Arnold Rodricks & Anr.

Vs

State of Maharashtra & Ors.

Writ Petitions Nos. 66 and 146 of 1965

(CJI P. B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, J. C. Shah, S. M. Sikri JJ)

14.03.1966

JUDGMENT

SIKRI, J.

These two petitions under Art. 32 of the Constitution raise substantially the same questions of law and were heard together and may conveniently be disposed of together. It would be convenient to give a few facts in Writ Petition No. 66 of 1965.

The petitioners who are citizens of India are owners of some land in Greater Bombay in the South Salsetta Taluka in the Bombay Suburban District. There are four respondents to the petition; the first is the State of Maharashtra, the second the Commissioner, Bombay Division, the third the Special Land Acquisition Officer and the Fourth the Maharashtra Industrial Development Corporation, established by notification under the Maharashtra Industrial Development Act, 1961. The predecessor in office of the second respondent, by notification dated March 30, 1962, published in the Maharashtra Government Gazette, purporting to act under s. 4 of the land Acquisition Act, 1894 (I of 1894) - hereinafter referred to as the Act - notified that the land belonging to the petitioners was likely to be needed "for a public purpose, viz., for development and utilisation of the said lands as an industrial and residential area". By the said notification the third respondent was appointed to perform the functions of the Collector under s. 5-A of the Act in respect of the said lands. Pursuant to the said notification the third respondent issued a notification under s. 4(1) of the Act calling upon the petitioners to file their objections to the acquisition of the said lands under the Act. The petitioners filed their statement of objections and took the objection that the purpose for which the lands were required, viz., development and utilisation of the said lands as an industrial and residential area, was vague and was not genuinely or properly a public purpose. The petitioners further pointed out that the said lands and the contiguous lands of the petitioners formed a compact area of land situate on the Central Salsette Railway Track and the said area could by reason of its location be easily and without in the least degree adversely affecting the scheme of the acquisition be excluded therefrom and should be released from acquisition accordingly. The first petitioner, Arnold Rodricks, pointed out in his letter dated October 5, 1963, addressed to the Assistant Secretary to the Government of Maharashtra, that the Government had already acquired about 3 acres of his land for University Campus in addition to his other lands acquired earlier by the State Government and that the said lands and the land bearing survey No. 330 Hissa No. 2 (part) and Survey No. 313 Hissa No. 14 were the only lands left with the petitioners and that the petitioners required the same for their own residential home. On October 7, 1963, the second respondent, being satisfied after considering the report of the Collector under sub-s. (2) of s. 5-A of Act that the said land were needed to be acquired at the public expense for a public purpose, declared under the provisions of s. 6 of the Act that the lands were required for the public purpose of "development and

utilisation of the said lands as industrial and residential area." After the issue of the notification under s. 6, usual notices under s. 9, cls. (3) and (4) were issued by the third respondent and pursuant to these notices the petitioners filed their statement of claim for compensation with the third respondent under protest and without prejudice to their rights and contentions. In the petition, the notifications dated March 30, 1962 and October 7, 1963, and the acquisition proceedings and the enquiries purported to be held under s. 5A and s. 11 of the Act are challenged as being illegal, invalid and inoperative in law and without and/or in excess of jurisdiction, etc., on various grounds.

Before we mention the points urged before us it is necessary to mention that the Bombay Legislature amended the definition of the expression "public purpose" in s. 3 of the Act, and the definition in the Act as amended by the Bombay Legislature reads as follows :-

> "(f) the expression "Public purpose" includes
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> (1) the provision of village sites in districts in which the Appropriate Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision and a housing scheme as defined in the Land Acquisition (Bombay Amendment) Act, 1948; and
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> (2) the acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development."

The validity of s. 3(f)(2) above has been questioned before us. Further, the Act was amended, by virtue of notification issued under s. 3(4) of Bombay Commissioners of Divisions Act, 1957 (Bombay Act 8 of 1958) - which for the sake of brevity will be referred to as the Commissioners Act. The notification had amended ss. 3A, 4, 5A, 6, 7 and 17 of the Act as follows :

> "1. In section 3A,
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> (i) after the words "State Government", where they occur for the first time, the words "or the Commissioner" shall be inserted;
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> (ii) after the words "by the State Government in this behalf" the words "or, as the case may be, any officer authorised by the Commissioner" shall be inserted.
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> 2. In section 4 -
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> (i) in sub-section (1), after the words, "appropriate Government" the words "or the Commissioner" shall be inserted;
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> (ii) in sub-section (2), after the words, "such Government" the words "or, as the case may be, by the Commissioner" shall be inserted.
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> 3. In section 5A, in sub-section (2) after the words "appropriate Government", where they occur at two places the words "or, as the case may be, of the Commissioner" shall be inserted.
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> 4. In section 6 -

(i) in sub-section (1) -

(a) after the words "appropriate Government" the words "or, as the case may be, the Commissioner" shall be inserted;

(b) after the words "its orders" the words "or, as the case may be, under the signature of the Commissioner" shall be inserted;

(ii) in sub-section (3), after the words "appropriate Government" the words "or, as the case may be, the Commissioner" shall be inserted.

5. In section 7, after the words "in this behalf" the words "or, as the case may be, the Commissioner" shall be inserted,

6. In section 17 -

(i) in sub-section (1), after the words "appropriate Government" the words "or the Commissioner" shall be inserted.

(ii) in sub-section (2)

(a) after the words "the State Government" the words "or the Commissioner" shall be inserted;

(b) after the words "appropriate Government" the words "or, as the case may be, of the Commissioner" shall be inserted;

(iii) in sub-section (4)

(a) after the words "appropriate Government" where they occurr at two places, the words "or the case may be, of the Commissioner" shall be inserted;

(b) for the words "it does so direct" the words "it or he does so direct" shall be substituted."

Mr. Niren De, the learned Additional Solicitor-General appearing on behalf of the petitioners, raised four points before us,

(1) That the declarations under ss. 4 and 6 of the Act are essential features or are related to essential legislative policies and as such ss. 4 and 6 can only be amended by the legislature;

(2) That s. 3(4) of the Commissioners Act suffers from excessive delegation;

(3) That s. 3(4) of the Commissioners Act is an abdication of the powers of the legislature in favour of the executive; and

(4) Amendment of the Act by a notification is a law which requires assent of the President under arts. 31(2) and art. 254 of the Constitution, and the assent not having been obtained, the notification is bad.

It would be convenient to take the first three points together because in substance they raise the point that s. 3(4) is bad, because the legislature should have performed the functions entrusted to the State Government under s. 3(4) of the Commissioners Act. Mr. Niren De Contends that from 1857 onwards the Indian statutes had made it the duty of the state Government to decide whether a land was likely to be needed for a public purpose or not and once the Government was satisfied the declaration was made conclusive. He says that this is an essential legislative feature of the Land Acquisition Act and the Bombay Legislature should have directly amended the Land Acquisition Act and not empowered the State Government to do so. He says that the State Legislature has not really decided that this essential legislative feature should be changed and it is incompetent to confer that power on the State Government. He further points out that there never has been any power of delegation in the Land Acquisition Act since 1857. He says that it is well-settled that a legislature cannot empower an executive authority to change an Act in any essential features. He further urges that the Commissioners Act does not give any guidance to the State Government as to which Acts should be amended or not and powers of which officers should be taken away and conferred on the Commissioners. He urges that the language is wide enough even to enable the judicial functions of courts under the Civil Procedure Code and Criminal Procedure Code to be conferred on the Commissioners.

Mr. Setalvad, who appears on behalf of the respondents, says that what you have to consider is the legislative policy underlying the Commissioners Acts and not the Land Acquisition Act. He says that there is enough guidance in the Commissioners Act and in the history of the legislation to enable the State Government to decide what powers and duties should be conferred on the Commissioners. He further says that the State Government being in charge of the administration of the State knows what duties can appropriately be conferred on the Commissioners. He points out that the institution of the Commissioners is not a new thing; it was in existence before and as the Government found it necessary to revive the institution of Commissioners instead of amending each act separately and conferring powers on the State Government to delegate its function, it passed a comprehensive legislation enabling the State Government to do it. He says that it must be remembered that the Commissioners are revenue and executive officers and there is no question of conferring powers on them under the Criminal Procedure Code or the Civil Procedure Code.

Let us then first examine the scheme of the Commissioners Act and the history of the legislation. The preamble of Commissioners Act reads as follows :

> "Whereas it is expedient to provide for the offices of Commissioners of divisions in the State of Bombay, for prescribing their powers and duties and to make provisions for matters consequent on the provision for such offices and for certain other matters."

The "Commissioner" is defined to mean "the Commissioner of a division appointed under the law relating to land revenue as amended by the Schedule to this Act." The Bombay Land Revenue Code, 1879, has been amended by the Schedule and we may notice s. 6A inserted by the Schedule. Section 6A is as follows :

> "6. (1) The Commissioners of divisions shall be appointed by the State Government.
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> (2) The Commissioners shall exercise the powers and discharge the duties conferred and imposed on a Commissioner under this Act or under any law for the time being in force, and so far as is consistent therewith all such other powers or duties of

appeal, superintendence and control within their respective divisions, and over the officers subordinate to them as may from time to time be prescribed by the State Government.

(3) The Commissioner shall also, subject to the control and the general or special orders of the State Government, exercise such powers and discharge such duties, as the State Government may confer or impose on them for the purpose only of carrying out the provisions of any law for the time being in force, and so far as is consistent therewith."

It will be noticed that the Commissioner is enabled by sub-s. 6A-(2) to exercise powers and discharge duties conferred not only by the Bombay Land Revenue Code 1879 but any other law for the time being in force. "Division" is defined to mean the territories formed into a division under the Bombay Land Revenue Code, 1879, or under that code in its application to the Kutch and Saurashtra areas of the State of Bombay, or under the Madhya Pradesh Land Revenue Code, 1954, or under the Hyderabad Land Revenue Act. "Divisional officer" means an officer appointed as such, immediately before the commencement of the Commissioners Act, under the provisions of -

(i) section 5 of the Bombay Land Revenue Code, 1879, or that section of the Code in its application to the Kutch area of the State of Bombay,

(ii) Section 5 of the said Code in its application to the Saurashtra area of the State of Bombay and read with the Government Notification in the Legal Department No. 25398/B, dated 1st November, 1956, issued under section 122 of the States Reorganisation Act, 1956,

(iii) section 9-A of the Madhya Pradesh Land Revenue Code, 1954, read with Government Notification in the Revenue Department No. RVA.1556-R, dated 1st November 1956, or

(iv) section 4 of the Hyderabad Land Revenue Act.

"Existing law" is defined as "any enactment of a Legislature or other competent authority in relation to matters specified in lists II and III in the Seventh Schedule to the Constitution in force in any part of the State immediately before the commencement of this Act and includes any rule, bye-law, regulation, order, notification, scheme, form or other instrument having the force of law made, prescribed or issued under any such enactment." Section 3 may be set out in full;

"3. (1) For the purposes of constituting offices of Commissioners of divisions and conferring powers and imposing duties on Commissioners and for certain other purposes, the enactments specified in column 1 of the Schedule to this Act shall be amended in the manner and to the extent specified in column 2 thereof.

(2) The Commissioner of a division, appointed under the law relating to land revenue as amended by the said Schedule, shall exercise the powers and discharge the duties conferred and imposed on the commissioner by any law for the time being in force, including the enactments referred to in sub-section (1) as amended by the said Schedule.

(3) The State Government may by notification in the Official Gazette amend or delete any entry in the Schedule for the purpose of imposing any conditions or restrictions on the exercise of powers and discharge of duties conferred or imposed on the Commissioner or withdrawing them, as the case may be, and the Schedule shall be amended accordingly.

(4) The State Government may confer and impose on the Commissioner powers and duties under any other enactment for the time being in force and for that purpose may, by a notification in the Official Gazette, add to or specify in the Schedule the necessary adaptations and modifications in that enactment by way of amendment; and thereupon -

(a) every such enactment shall accordingly be amended and have effect subject to the adaptations and modifications so made, and

(b) the Schedule to this Act shall be deemed to be amended by the inclusion therein of the said provision for amending the enactment."

Section 4 repeals the Bombay Commissioners (Abolition of Office) Act, 1950, and the Central Provinces and Berar Commissioners (Construction of References) Act, 1948. The Bombay Commissioners (Abolition of Office) Act, 1950 (Bom. Act 28 of 1950) has abolished the office of the Commissioner and further provided that wherever a reference was to the Commissioner, the reference should be read as a reference to the State Government or to such authority as the State Government may by general or special order appoint. The Central Provinces and Berar Commissioners (Construction of References) Act, 1948 (61 of 1948) had similarly abolished the Commissioners Divisions of Nagpur, Jabbulpore, Chhatisgarh and Berar, and had provided that the appointment of Commissioners to these Divisions shall cease. By s. 4 it was further provided that "all enactments and all notifications, orders, rules and byelaws issued, made or prescribed under any enactment which immediately before the commencement of this Act were in force shall be construed as if references therein to the Commissioner were references to the State Government or to such authority as the State Government may, by notification, appoint."

Sections 5, 6, 7 and 8 of the Commissioners Act may also be set out in full :

"5. If at the commencement of this Act, any legal proceedings are pending to which a Divisional Officer or Director of Local Authorities is a party, the commissioner shall be substituted for the Divisional Officer or the Director of Local Authorities in the said proceedings.

6. Subject to the provisions made in the Schedule, all existing laws shall, unless the context otherwise requires, be construed as if references therein to the Divisional Officer or, as the case may be, to the Director of Local Authorities were references to the Commissioner.

7. All instruments or documents executed or made before the commencement of this Act under or with reference to any existing law or any enactment specified in the Schedule shall, unless the context otherwise requires, be construed as if references therein to the Divisional Officer or the Director of Local Authorities were references to the Commissioner.

> 8. All proceedings including proceedings by way of appeals, revision or review pending under any existing law before the State Government or a Divisional officer or Director of Local Authorities or any other officer or authority immediately before the commencement of this Act shall, where disposal of the proceedings falls within the purview of the powers and duties of the Commissioner, be transferred to the Commissioner for disposal according to law."

It seems to us that the underlying policy or the essential legislative feature of the Commissioners Act is to reintroduce the old offices of Commissioners and confer powers and duties on them which could appropriately be discharged by them. The legislature has no doubt left it to the State Government to decide whether any duties imposed on it or some of the authorities should now under the new administrative set up system be discharged by the Commissioners. But the Legislature has definitely given an indication of the kinds of powers that may be conferred on them in ss. 6 and 7. Further, the very nature of the office held by a Commissioner and the duties performed by him up to 1950 would show that it is only the duties of the State Government and of officers of equivalent rank discharging revenue and executive duties which would be conferred on the Commissioner. We see no difference in principle between the State Legislature inserting a section in an Act enabling the State Government to delegate its power to another authority and the Legislature in view of the change in the administrative set up conferring powers on the State Government to confer not only its own duties on Commissioners but also of other officers performing executive and revenue duties.

This Court upheld the validity of s. 4 of the Essential Supplies (Temporary Powers) Act, 1946 (24 of 1946) in Harishankar Bagla v. The State of Madhya Pradesh ((1955) 1 S.C.R. 380 at pp. 389-390). Section 4 was in the following terms :

> "4. The Central Government may by notified order direct that the power to make orders under section 3 shall in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by -
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> (a) such officer or authority subordinate to the Central Government, or
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> (b) such State Government or such officer or authority subordinate to a State Government as may be specified in the direction."

The Court observed as follows :-

> "Section 4 of the Act was attacked on the ground that it empowers the Central Government to delegate its own power to make orders under section 3 to any officer or authority subordinate to it or the Provincial Government or to any officer or authority subordinate to the Provincial Government as specified in the direction given by the Central Government. In other words, the delegate has been authorised to further delegate its powers in respect of the exercise of the powers of section 3. Mr. Umrigar contended that it was for the Legislature itself to specify the particular authorities or officers who could exercise power under section 3 and it was not open to the Legislature to empower the Central Government to say what officer or authority could exercise the power. Reference in this connection was made to two decisions of the Supreme Court of the United States of America - Panama Refining Co. v. Ryan (293 U.S. 388) and Schechter v. United States (295 U.S. 495). In both

> these cases it was held that so long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. These decisions in our judgment do not help the contention of Mr. Umrigar as we think that section 4 enumerates the classes of persons to whom the power could be delegated or sub-delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the Legislature itself. The decision of their Lordships of the Privy Council in Shannon's case ((1938) A.C. 708) completely negatives the contention raised regarding the invalidity of section 4. In that case the Lt.-Governor in Council was given power to vest in a marketing board the powers conferred by section 4A(d) of the Natural Products Marketing (British Columbia) Act, 1936. The attack on the act was that without constitutional authority it delegated legislative power to the Lt.-Governor in Council. This contention was answered by their Lordship in these terms : "The third objection is that it is not within the powers of the Provincial Legislature to delegate so-called legislative powers to the Lt.-Governor in Council, or to give him powers of further delegation. This objection appears to their Lordships subversive of the rights which the Provincial Legislature enjoys while dealing with matters falling within the classes of subjects in relation to which the Constitution has granted legislative powers. Within its appointed sphere the Provincial Legislature is as supreme as any other Parliament; and it is unnecessary to try to enumerate the innumerable occasions on which Legislatures, Provincial, Dominion and Imperial, have entrusted various persons and bodies with similar powers to those contained in this Act."

It would be noticed that s. 4 of the Essential Supplies (Temporary Powers) Act, 1946, left it to the Central Government to decide three things; (1) the matters which can be delegated to the officers or authorities subordinate, (2) the conditions subject to which the power to make orders under s. 3 be exercised, and (3) the officers who would exercise the power to make orders under s. 3. In the present case, the Legislature has specified that it is only the Commissioners to whom powers in an act can be delegated. If a section similar to sub-s. (4) of s. 3 of the Commissioners Act had been inserted in every Act relating to matters in Lists II and III, it would have been difficult to distinguish the decision in Bagla's ((1955) 1 S.C.R. 380) case, except on the ground that the State Government is also enabled to confer powers of some other authorities on Commissioners. This in our opinion does not make any difference because the Bombay Act 28 of 1950 had also enabled State Government to confer Powers of Commissioners on some other authorities.

We may mention that at one stage of the arguments it was contended that sub-s. (3) of s. 3 of the Commissioners Act enabled the State Government to amend the Schedule and this showed the extent of delegation made to the State Government. But, in our opinion, the object of sub-s. (3) is two fold; first to enable the Government to impose any conditions or restrictions on the exercise of powers and discharge of duties on the Commissioners, and secondly, to withdraw them in case it is felt that the Commissioners should not exercise those powers. We see no objection in entrusting this function to the State Government because, as mentioned above, the State Government is in charge of the administration and the whole object of the Commissioners Act is to enable it to run the administration as smoothly as possible. After all, the law which the Commissioners or the State Government or the other authorities have to administer remain the same; it is only the authority that is changed.

It is really not necessary to consider the other cases cited before us because the general principles are quite clear and it is only in their application that difficulties arise. We have come to the conclusion that the Legislature has not abdicated itself in favour of the executive but it has laid down essential legislative policy and wisely left it to the State Government to reorganise the administration consequent on the setting up of commissioners Decision. The State Government is after all in charge of administration and it knows, specially in view of its previous experiences, what powers of existing authorities including itself can suitably be conferred on the Commissioners. We may mention that the Bombay High Court has in two decisions (Ganesh Varayan v. Commissioner Nagpur division, Nagpur ((1964) 66 B.L.R. 807) and Sadruddin Suleman Jhaveri v. J. H. Patwardhan (I.L.R. (1965) Bom. 394) upheld the validity of the Commissioners Act.

This takes us to the fourth point, namely, whether the assent of the President was necessary to the notification amending the Act. It is common ground that the Commissioners Act received assent of the President. The question that is raised is whether it is necessary that assent of the President should be obtained for every notification issued under the Commissioners Act which has the effect of amending any legislation in respect of the matters in the concurrent List i.e. List III. In our opinion, it is not necessary because the amendment of the Act became effective by virtue of the Commissioners Act and not by virtue of the notification. This Court was faced with a similar problem in Harishanker Bagla and Another v. The State of Madhya Pradesh ((1955) 1 S.C.R. 380 at p. 392) and repelled a similar contention in the following words :

> "Conceding, however, for the sake of argument that to the extent of a repugnancy between an order made under section 3 and the provisions of an existing law, to the extent of the repugnancy, the existing law stands repealed by implication, it seems to us that the repeal is not by any Act of the delegate, but the repeal is by the legislative Act of the parliament itself. By enacting section 6 Parliament itself has declared that an order made under section 3 shall have effect notwithstanding any inconsistency in this order with any enactment other than this Act. This is not a declaration made by the delegate but the Legislature itself has declared its will that way in section 6. The abrogation or the implied repeal is by force of the legislative declaration contained in section 6 and is not by force of the order made by the delegate under section 3. The power of the delegate is only to make an order under Section 3. Once the delegate has made that order its power is exhausted. Section 6 then steps in wherein the Parliament has declared that as soon as such an order comes into being that will have effect notwithstanding any inconsistency therewith contained in any enactment other than this Act."

In our opinion the above reasoning applies to the facts of this case and the Commissioners Act having received the assent of the President it is not necessary that some further assent of the President should be given to a notification. We may mention that we are assuming and not laying down that it is possible to obtain the assent of the President under the Constitution to the issue of a notification.

In conclusion we see no force in the contentions raised by Mr. De on behalf of the petitioners and this takes us to the next petition (W.P. No. 146 of 1965) in which Mr. Pereira has raised some additional points. He raised three points before us; (1) that no hearing was given to the petitioner under s. 5A of the Act; (2) that the declaration under s. 6 is a colourable exercise of power and (3) that s. 3(f)(2) of the Act, as amended in Bombay, is void and there is no public purpose involved in issuing the notification under s. 6 of the Act.

There is no force in the first point because we find, on looking at the record, that the petitioners raised no objections to the acquisition and they never wanted any hearing on this point. As they did not object to the acquisition, it is difficult to see what enquiries had to be made under s. 5A.

We may next take up the question of the validity of s. 3(f)(2). In our view it is not necessary to decide this point because we have come to the conclusion that the notifications issued under ss. 4 and 6 specified a public purpose; the purpose specified was "development and utilisation of the said lands as industrial and residential areas". In our opinion this purpose is a public purpose within the Land Acquisition Act as it stood before the amendment made by the Bombay Legislature and it is not necessary for the respondents to rely on the amendment to sustain the notification. This court in State of Bombay v. Bhanji Munji ((1955) 1 S.C.R. 777) upheld the requisitioning of premises for housing a person having no housing accommodation on the ground that this was a public purpose. This Court observed at page 783 as follows :

> "In the present set of cases there is proof of a public purpose. It is given in the affidavits made on behalf of the State and in the subsequent orders just quoted, namely to house the homeless. At that time the housing situation in Bombay was acute, largely due to the influx of refugees. Questions of public decency, Public morale, public health and the temptation to lawlessness and crime, which such a situation brings in its train, at once arose; and the public conscience was aroused on the ground of plain humanity. A race of proprietors in the shape of rapacious landlords who thrived on the misery of those who could find no decent roof over their heads sprang into being. Even the efficiency of the administration was threatened because Government servants could not find proper accommodation. Milder efforts to cope with the evil proved ineffective. It was necessary therefore for Government take more drastic steps and in doing so they acted for the public weal. There was consequently a clear public purpose and an undoubted public benefit".

In the affidavit of S. R. Naik, Special Land Acquisition Officer, it is stated that the State Government had set up a study group to consider and recommend on various matters relating to congestion in the Island of Bombay. The study group, inter alia, found :

> "The said Study Group found as a result of its inquiry that there had been a phenomenal increase in the population of the Island of Bombay from 1948 to 1958 during which period the population had shot up from 14.89 lakhs in 1941 to an estimated 31 lakhs at the close of 1958. It found that this enormous increase in population had resulted in congestion of traffic, deficiency in open spaces and play fields for schools, overcrowding in trains, overcrowding in houses, creation of slums etc., and that the increased population had also constituted an increasingly intolerable burden on the sanitary circumstances and public utilities of the Island. According to the estimate of the Study Group based on the formula adopted by the Director General of Health Services of the Government of India the population of Greater Bombay would increase to a total staggering figure of 75 lakhs by the year 1958.
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> The Study Group also found that just as there was a heavy concentration of population in Greater Bombay in a small area of 169 sq. miles there was also a concentration of industries in Greater Bombay. It found that of the total number of 11,539 registered factories in the State of Maharashtra as in 1958 Greater Bombay had 3,539 registered factories which meant that one third of the total number of

> factories in the State of Maharashtra were in Greater Bombay alone. Of the total number of factories in Greater Bombay as many as 76% were located in the Island of Bombay which admeasures only 26.19 sq. miles out of the total Greater Bombay area of 169 sq. miles. All these factories in Greater Bombay employ 44% of the total number of factory workers in the State and 85% of the factory workers in Greater Bombay were concentrated within the Island of Bombay alone. All these factors gave rise to a number of problems including the problem of traffic housing accommodation and deterioration of public utility services.
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> As regards housing the Study Group observed that in the year 1958 there were about 57,37,000 tenements in Greater Bombay of all categories including a large portion of single room tenements. At the rate of five persons to a tenement the Study Group observed that the then existing tenements were only enough for 28 lakhs persons leaving 15 lakhs persons to be still provided with housing accommodation. The growth in population and the concentration of the population in a small area also led to the deterioration of public utility services as observed by the Study Group. The Study Group suggested a number of measures for relieving the congestion of population and industries in the Greater Bombay including the shifting of industries, the establishment of industrial estates, the establishment of industries in the suburbs, the development of the suburbs, reclamation of salt pans".

In our opinion, on these facts it cannot be held that the impugned notifications were issued to subserve not a public purpose but some private purpose. It was observed by this Court in Babu Barkya Thakur v. The State Bombay; ((1961) 1 S.C.R. 128 at p. 137).

> "It has been recognised by this Court in the case of The State of Bombay v. Bhanji Munji and Another ((1955) 1 S.C.R. 777) that providing housing accommodation to the homeless is a public purpose. In an industrial concern employing a large number of workmen away from their homes it is a social necessity that there should be proper housing accommodation available for such workmen. Where a larger section of the community is concerned, its welfare is a matter of public concern."

In Pandit Jhandu Lal v. The State of Punjab ((1961) 2 S.C.R. 459) it was observed at page 467 :

> "There is also no doubt that the structures to be made on the land would benefit the members of the Co-operative Society. But, the private benefit of a large number of industrial workers becomes public benefit within the meaning of the Land Acquisition Act."

It was held in that case that acquisition of building sites for residential houses for industrial labourers was for a public purpose even apart from s. 17(2) of the Act, as amended by the Land Acquisition (Punjab Amendment) Act.

In Smt. Somawanti v. The State of Punjab (A.I.R. 1963 S.C. 151) it was observed :

> "Broadly speaking the expression "public purpose" would, however, include a purpose in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned."

It was further observed at p. 163 :

> "Public purpose is bound to vary with the times and the prevailing conditions in a given locality and therefore it would not be a practical proposition even to attempt a comprehensive definition."

It was urged before us that the Stateovernment was not entitled to acquire property from A and give it to B. Reliance was placed on the decision of the Supreme Judicial Court of Massachusetts (204 Mass. 607). But as pointed out by this Court, public purpose varies with the times and the prevailing conditions in localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites. It is true that these residential and industrial sites will be ultimately allotted to members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the impugned notifications was not to think of the private comfort or advantage of the members of the public but the general public good. At any rate, as pointed out in Babu Barkya Thakur v. The State of Bombay ((1961) 1 S.C.R. 128) a very large section of the community is concerned and its welfare is a matter of public concern. In our view the welfare of a large proposition of persons living in Bombay is a matter of public concern and the notifications served to enhance the welfare of this section of the community and this is public purpose. In conclusion we hold that the notifications are valid and cannot be impugned on the ground that they were not issued for any public purpose.

Mr. Pereira then urged that the notifications were colourable. We are not able to appreciate how the notifications are serving any collateral object. He said that he used the word "colourable" in the sense used by this Court in Mst. Somawanti v. State of Punjab (A.I.R. 1963 S.C. 151) Mudholkar, J., observed as follows :

> "If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a purpose, leaving aside for a moment the purpose of a company. If it appears that what the Government is satisfied about is not public but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final."

No material has been placed before us that the exercise of the power by the Government is colourable in this sense. The Government has the power to issue the notifications for a public purpose, and, as we have already held that the notifications were issued for a public purpose, there is no question of any colourable exercise of the power.

Lastly, he contended that the Government had not before issuing the notifications prepared any scheme. This is true that the Government has not uptil now prepared any scheme for the utilisation of the developed sites. But the notification itself shows that the sites would be used as residential and industrial sites. There is no law that requires a scheme to be prepared before issuing a notification under s. 4 or s. 6 of the Act. We have, however, no doubt that the Government will, before disposing of the sites, have a scheme for their disposal.

In the result we see no force in any of the contentions urged before us and we hold that the notifications are valid. The petitions accordingly fail and are dismissed but there will be no order as to costs.

Wanchoo, J. We regret we are unable to agree.

These two petitions under Art. 32 of the Constitution raise common questions of law and will be dealt with together. We may briefly state the facts in W.P. 66. The facts in the other petition are exactly similar except that the dates of the notifications are in some cases different and the lands notified are also different. On March 30, 1962, the Commissioner of Bombay Division issued a notification under s. 4 of the Land Acquisition Act, No. 1 of 1894, (hereinafter referred to as the Act). By this notification he declared that certain lands were likely to be needed for a public purpose, namely, "for development and utilisation of the said lands as an industrial and residential area". In consequence, objections were invited under s. 5-A of the Act and the Special Land Acquisition Officer, Bombay and Bombay Suburban District was notified as the person to perform the functions of a Collector under s. 5-A of the Act. After the proceedings under s. 5-A of the Act were over, the Commissioner issued another notification on October 7, 1963 under s. 6 of the Act. By this notification he declared that certain lands out of those notified under s. 4 were needed to be acquired at the public expense for the public purpose already specified. Some of the lands were however exempted and the notification under s. 4 with respect thereto was cancelled. The petitioners are owners of some of the lands included in the notification under s. 6. On receipt of the notice under s. 9 of the Act, they represented to Government that their lands be released from acquisition. They were informed that this could not be done and thereupon the present petition was filed to challenge the legality of the proceedings taken under the Act.

Two main contentions have been urged in these petitions on behalf of the petitioners. In the first place it is contended that the impugned acquisition is not for a public purpose and is intended for sale to private persons, limited companies and corporations for monetary gain, and in any case, the change in the definition of "public purpose" by the Land Acquisition (Bombay Amendment) Act, No. 35 of 1953, (hereinafter referred to as the 1953-Act) by which a new clause was added in s. 3(f) of the Act was ultra vires the concept of "public purpose" within the meaning of that phrase in Art. 31(2) of the Constitution. The added clause is in these words :-

> "The acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale, with the object of securing further development."

The second attack arises in this way. By the Bombay Commissioners (Abolition of Office) Act, (No. 28 of 1950) the office of the Commissioner in the State of Bombay was abolished and the functions of the Commissioner were transferred to the State Government or to such authority as the State Government may by general or special order appoint. In 1958, however, the Bombay Commissioners of Divisions Act, No. 8 of 1958, (hereinafter referred to as the 1958 Act) was passed by which the office of Commissioner of Division in the State of Bombay was revived. We are concerned in the present appeal mainly with s. 3(4) of this Act. By section 3(1) it is provided that "for the purpose of constituting offices of Commissioners of divisions and conferring powers and imposing duties on Commissioners and for certain other purposes, the enactments specified in column 1 of the Schedule to this Act shall be amended in the manner and to the extent specified in column 2 thereof". Sub-section (2) thereof provided that "the Commissioner of a division, appointed

under the law relating to land as amended by the said Schedule, shall exercise the powers and discharge the duties conferred and imposed on the Commissioner by any law for the time being in force, including the enactments referred to in sub-s. (1) as amended by the said Schedule". The Schedule made a number of amendments in the Bombay Revenue Code (No. 5 of 1879), the main amendment being that s. 6 provided for appointment of Commissioners for each division and s. 6-A provided for powers and duties of Commissioners. Further, in certain sections of the Land Revenue Law as applied to various areas in the reconstituted State of Bombay after the re-organisation of 1956, the word "Commissioner" was substituted for the "State Government" in various sections. Changes were also made in the Hyderabad Land Revenue Act (No. 8 of 1317 F.) and the Madhya Pradesh Land Revenue Code (No. 2 of 1955) to bring them into line with this Act and to provide for the office of Commissioner and its powers and duties. Besides these changes in the Land Revenue Code applicable to various areas in the re-organised State of Bombay, the Schedule also made amendments in various other Acts in force in the State of Bombay and "Commissioner" was substituted for "State Government" in these Acts. Besides this, "Commissioner" was also substituted for "Board of Revenue" in certain Acts in force in areas which came to the re-organised State of Bombay from the former Part B State of Hyderabad. Changes were also made in the Police Act (No. 5 of 1861) and "Commissioner" was introduced in certain sections thereof and a provision was made that the Magistrate of the District should be under the general control and direction of the Commissioner. Some changes were made in the Saurashtra Police Act (No. 18 of 1954), the Hyderabad District Police Act, (No. X of 1329 F) and the Bombay District Police Act, (No. 4 of 1890). Thus sections 3(1) and 3(2) as enacted by the Bombay legislature gave certain powers and imposed certain duties on Commissioners read with the amendments in the Schedule to the 1958 Act.

Further provision was made in sub-sections (3), (4) and (5) which may now be set out. They read thus :

> "(3) The State Government may by notification in the Official Gazette amend or delete any entry in the Schedule for the purpose of imposing any conditions or restrictions on the exercise of powers and discharge of duties conferred or imposed on the Commissioner or withdrawing them, as the case may be, and the Schedule shall be amended accordingly.
>
> (4) The State Government may confer and impose on the Commissioner powers and duties under any other enactment for the time being in force and for that purpose may, by a notification in the Official Gazette add to or specify in the Schedule the necessary adaptations and modifications in that enactment by way of amendment; and thereupon -
>
> (a) every such enactment shall accordingly be amended and have effect subject to the adaptations and modifications so made, and
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> (b) the Schedule to this Act shall be deemed to be amended by the inclusion therein of the said provision for amending the enactment.
>
> (5) The State Government may at any time in like manner cancel a notification under sub-section (4), and thereupon the relevant enactment shall stand unamended by the cancelled notification and the Schedule shall be altered accordingly."

It will be seen that these three sub-sections provided an integrated scheme. By sub-section (3) the State Government is given the power by notification in the Official Gazette to amend or delete any entry in the Schedule for the purpose of imposing any conditions or restrictions on the exercise of powers and discharge of duties conferred or imposed on the Commissioner or withdrawing them, as the case may be, and the Schedule shall be amended accordingly. Sub-section (4) empowers the State Government to confer and impose on the Commissioner powers and duties under any other enactment for the time being in force. It further empowers the State Government for that purpose by notification in the Official Gazette to add to or specify in the Schedule the necessary adaptations and modifications in that enactment by way of amendment. On such notification, such other enactment shall accordingly be amended and have effect subject to the adaptations and modifications so made, and the Schedule to the 1958 Act, shall be deemed to be amended by the inclusion therein of the said provision for amending the enactment. By sub-section (5) the State Government was given the power to cancel a notification made under sub-s. (4) and thereupon the relevant enactment shall stand unamended by the cancelled notification and the Schedule shall be altered accordingly. The contention of the petitioners is that by these sub-sections, and particularly by sub-s. (4) of s. 3, there was excessive delegation of legislative power to the State Government and further that these three sub-sections amount to the legislature abdicating its power of legislation in favour of the State Government. So it is urged that these provisions, and particularly s. 3(4), are ultra vires the power of the legislature inasmuch as they suffer from the vice of excessive delegation and amount to abdication of its power of legislation by the legislature in favour of the executive.

The petitions have been opposed on behalf of the State Government, and it is contended that the new clause added to s. 3(f) of the Act by the 1953 Act by which the definition of "public purpose" was amended is valid and what the addition has provided is within the concept of "public purpose" as used in Art. 31(2) of the Constitution. Further it is denied that the object of the State Government in making the acquisition is merely to sell the land acquired to private parties, private limited companies or corporations for monetary gain. As to s. 3(4) it is contended that it does not suffer from the vice of excessive delegation and does not amount to abdication of its legislative power by the legislature in favour of the executive.

We shall first consider the question whether the addition made by the Act of 1953 in the definition of "public purpose" is ultra vires the concept of "public purpose" as used in Art. 31(2) of the Constitution. "Public purpose" is not defined in Art. 31 of the Constitution; nor is it possible to lay down any hard and fast definition of "public purpose". The phrase came up for consideration before this Court in the State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others ((1952) S.C.R. 889). In that connection Mahajan J. (as he then was) observed that "the phrase 'public purpose' has to be construed according to the spirit of the times in which the particular legislation is enacted." He also referred to Art. 39 of the Directive Principles of State Policy in construing the phrase "public purpose" after coming into force of the Constitution. In the same case, Das J. (as he then was) observed that "no hard and fast definition can be laid down as to what is a 'public purpose' as the concept has been rapidly changing in all countries, but it is clear that it is the presence of the element of general interest of the community in an object or aim into a public purpose, and whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose."

We respectfully agree with these observations. There can be no doubt that the phrase "public purpose" has not a static connotation, which is fixed for all times. There can also be no doubt that it is not possible to lay down a definition of what "public purpose" is, particularly as the concept of public purpose may change from time to time. There is no doubt however that "public purpose"

involves in it an element of general interest of the community and whatever furthers the general interest must be regarded as a public purpose. It is in the light of this concept of public purpose, which is not static and is changing from time to time and in which there must always be an element of general interest of the community that we have to look at the addition made by the 1953 Act in the definition of "public purpose" in s. 3(f) of the Act.

We have already set out the addition. It is in two parts. The first part provides for acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority. So far as this part is concerned, it is conceded by learned counsel for the petitioners that development of areas with the aid of public revenue or some fund controlled or managed by a local authority would be a public purpose. Under this part the land would be acquired by the State or by a local authority for the purpose of development and this development will consist, generally speaking, of leveling land, providing roads thereon, providing drainage and electric lines and such other amenities as should be made available at the time when the acquisition is made and the land is developed. Such development generally speaking is not possible through private agencies. As we have said already, it is not disputed on behalf of the petitioners that such development would be a public purpose within the concept of the phrase in Art. 31(2) of the Constitution.

The attack of the petitioners is on the second part of the addition in 1953 which provides for "subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development." It is urged that all these words mean is that after the development envisaged in the first part of the addition the State or the local authority would be free to dispose of the land acquired in whole or in part by lease, assignment or sale, apparently to private persons. This, it is said, means that the State or the local authority would acquire land in the first instance and develop it in the manner already indicated and thereafter make profit by leasing, assigning or selling it to private individuals or bodies. It is also said that the object of securing further development which is the reason for sale or lease etc. is a very vague expression and there is nothing to show what this further development comprises of.

It is true that when this part speaks of "subsequent disposal thereof in whole or in part by lease, assignment or sale", it is not unlikely that this disposal will take place to private persons and thus in an indirect way the State would be acquiring the land from one set of individuals and disposing it of to another set of individuals after some development. If this were all, there may be some force in the argument that such acquisition is not within the concept of "public purpose" as used in Art. 31(2). But this in our opinion is not all. We cannot ignore the words "with the object of securing further development", which appear in this provision. It would have been a different matter if the provision had stopped at the words "lease, assignment or sale"; but the provision does not stop there. It says that such lease, assignment or sale must be with the object of securing further development, and these words must be given some meaning. It is true that the words "further development" have not been defined, but that was bound to be so, for further development would depend upon the nature of the purpose for which the land is acquired. Of course, it is possible that further development can be made by the State itself or by the local authority which acquires the land; but we see no reason why the State or the local authority should not have the power to see that further development takes place even through private agencies by lease, assignment or sale of such land. So long as the object is development and the land is made fit for the purpose for which it is acquired there is no reason why the State should not be permitted to see that further development of the land takes place in the direction for which the land is acquired, even though that may be through private agencies. We have no doubt that where the State or the local authority decides that further development should take

place through private agencies by disposal of the land so acquired by way of lease, assignment or sale, it will see that further development which it has in mind does take place. We can see no reason why if the land so acquired is leased, assigned or sold, the State or the local authority should not be able to impose terms on such lessee, assignee or vendee that will enable further development on the lines desired to take place. We also see no reason why when imposing terms, the State or the local authority may not provide that if the further development it desires the lessee, assignee or the vendee to make is not made within such reasonable time as the State or the local authority may fix, the land will revert to the State or the local authority so that it may again be used for the purpose of further development which was the reason for the acquisition of the land.

Take the case where land is acquired for the purpose of development of certain areas for residential purposes. The State or the local authority levels the land where necessary, makes a lay out, provides roads, drainage, electric lines and such other amenities as may be available whereafter houses have to be built. The State or the local authority may build these houses itself, but there is no reason why if the purpose is development of certain land as a residential area, the State or the local authority may not lease, assign or even sell the lands laid out and already developed in order that further development of building houses may be achieved. In such a case it will always be open to the State Government or the local authority to provide, and we have no doubt that it will always so provide, that the persons to whom the land is leased, assigned or sold carry out the further object of building houses. There is also no reason why the State or the local authority should not provide for the terms on which residential buildings would be made, the specifications of such buildings, and the time within which they should be made. There is also no reason why the terms should not provide that if the further object of development is not carried out within a reasonable time, the land would revert to the State or the local authority to be used for the purpose for which it was acquired. We have no doubt that the State or the local authority would see that such terms are imposed on those to whom lands are leased, assigned or sold with the object of further development by constructing houses where the scheme is for residential purpose. We have also no doubt that in imposing terms, the State or the local authority will see that the purpose for which the lease, assignment or sale is made is carried out within a reasonable time, failing which the land will revert to the State or the local authority. These matters are in our opinion implicit in the words "with the object of securing further development", and we have no reason to think that the State or the local authority would just dispose of the land so acquired by lease or assignment or sale without caring to see that further development which was the basis of acquisition takes place.

We may refer in this connection to a similar provision in s. 41 of the Act, which provides for an agreement between the private company for which the land is acquired and the State, and which lays down that the agreement shall provide the terms on which the land shall be held by the company. There is in our opinion no doubt that when this provision speaks of "with the object of securing further development" it implicitly requires that before the land so acquired is leased, assigned or sold, the State or the local authority shall see that the purpose for which the acquisition is made is carried out by persons to whom the land is leased, assigned or sold. There is also in our opinion implicit in this provision that the State or the local authority would impose terms on the persons to whom the land is leased, assigned or sold and the terms should be such as to ensure that the object of further development takes place within a reasonable time and if the persons to whom the land is leased or assigned or sold do not carry out that object within a reasonable time, the land would revert to the State or the local authority so that it may again be used for the purpose for which the acquisition was made. If this is the true import of the words "with the object of securing further development" in this provision - and we have no doubt that it is so - we fail to see how the provision made by the 1953 Act providing for development in two stages, first by the State or the local

authority itself by making the land fit for the purpose for which acquisition is made, and then by private persons also after the land is developed by the State or the local authority, is not for a public purpose within the meaning of that phrase in Art. 31(2) of the Constitution. Population in India is rising and more or more industries are coming into being. Therefore where the acquisition is with the object of providing for residential and industrial development, we see no reason why such provision would not be included in the concept of public purpose in the present context. We are therefore of opinion that the words "with the object of securing further development" have a meaning and if that meaning is what we have stated above (as to which we have no doubt) it cannot be said that this provision made by the 1953 Act is not within the concept of Art. 31(2) of the Constitution. We therefore hold that the amendment by the 1953 Act already set out above is within the concept of public purpose in Art. 31(2) of the Constitution and cannot be struck down as ultra vires.

Delegated legislation is a well known modern device. In view of the complexities of modern life it is not possible for the legislature to find time to make all the detailed rules which are necessary to carry out the purposes of an enactment; so it delegates to an appropriate executive authority the power to make rules. But before doing so, the legislature itself enacts the law under which the power is delegated and lays down the essential policy of the Act and all such essential matters which require to be included in the Act itself. Having thus provided for all such essential matters in the enactment itself, the legislature leaves it to a subordinate authority which may be some appropriate executive authority to frame detailed rules to carry out the purposes of the Act. These rules are ancillary and subserve the purposes of the enactment. They cannot go against the provisions of the enactment and cannot in any manner make any change in the provision of the enactment and are merely for the purpose of carrying out the essential policy which the legislature has laid down in the enactment itself. These rules are called delegated legislation and it is important to remember that this delegated legislation cannot in any way change the provisions of the enactment itself and must only be resorted to for carrying out the purposes of the legislation itself. Such being the nature of delegated legislation we have to see whether the impugned provisions of s. 3 are in accord with these principles. If they are not and if the legislature has conferred powers on the State Government beyond this such conferment of power cannot be delegated legislation and is really an abdication of its power by the legislature and transfer of it to the executive.

This brings us to a consideration of s. 3. Sub-sections (1) and (2) of s. 3 read with the Schedule confer powers and impose duties on the Commissioner by virtue of the 1958 Act itself. Then comes sub-section (3), and let us see what exactly it provides. The State Government is given power by this sub-section to amend or delete any entry in the Schedule. The amendment is for the purpose of imposing any conditions or restrictions on the exercise of powers and discharge of duties conferred or imposed on the Commissioner while deletion is with respect to withdrawing any powers conferred by the Schedule on the Commissioner. Leaving out the question of amendment, sub-section (3) confers power on the State Government to delete any entry from the Schedule if it desires to withdraw any powers conferred on the Commissioner by the legislature itself in the Schedule. In effect therefore the legislature says by sub-s. (3) that though it has deemed fit in its wisdom to confer a certain power on the Commissioner, it leaves it to the State Government to withdraw that power from the Commissioner and delete the necessary entry in the Schedule with respect thereto. So the State Government is given carte blanche to take away all or any of the powers conferred by the legislature itself under the Schedule. It may also be added that the Schedule in the present case is very different from the Schedule in the Edward Mills Co. Limited v. The State of Ajmer ((1955) 1 S.C.R. 735). In that case s. 27 of the Minimum Wages Act. (11 of 1948) gave power to the appropriate government after necessary formalities to add to the schedule any

employment in respect of which it was of opinion that minimum rates of wages should be fixed under that Act. It will be seen that the schedule in that Act merely enumerated certain employments while the Schedule in the 1958 Act amends a large number of enactments. This method is merely a convenient device for making amendments in other enactments which would otherwise have found place in the main body of the 1958 Act. Further s. 27 of the Minimum Wages Act did not give any power to the appropriate government to delete any entry from the schedule; it merely gave power to the appropriate government to add to the schedule and that delegation was upheld by this Court. It will thus be seen that the provision in sub-s. (3) by which the State Government is even given the power to delete any entry in the Schedule and withdraw if it wants to do so the power conferred on the Commissioner by the legislature is a very different matter from addition to the schedule which was permitted by the Minimum Wages Act.

It is clear that sub-s. (3) judged by the test of delegated legislation has gone far beyond what the legislature can do when it delegates its functions to an executive authority for making subordinate legislation. As we have indicated above, sub-section (3) confers power on the State Government even to the extent of deleting any entry from the Schedule and withdrawing the power conferred by the legislature in its wisdom on the Commissioner. This in our opinion is not delegated legislation but transfer by the legislature of its power in the matter of legislation to the executive. In effect the legislature says that though it considers that the Commissioner should have certain powers it has conferred on him in the Schedule, the State Government may withdraw those powers which it has though fit to confer on the Commissioner. We are of the opinion that this is not a provision for delegated legislation but a transfer by the legislature of its power to make law to the executive. Further if it can be considered to be conferment of power of delegated legislation, it suffers from the vice of excessive delegation inasmuch as it gives power to the executive to the extent of repealing a part of the law made by the legislature.

Then we come to sub-s. (4) let us see what it provides. It says that the State Government may confer and impose on the Commissioner powers and duties under any other enactment for the time being in force and further gives power to the State Government to amend any such enactment by adding to the entries to the Schedule. The language of the provision is of the widest amplitude and gives blanket power to the State Government to amend any enactment which may be in force for the time being in the State by making necessary entries in the Schedule. It is however urged on behalf of the State that we should read down this provision in two respects. As the words stand, they confer power on the State Government to amend any enactment for the time being in force even though that enactment may be a law under List I of the Seventh Schedule to the Constitution. It is urged that the legislature could not have meant to confer power on the State Government by this provision with respect to laws under List I of the Seventh Schedule to the Constitution, for the legislature itself had no power to make any amendment in laws referable to List I of the Seventh Schedule. We are of the opinion that the provision in sub-s. (4) can be read down to this extent that the legislature could never have intended to give power to the State Government in matters in which it had itself no power. We shall therefore proceed on the basis that in sub-section (4) the legislature only referred to enactments which it was itself competent to pass under Lists II and III of the Seventh Schedule to the Constitution.

Secondly, it is urged that we should read down this provision and hold that all that the legislature intended thereby was to give to the State Government power to confer on the Commissioner powers and impose upon him duties of an executive nature which were conferred and imposed on the State Government by laws referable to Lists II and III of the Seventh Schedule to the Constitution. It is also urged the all that the legislature intended by this provision in sub-section (4) was to confer on

the State Government the power to delegate its own executive power under other enactments not specified in the Schedule to the Commissioner. We are unable to see on what principle we can read down this provision in this manner. Even if we look at the schedule as it was passed by the legislature we find that though mostly "Commissioner" was substituted for "State Government" in the enactments specified in the Schedule there are other provisions in the Schedule as enacted by the legislature which go beyond this. The Schedule therefore is of no help in reading down the provision in sub-s. (4) in the manner suggested. Besides what learned counsel for the State asks when he says that we should read down the provision in sub-s. (4) is that we should re-draft it altogether and add words in it which are not to be found therein. Sub-section (4) says that the State Government may confer and impose on the Commissioner powers and duties under any other enactment. The nature of these powers and duties are not specified in the provision, and we fail to see how we can add words in the sub-section which would delimit the nature of these powers and duties as merely executive powers conferred by other enactments on the State Government. Sub-section (4) as it stands therefore does not merely authorise the State Government to delegate its executive power to the Commissioner under other enactments; it empowers the State Government to confer any powers and impose any duties under any other enactment and to do so by amendment of the other enactment, and if notification envisaged therein is made, the other enactment is accordingly amended and the Schedule is also amended by the inclusion of the provision in the notification. As the words of sub-section (4) stand we cannot in any way read down this provision to mean that it only authorises the State Government to delegate its executive powers and duties under other enactments besides those mentioned in the Schedule to the Commissioner by the legislature. If that was all that the legislature intended, we do not see why a suitable provision to that effect could not have been made by the legislature in sub-s. (4). It is however clear from the scheme of s. 3 that that is not all that the legislature intended. We have already referred to sub-s. (3) and held that by that provision the legislature empowered the State Government to amend or repeal the law contained in the Schedule to the 1958 Act. By sub-section (4) it further empowered the State Government to amend any other law not mentioned in the Schedule, though of course with the object of conferring powers and imposing duties on the Commissioner under other enactments which might have been conferred by those enactments on other authorities. In effect therefore the legislature was empowering the State Government by sub-s. (4) to substitute "the Commissioner" for the other authorities which might be mentioned in other enactments with respect to any powers and duties thereunder.

Taking a concrete case to illustrate out point and to show the far reaching effect of the provision in sub-s. (4) we may refer to s. 18 of the Act. Under that provision the Collector has the power to make reference to court in certain circumstances on the application of a person who has not accepted the award made by the Collector. Sections 20 to 28 confer power on the court and impose duties on it when dealing with references. The Act was not one of the enactments mentioned in the Schedule as it was originally passed by the legislature. On the wide words used in sub-s. (4) it would be possible for the State Government to confer on the Commissioner the powers conferred on the court and duties imposed on it by s. 18 to s. 28 by substituting the word "Commissioner" for the word "court" in the relevant provisions. If that is the extent of the power conferred on the State Government by sub-s. (4) - (and we have no doubt that it is so) - it is not a case of providing merely for delegated legislation properly so-called but amounts to complete transfer of its power of legislation by the legislature in this matter to the State Government. We fail to see why if the intention of the legislature was merely to provide for delegation of its executive power by the State Government to the Commissioner a simple provision to the effect that the State Government may delegate its power under any enactment for the time being in force to the Commissioner was not made. Instead we find

an integrated scheme in sub-sections (3), (4) and (5). By sub-section (3), the State Government is given the power to amend the Schedule enacted by the legislature and take away from the Commissioner powers which the legislature in its wisdom thought fit to confer on him. This is done by providing for deletion of any entry in the Schedule. Then by sub-section (4) power is given to the State Government to confer powers and impose duties on the Commissioner under any other enactment by amending that enactment. Lastly by sub-section (5) the State Government was given the power to undo what it had done under sub-section (4) and on such action being taken the original provision in the other enactments would revive. This scheme is clear from the provisions of sub-sections (3), (4) and (5) and in our opinion clearly amounts to transfer of its legislative power by the legislature to the State Government with respect to matters dealt with in these sub-sections. Further if this is to be treated as a kind of delegation, then these sub-sections suffer from the vice of excessive delegation for they not only authorise the State Government to frame rules in the nature of subordinate legislation but give power to it to undo what the legislature itself has done by the 1958 Act; they also give further power to the State Government to amend what the legislature may itself have provided in other enactments already in force or what it may provide by other enactments to be passed in future. We have no doubt therefore that sub-s. (4) cannot be read down in the manner urged on behalf of the State. There is also no doubt that as this provision stands it is a complete transfer of legislative power by the legislature to the executive within the ambit of sub-s. (4). Sub-section (5) is consequential to sub-s. (4) and will fall along with it. We are therefore of opinion that the provisions contained in sub-sections (3), (4) and (5) of s. 3 of the 1958 Act which are clearly an integrated scheme are ultra vires the power of the legislature for they amount to transfer by the legislature of its legislative power to the State Government, and in any case suffer from the vice of excessive delegation if such conferment of power can be called delegation for the purposes of subordinate legislation.

We may now refer to two decisions of the Bombay High Court in which s. 3(4) of the 1958 Act has been upheld, namely, (i) Ganesh Narayan v. Commissioner, Nagpur Division ((1964) 66 Bom. Law Reporter 807), and (ii) Sadruddin Suleman Jhaveri v. Patwardhan (I.L.R. (1965) Bom. 394). With respect we find that in these two cases no attempt has been made to construe the actual words used in s. 3(4) and it has been assumed that the section merely allowed the State Government to confer on the Commissioner powers and impose duties which have been conferred or imposed on the State Government under other enactments. We have construed the words used in s. 3(4) and we are of the opinion that this is not what they mean. The words are of very wide amplitude and as they stand they confer on the State Government power to amend any other Act and confer on the Commissioner powers and impose duties under those acts which may be conferred thereunder on any authority. Further there is nothing in the words of s. 3(4) confining conferment of powers of executive nature only. As the words stand, any powers and duties of any authority can be conferred on the Commissioner.

Nor do we think that the principles laid down in the case of Her Majesty, the Queen v. Burah ((1878) L.R. 5 I.A. 178) and of Re. Delhi Laws Act, 1912 ((1951) S.C.R. 747) help to sustain the validity of s. 3(4). Burah's case ((1951) S.C.R. 747) was a case of conditional legislation and not of delegated legislation. Act 22 of 1869 was enacted to remove the Garo Hills from the jurisdiction of the tribunals established under the General Regulations and Act and for other purposes. It was to apply in the first instance to Garo Hills but s. 9 thereof gave power to the Lieutenant-Governor to extend the provisions of this Act or any of them to the Jaintia Hills, the Naga Hills and to such portion of the Khasi Hills as for the time being forms part of British India. By virtue of this power, the Lieutenant-Governor issued a notification extending the provisions of this Act to the Khasi and Jaintia Hills and excluding therefrom the jurisdiction of the Courts of Civil and Criminal Judicature.

The Privy Council upheld the validity of s. 9 as a piece of conditional legislation. It will be seen however that all that was left to the Lieutenant-Governor by s. 9 was to apply a certain law which had been passed by a competent legislature to a certain area. There was no provision in the law for any amendment of that law or any other law before its application to new territories. There is therefore no parallel between that case and the present case.

We are further of opinion that Re. Delhi Laws Act ((1951) S.C.R. 747) case cannot help the State. The main question in that case was about the extension of certain laws with necessary adaptations and modifications to Delhi. It was in that connection that this Court held that that was also conditional legislation and laws in force in other parts of India could be extended to Delhi subject to necessary modifications and adaptations. Even so this Court pointed out that it was not open to the authority on whom such power was conferred to modify them in any essential feature when ordering their extensions. What constitutes "essential feature" of a piece of legislation was a matter over which there was difference of opinion between the learned Judges of this Court; but they were agreed that no essential feature could be altered by the power given to the executive to apply other laws in force in India to the territory of Delhi by modification or adaptation. This would also be more or less a case of conditional legislation and not of delegated legislation. As pointed out by Mukherjea J. (as he was then) at p. 1009 in Re. Delhi Laws Act's case ((1951) S.C.R. 747) "to repeal or abrogate an existing law is the exercise of an essential legislative power". The amendment of a particular law falls also in the same category, for an amendment in effect amounts to a partial repeal of the existing provision with, may be, substitution in its place of another provision. What the legislature has done in the present case is to give power to the executive to amend other laws as it thinks fit for the purpose of conferring powers on the Commissioner and this in our opinion is conferment of an essential legislative function on the executive which cannot be justified on the principles laid down in Re. Delhi Laws Act case ((1951) S.C.R. 747). As we read s. 3(4), we are clearly of opinion that it confers power on the State Government to amend any law it deems fit for the purpose of conferring any powers and imposing any duties on the Commissioner which may be imposed by other laws on any authority. This is beyond the power of the legislature and is really abdication of its essential function in this matter; and if it is a case of delegation it suffers from the vice of excessive delegation. We are therefore of the opinion that the two cases of the Bombay High Court are not correctly decided.

It is not in dispute that the amendments to the Act by which the power of the State Government was also conferred on the Commissioner under sections 4, 5A and 6 of the Act were made by notifications under s. 3(4) of the 1958-Act. As we have held that s. 3(4) of the 1958 Act is ultra vires the powers of the legislature and as the Commissioner had no power under the Act before such amendments to ss. 4, 5-A and 6 were made under s. 3(4) the notification issued in this case under ss. 4 and 6 must fall and must be quashed.

In the view we have taken it is unnecessary to consider the other points which have been raised in these petitions. We would therefore allow the petitions and quash the notifications under ss. 4 and 6 of the Act issued by the Commissioner in the present cases.

Petitions allowed.

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