me to the petitioners' case that the award has been made by an unauthorised person and, therefore, the same must be quashed. The proceedings under sections 9 to 11 of the Land Acquisition Act have to be taken by the Collector. In other words, only Collector can issue notices under sections 9 and 10 and it is only he who can hold an enquiry and give an award. Section 3(c) defines a Collector:—

> "The expression 'Collector' means the Collector of a district, and includes a Deputy Commissioner and any officer specifically appointed by the appropriate Government to perform the functions of a Collector under this Act."

At the time of acquisition S. Dalip Singh was the Collector. It is common ground that he took orders for acquisition of the land under section 7 of the Act. It appears that after some time

S. Dalip Singh was suspended, and proceedings relating to this acquisition were taken up by Shri Babu Ram. Shri Babu Ram issued notices under sections 9 and 10 and after holding an enquiry gave his award under section 11 of the Act. The argument is that Shri Babu Ram was not authorized to issue the notices, nor to hold any enquiry, nor to give any award under section 11 of the Act, as he was not a Collector as defined in the Act. Admittedly, Shri Babu Ram was not the Collector of the district, nor did he hold the post of a Deputy Commissioner at the relevant time. The question is whether he was or was not "an officer specially appointed by the Government to perform the functions of a Collector under this Act". It is, therefore, necessary to determine whether Shri Babu Ram was ever appointed by the Government to perform the functions of a Collector under the Land Acquisition Act. On the 5th of September, 1956, the then Pepsu Government issued a notification reading:—

> "His Highness the Rajpramukh is pleased to post Shri Babu Ram, Tehsildar, as Officiating Land Acquisition Officer, P.W.D., vice S. Dalip Singh placed under suspension."

He was, therefore, appointed only an officiating Land Acquisition Officer in place of S. Dalip Singh. Now the term "Land Acquisition Officer" is not known to the Land Acquisition Act. The respondents' case is that the Government used this term as synonymous and interchangeable with "Collector" and the learned counsel invited my attention to the notification under section 6 wherein it is stated that:—

> "The Collector (Land Acquisition Officer) Pepsu, Patiala, is hereby directed * * *"

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There is no substance in this argument. Powers under section 7 are to be exercised by the Collector and the notification under section 6 says so. At that time S. Dalip Singh was appointed a Collector as well as the Land Acquisition Officer. The notification dated the 5th December, 1954, appointing S. Dalip Singh as Collector reads:—

> "In exercise of the powers vested in him under the provisions of clause (c) of section 3 of the Land Acquisition Act, 1894, as extended to this State by section 3 of the Pepsu Land Acquisition Act, 1953 (No. 5 of 1953), His Highness the Rajpramukh is pleased to appoint Sardar Dalip Singh, Land Acquisition Officer, Public Works Department, Patiala, to perform the functions of a Collector under the said Act, within the whole State".

It is, therefore, clear that the Government appointed Sardar Dalip Singh a Collector under section 3(c) of the Act at the time when he had already been appointed Land Acquisition Officer. From the reading of the two notifications it is also clear that the Government appointed Shri Babu Ram only to take S. Dalip Singh's post as Land Acquisition Officer and that he was not further empowered to perform the functions of a Collector under the Act. On the day that Shri Babu Ram was appointed Land Acquisition Officer and thereafter also it was open to the Government to appoint him or some other officer to perform the functions of a Collector. It appears to me that at that time the Pepsu Government had treated the post of Land Acquisition Officer and that of Collector under the Act as separate and independent of each other, though S. Dalip Singh was appointed to hold both the posts. The petitioners'

counsel also brought to my notice subsequent notification of 18th June, 1955, whereby Shri Balwant Singh was specifically appointed Collector under section 3 of the Act and similarly in 1956, three other officers were specifically so appointed. It follows that Shri Babu Ram was never appointed to perform the functions of a Collector under the Land Acquisition Act. That being so, he had no jurisdiction to take proceedings under sections 9 and 10 of the Act, nor to give the awards under section 11 of the Act. He purported to take those proceedings as a Collector and signed documents as such, but he had no power to so act. In the circumstances, all proceedings taken by Shri Babu Ram as Collector, must be held to be invalid and without authority.

The respondents have strenuously argued before me that the awards given by Shri Babu Ram may be invalid, but this Court in the exercise of its discretion need not quash them. They have pointed out that an award under section 11 of the Act is merely a tender as to the sum that the Government through its Collector is willing to pay to the claimants and that this offer, while binding on the Government, is not binding on the claimants and does not affect their interests. They have further pointed out that in the present case the claimants have not accepted these awards and the amount of compensation payable to the claimants has been referred for the determination of the District Judge, Patiala, under section 18 of the Act where proceedings are still going on. It is clear that if all proceedings taken by Shri Babu Ram are quashed, then it will be inconvenient and particularly so to the claimants as fresh proceedings will have to be taken and the payment of compensation to them will be further delayed. To my mind these are strong reasons.

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The claimants have, however, urged that they can look after their own interests and they would prefer to get the awards quashed and to get the amounts under section 11 determined by a proper and competent authority as their allegation is that they expect a properly authorized Collector to take more reasonable view of the amount of compensation payable to the claimants. It appears to me that when on admitted facts it is found in a petition under Article 226 of the Constitution that the impugned proceedings are wholly illegal and have been taken by an unauthorized person then it would not be a proper exercise of the discretion to let the proceedings stand. I have, therefore, decided, though with certain amount of reluctance, that when the claimants insist on getting these awards set aside and do not care for the delay that will be caused thereby, then I should let the law have its course. Accordingly, in my opinion, the petitioners succeed on this part of the case and I would quash all proceedings taken by Shri Babu Ram as Collector under the Land Acquisition Act, so far those proceedings relate to the acquisition now under consideration.

For all these reasons I hold that the acquisition of lands in the present case was valid and constitutional, but the proceedings taken by Shri Babu Ram were illegal and without jurisdiction. I, therefore, quash all the proceedings taken by Shri Babu Ram as Collector. It will be now necessary for a properly appointed Collector under the Land Acquisition Act to take proceedings from the stage Shri Babu Ram started the proceedings as a Collector. All the petitions are, therefore, accepted to the extent indicated above. Parties will bear their own costs of these petitions.

K.S.K.