Udai Ram Sharma and Others Etc.

Vs

Union of India and Others

Writ Petitions Nos. 114, 216, 223, and 252 of 1966 and 85 of 1967

(CJI K. N. Wanchoo, R. S. Bachawat, J. M. Shelat, G. K. Mitter, C. A. Vaidialingam JJ)

07.02.1968

JUDGMENT

MITTER, J.

This is a group of five Writ Petitions under Art. 32 of the Constitution challenging in four cases the validity of land acquisition proceedings started by a notification dated November 13, 1959 under s. 4 of the Land Acquisition Act and declarations contained in other notifications dated March 18, 1966 onwards under s. 6 of the said Act and for other incidental reliefs including the issue of appropriate writs for the purpose. Various persons have joined as petitioners in three of the applications. In Writ Petition No. 114 of 1966 the petitioners number 61. They all own lands in village Mandawali Fazilpur, on Patparganj Road within the union territory of Delhi, the notification of the declaration under s. 6 having been on March 18, 1966. In Writ Petition No. 216 of 1966 there are 71 petitioners who also own lands in the same village. Their complaint is based on the same notification under s. 4 and a notification dated July 12, 1966 under s. 6 of the Act. In Writ Petition No. 223 of 1966 the single petitioner is Pandit Lila Ram who owned lands in villages Masjid Moth, Raipur Khurd and Shahpur Jat respectively within the union territory of Delhi. His complaint is based on a s. 4 notification dated September 3, 1957, a notification dated April 15, 1961 under s. 6 of the Act and several awards of Land Acquisition Collector, Delhi made in 1961. In Writ Petition No. 252 of 1966, there are eight petitioners who owned lands in village Kotla at Patparganj Road within the union territory of Delhi. Their grievance is against s. 4 notification dated November 13, 1959 and a notification dated June 14, 1961 under s. 6 of the Act. In Writ Petition No. 85 of 1967 the sole petitioner is one Rai Bahadur Sohan Lal who owned land in village Kilokri on the Delhi-Mathura Road within the union territory of Delhi. His grievance is against s. 4 notification dated November 13, 1959, a notification dated July 27, 1961 under s. 6 of the Act and an award dated February 16, 1962.

Although there are some distinctive features in some of the petitions to be mentioned later, the common attack is based on the judgment of this Court delivered on February 9, 1966 in State of Madhya Pradesh v. V. P. Sharma [[1966] 3 S.C.R. 557.]. That case arose out of proceedings for acquisition of land in eleven villages in Madhya Pradesh for the steel plant at Rourkela. There a notification had been issued under s. 4(1) of the Land Acquisition Act on May 16, 1949 declaring that lands in eleven named villages were likely to be needed for a public purpose i.e., the erection of an iron and steel plant. Thereafter, notifications were issued under s. 6 from time to time and some lands in village Chhawani were acquired in the year 1956. In August 1960 a fresh notification under s. 6 of the Act was issued proposing to acquire Ac. 486-17 of land in the said village. Some owners of the land in the village who were affected by the notification filed a writ petition challenging the validity of the notification under s. 6. The High Court accepted their contention whereupon the State

of Madhya Pradesh came up to this Court in appeal. It was held by this Court that Ss. 4, 5-A and 6 of the Land Acquisition Act were integrally connected and that acquisition always began with a notification under s. 4(1) followed by consideration of all objections thereto under s. 5-A and a declaration under s. 6. According to this Court, once a declaration under s. 6 was made the notification under s. 4(1) was exhausted and latter section was not a reservoir from which the Government might from time to time draw out land and make declaration with respect to it successively. The ultimate conclusion was that there could be no successive notifications under s. 6 with respect to land in a locality specified in one notification under s. 4(1) and in the result, the appeal of the State was dismissed. The present Writ Petitions were all filed after the said judgment of this Court.

The omnibus notification under s. 4 in four of these cases dated November 13, 1959 covered an area of Ac. 34,070-00 marked as blocks Nos. A to T and X in a map enclosed with the notification excepting therefrom certain classes of lands, namely, (a) Government land and evacuee land, (b) land already notified either under s. 4 or under s. 6 of the Act for any Government scheme, (c) land already notified either under s. 4 or under s. 6 for house building co-operative societies mentioned is annexure (iii) to the notification and the land under graveyards, tombs, shrines and those attached to religious institutions and wakf property. The notification stated that land was required by the Government at the public expense for a public purpose, namely, the planned development of Delhi. As already noted, there were several notifications under s. 6 made from time to time, the earliest one in this series of petitions being dated June 14, 1961. It is clear that on the basis of the judgment of this Court the validity of the notifications under s. 6 of the Act after the first of the series could not be upheld in a court of law.

On January 20, 1967 an Ordinance was promulgated by the President of India styled The Land Acquisition (Amendment and Validation) Ordinance (1 of 1967). The scheme of the Ordinance was that the Land Acquisition Act of 1894 was to have effect, subject to the amendments specified in Ss. 3 and 4 of the Ordinance. Section 3 purported to amend s. 5-A of the Land Acquisition Act (hereinafter referred to as the principal Act) by enabling different reports to be made in respect of different parcels of land under s. 5-A of the Act. Similarly, s. 4 of the Ordinance purported to amend s. 6 of the principal Act by enabling different declarations to be made from time to time in respect of different parcels of land covered by the same notification under s. 4. Section 5 of the Ordinance purported to validate all acquisitions of land made or purporting to have been made under the principal Act before the commencement of the Ordinance, notwithstanding any judgment, decree or order of any court to the contrary.

On April 12, 1967 Parliament passed an Act (Act 13 of 1967) styled The Land Acquisition (Amendment and Short Title Validation) Act, 1967. Section 2 of this Act purported to amend s. 5-A of the principal Act to allow the making of more than one report in respect of land which had been notified under s. 4(1). Section 3 similarly purported to amend s. 6 of the principal Act by empowering different declarations to be made from time to time in respect of different percels of land covered by the same notification under s. 4(1) irrespective of whether one report or different reports had been made under s. 5-A sub-s. (2). Clause (ii) of s. 3 inserted a new provision to s. 6(1) reading :

> "Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication."

As a good deal of argument turns on the interpretation of s. 4 of the Amending Act, it is necessary to set the same out in extension :

> "4. (1) Notwithstanding any judgment, decree or order of any court to the contrary, -
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> (a) no acquisition of land made or purporting to have been made under the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, and no action taken or thing done (including any order made, agreement entered into, or notification published) in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground -
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> (i) that one or more Collectors have performed the functions of Collector under the principal Act in respect of the land covered by the same notification under sub-section (1) of section 4 of the principal Act;
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> (ii) that one or more reports have been made under sub-section (2) of section 5-A of the principal Act, whether in respect of the entire land, or different parcels thereof, covered by the same notification under sub-section (1) of section 4 of the principal Act;
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> (iii) that one or more declarations have been made under section 6 of the principal Act in respect of different percales of land covered by the same notification under sub-section (1) of section 4 of the principal Act;
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> (b) any acquisition in pursuance of any notification published under sub-section (1) of section 4 of the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967, may be made after such commencement and no such acquisition and no action taken or thing done (including any order made, agreement entered into or notification published), whether before or after such commencement, in connection with such acquisition shall be deemed to be invalid merely on the grounds referred to in clause (a) or any of them.
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> (2) Notwithstanding anything contained in clause (b) of sub-section (1), no declaration under section 6 of the principal Act in respect of any land which has been notified before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, under sub-section (1) of section 4 of the principal Act, shall be made after the expiry of two years from the commencement of the said Ordinance.
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> (3) Where acquisition of any particular land covered by a notification under sub-section (1) of section 4 of the principal Act, published before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, is or has been made in pursuance of any declaration under section 6 of the principal Act, whether made before or after such commencement, and such declaration is or has been made after the expiry of three years from the date of publication of such notification, there shall be paid simple interest, calculated at the rate of six per cent per annum on the market value of such land, as determined under section 23 of the principal Act, from the date of expiry of the said period of three years to the date of tender of payment of compensation awarded by the Collector for the acquisition of such land :

Provided that no such interest shall be payable for any period during which the proceedings for the acquisition of any land were held up on account of stay or injunction by order of a court :

Provided further that nothing in this sub-section shall apply to the acquisition of any land where the amount of compensation has been paid to the persons interested before the commencement of this Act."

Section 5 of the Amending Act repeated the Land Acquisition (Amendment and Validation) Ordinance, 1967 and further provided that notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act as if this Act had come into force on the 20th January, 1967.

The petitions before us were amended by leave of the Court so that the Validation Act of 1967 could be challenged. Mr. C. B. Agarwala who appeared for the petitioners in Writ Petitions Nos. 114, 216, 252 of 1966 and 85 of 1967 raised the following points in support of the petitions : (1) The Validation Act does not revive the notification under s. 4 which had become exhausted after the first declaration under s. 6 and no acquisition could be made without a fresh notification under s. 4. (2) The Validation Act violated Art. 31(2) of the Constitution inasmuch as it purported to authorise acquisitions without fresh notifications under s. 4 thereby allowing compensation to be paid on the basis of the dead notification under s. 4. It was argued that once a notification under s. 4 was exhausted Government had to make a fresh one under the said section; as a result thereof compensation had to be assessed on a different basis altogether. (3) The Validation Act violated Art. 14 of the Constitution in various ways :-

(a) It made discrimination inasmuch as a notification under s. 4 made before the commencement of the Ordinance had to be followed by a declaration under s. 6 within two years of the said date, whereas if a notification under s. 4 was made after 20th January 1967 i.e. the date of the Ordinance, the declaration under s. 6 could be made within a period of three years from the date of the notification under s. 4. The discrimination lay in the fact that whereas a declaration under s. 6 had to be made in respect of a notification under s. 4 bearing date subsequent to 20th January 1967 within three years, a much longer period of time might elapse between a date of declaration under s. 6 and a notification under s. 4 issued prior to the date of the Ordinance.

(b) If a notification under s. 4 was made after the date of the Ordinance, compensation had to be paid on the basis of such notification but if a notification had been made under s. 4 of the Act before the date of the Ordinance, compensation would be awarded on the basis of the exhausted notification under s. 4 however much time might have elapsed since the date of the dead notification.

(c) If compensation had not been paid before the Ordinance, interest at 6% had to be paid to the owner of the land on the amount of compensation fixed, but if the owner had received compensation before the date of the Ordinance, he had no claim to interest although the acquisition in both cases flowed from the same notification under s. 4

(d) It was open to Government to make a fresh notification under s. 4 after the lapse of three years from the date of the ordinance and such notification might be issued after every period of three years in any case where acquisition was not completed. In such cases, owners of land would be substantially benefited by the new notification under s. 4. But if a notification had been made before the date of the Ordinance, the owner of the land would receive compensation based on the old notification although a period much longer than three years might elapse between the date of the notification under s. 4 and a declaration under s. 6, his only solatium being interest at 6% p.a. on the amount of the compensation. This would result in discrimination inasmuch as a person affected by a s. 4 notification prior to the date of the Ordinance would be treated very differently from another person whose land was acquired in terms of a notification made after the commencement of the Ordinance.

On the first point, it was argued by Mr. Agarwala that Ss. 2 and 3 of the Amending Act had no retrospective operation, that there was no law which purported to validate retrospectively any but the first report made under s. 5-A of the principal Act or any but the first declaration issued under s. 6 of the Act and consequently there was no legal basis for the validation of such past acts by the operation of s. 4 of the Amending Act. It was therefore argued that the defect in the principal Act as pointed out by this Court in V. P. Sharma's case [[1966] 3 S.C.R. 557.] was not removed by s. 4 of the Amending Act. It was urged that Acts seeking to validate past transactions can only be effective if the amendment introduced had retrospective operation so as to cure the lacuna in the enactment from a date anterior to that of the impugned transactions. It the Amending Act had no retrospective operation, it could not protect past transactions which would still have to be declared invalid inasmuch as the notification under s. 4 made on November 13, 1959 having exhausted itself after the first declaration under s. 6 was not resusciated by any provision of the Amending Act.

On the second point, the broad contention urged was that the amendment was hit by Art. 31(2) of the Constitution inasmuch as its whole purpose was to avoid payment of enhanced compensation which would be necessitated if a fresh notification had to be issued under s. 4. The notification dated November 13, 1959 having spent itself, a fresh one in the normal course would have to be issued and compensation be paid not on the basis of valuation on November 13, 1959 but on that prevailing at least 8 or 9 years afterwards which would be substantially higher. It was argued that acquisition on the basis of any declaration under s. 6 of the Act after the first one would in effect be providing for compensation on the basis of a notification under s. 4 which had no relation to the acquisition. In order words, the date of the earlier notification under s. 4 must be treated to be an arbitrary date divorced from and completely alien to the acquisition sought to be made by a subsequent declaration under s. 6. In such circumstances, the ratio of a number of decisions of this Court starting from that of The State of West Bengal v. Mrs. Bela Banerjee [[1954] S.C.R. 558.] to a recent judgment in Union of India v. Kamalabai Harjivandas Parekh and others [C.A. 1564/1966 decided on 7-9-1967.] would apply. It is not necessary to examine all these decisions in detail. The notable decisions to which reference was made at some length are P. V. Mudaliar v. Dy. Collector [[1965] 1 S.C.R. 614.], Jeejeebhoy v. Asstt. Collector [[1965] 1 S.C.R. 636.] and State of Madras v. D. Namasivaya Mudaliar [[1964] 6 S.C.R. 936.]. It was argued that though the Land Acquisition Act was saved by Art. 31(5)(a) of the Constitution, any amendment thereto after the coming into force of the Constitution had to pass the test of Art. 13 and Art. 31(2) would apply with full force to any amendment of the Land Acquisition Act if as a result thereof a person expropriated was being deprived of compensation, i.e., the just equivalent of the property acquired. The point sought to be made was that the notification of November 13, 1959 having exhausted itself, the value of the property at or about that date would be illusory compensation in violation of Art. 31(2) in respect of

a declaration under s. 6 made after the first one of the series. Reference was made to proceedings for compulsory acquisition of land in England under the Lands Clauses Acts under which "once the undertakers or authority are authorised to purchase, the next step in the normal course is to serve a notice to treat" - see Halsbury's Laws of England, third edition, Vol. 10, page 60, Art. 97. It is pointed out in Art. 102 of the said book that

> "The effect of serving a notice to treat is to establish a relation analogous in some respects to that of a purchaser and vendor, a relation which binds the undertakers to take the land and binds the land-owner to give up the land subject to his being paid compensation, but until the price is ascertained the land remains the property of the landowner. Both parties have the right to have the price ascertained and the purchase completed in manner provided by the Lands Clauses Acts."

It was said that the English procedure ensured the payment of just equivalent of the property to the person who was deprived of it and that issue of a declaration under s. 6 made years after the notification under s. 4 the date of which alone was to be considered for fixing the value of the property, ignored the rights of the person to the lawful compensation aimed at by Art. 31(2) of the Constitution. Reference was made to the judgment of the Judicial Committee of the Privy Council in Ezra v. Secretary of State for India [R. 32 Calcutta 605 at 629.] where on a reference to the sections of the Land Acquisition Act as they then stood, it was observed :

> "that the expert official charged with the duty of fixing a value should be possessed of all the information in the hands of the department, and should at the same time avail himself of all that is offered at the enquiry, his ultimate duty being not to conclude the owner by his so-called award, but to fix the sum, which in his best judgment is the value and should be offered."

On the question of violation of Art. 14 of the Constitution, besides the general argument already referred to, it was urged that in Writ Petition No. 85 of 1967 there was a further point as to discrimination. The facts laid in this petition are as follows. The petitioner was the owner of land measuring Ac. 10-62 in village Kilokri. He wanted to develop the land by establishing a residential colony and selling the same out in plots. For this purpose, he had spent a good deal of money and taken enormous trouble and divided the area after development into 78 residential plots. In 1956 he had submitted a lay out plan of the land in question for necessary sanction to the Delhi Development Provisional Authority. On June 18, 1956 he was informed by the Delhi Development Provisional Authority that the final lay out plan had been approved by the said authority. In September 1957 the said authority demanded from the petitioner a security for Rs. 12,850-25 as a guarantee for carrying out the development of the colony in accordance with the approved standards and this sum was duly deposited by the petitioner. On September 15, 1958 the petitioner submitted service plans in respect of his colony and these were duly checked and found to be in order : the case was ordered to be placed before the Standing Committee of the Municipal Corporation for approval. By December, 24, 1958 the Standing Committee referred the case back to the Town Planner for a scrutiny of the ownership documents. The question relating to the proof of ownership was settled on March 19, 1961. In the meantime, the notification dated November 13, 1959 had been issued under s. 4(1) of the Act. The petitioner duly filed his objections under s. 5-A of the Act. By a notification dated July 1, 1960 published by the Delhi Administration the Chief Commissioner, Delhi, withdrew the land of 16 colonies from the acquisition out of the area covered by the notification of November 13, 1959 on the ground that their lay out plan had been sanctioned by the Delhi Municipal Corporation and as per general decision of the Standing Committee, Delhi Municipal Corporation, the petitioner was

asked by the Town Planner by letter dated April 16, 1960 to submit a de-notification certificate to the effect that the land comprising the proposed lay out of his colony was excluded from the purview of the notification issued under s. 4 of the Act. On June 14, 1961 the Deputy Housing Commissioner, Delhi Administration, issued the first notification under s. 6 of the Act in respect of 97 bighas and 4 biswas of land in village Kilokri as required by the Government for a public purpose at the public expense, namely, the planned development of Delhi. The petitioner's land was not covered by this notification. The Deputy Housing Commissioner, Delhi Administration, purported to issue another notification dated 26/27th July, 1961 under s. 6 of the Act declaring that land specified therein in village Kilokri was required to be taken by the Government at public expense for a public purpose. This notification covered the petitioner's land in question in village Kilokri. On January 9, 1962 the petitioner was informed by a letter issued by the office of the Town Planner, Municipal Corporation, Delhi, that the Standing Committee of the Municipal Corporation by its resolution No. 1190 dated December 18, 1961 had rejected the lay out plan of the petitioner's colony. According to the petitioner, this resolution went to show that his land was sought to be acquired because it had not been denotified along with the land of the other colonies on the ground that the Standing Committee had rejected the lay out plan of his colony. Thereafter the Land Acquisition Collector, Delhi, made an award No. 1276 dated February 16, 1962 with respect to the petitioner's said land. In March 1965 the petitioner learnt about the notification issued by the Delhi Administration on July 1, 1960 under s. 48(1) of the Act withdrawing the land of the 16 colonies mentioned therein from the acquisition out of the area covered by the notification dated November 13, 1959 on the ground that their lay out plan had been sanctioned by the Delhi Municipal Corporation. By letter dated March 10, 1965 the petitioner asked the Deputy Housing Commissioner, Delhi Administration, for restoration of his land on the same basis because his lay out plan had been sanctioned before the s. 4 notification. This request was however turned down by letter dated May 14, 1965 on the ground that the petitioner's land had already been acquired and could not be released. According to the petitioner, there was no basis for treating his land in a manner different from that of the 16 colonies. This differential treatment has resulted in violation of Art. 14 of the Constitution so far as the petitioner's colony is concerned.

Mr. Agarwala also tried to make a subsidiary point in this connection and urged that acquisition of petitioner's land was a colourable exercise of the power under the Act inasmuch as the petitioner was out to do the same thing as was sought to be achieved by proceedings under Land Acquisition Act, the only difference being that whereas the sales effected by him were at reasonable rates, those fetched at auction of lands acquired under the Act were for much higher figures and the State was really making revenue out of such acquisitions.

Mr. R. V. S. Mani who appeared for the petitioner in Writ Petition No. 223 of 1966 adopted the arguments of Mr. Agarwala in general but sought to make a special point of his own. In substance the additional ground urged by him was that by the Validating Act the Legislature had sought to encroach into the domain of the Judiciary. Mr. Mani contended that although there was no clear separation of legislative and judicial powers in our Constitution, nevertheless the Constitution did not confer unlimited powers on the legislature and it was for the Judiciary to declare the limits of the legislative powers enshrined in the Constitution. To quote Mr. Mani's words :

> "The Legislature exercises judicial power if its legislative action retroacts on past controversies and overrides or reverses the decisions of the Judiciary."

Such an act, argued Mr. Mani, had to be struck down in courts of law.

Mr. Mani's main argument was that inasmuch as Ss. 2 and 3 of the Amending Act had not been given retrospective effect, the validation sought to be effected by s. 4 with respect to the past transactions was of no avail as the impugned actions, i.e., the subsequent declarations under s. 6 of the Act, had no legal basis.

In our opinion no useful purpose will be served by referring to the clear demarcation between the judicial powers and legislative powers in America and attempt to engraft the said principle in the working of our Constitution. This development of the law, as pointed out in A. K. Gopalan v. State [[1950] S.C.R. 88 at 198.] was due to historical reasons. In that case it was pointed out by Das, J. (see at p. 286) that

> "the Supreme Court of the United States, under the leadership of Chief Justice Marshall, assumed the power to declare any law unconstitutional on the ground of its not being in "due process of law," ... It is thus that the Supreme Court established its own supremacy over the executive and the Congress. In India the position of the Judiciary is somewhere in between the Courts in England and the United States. While in the main leaving our Parliament and the State Legislatures suprme in their respective legislative fields, our Constitution has, by some of the articles, put upon the Legislature certain specified limitations . . . . . Our Constitution, unlike the English Constitution, recognises the Court's supremacy over the legislative authority, but such suprmacy is a very limited one, for it is confined to the field where the legislative power is circumscribed by limitations put upon it by the Constitution itself. Within this restricted field the Court may, on a scrutiny of the law made by the Legislature, declare it void if it is found to have transgressed the constitutional limitations."

It will not serve any useful purpose to note the decisions of this Court where reference has been made to the distinction between the India Constitutional law and the American Constitutional law on this subject. Mr. Mani sought to rely on a statement of the law made by Cooley in his Constitutional Limitations, 7th ed., p. 137, as quoted in Willoughby's Constitution of the United States, second edition, Vol. 3, at page 1651 that :

If the legislature would prescribe a different rule for the future from that which the courts enforce, it must be done by statute, and cannot be done by a mandate to the courts which leaves the law unchanged, but seeks to compel the courts to construe and apply it not according to the judicial, but according to the legislative judgment . . . . . If the legislature cannot thus indirectly control the action of the courts, by requiring of them a construction of the law according to its own views, it is very plain it cannot do so directly, by setting aside their judgments, compelling them to grant new trials, ordering the discharge of offenders, or directing what particular steps shall be taken in the progress of a judicial inquiry."

According to Willoughby,

> "Retroactive legislation which does not impair vested rights, or violate express constitutional prohibitions, is valid, and therefore, particular legal remedies, and, to a certain extent, rules of evidence may be changed and, as changed, made applicable to past transactions, ... But substantial right may not thus be interfered with."

Willoughby seeks to fortify his statement quoting from Cooley again :

> "The legislature does, or may, prescribe the rules under which the judicial power is exercised by the courts; and in doing so it may dispense with any of those formalities which are not essential to the jurisdiction of the court; and whatever it may dispense with by statute anterior to the proceedings, we believe it may also dispense with by statute after the proceedings have been taken, if the court has failed to observe any of those formalities. But it would not be competent for the legislature to authorize a court to proceed and adjudicate upon the rights of parties, without giving them an opportunity to be heard before it and, for the same reason it would be incompetent for it, by retrospective legislation, to make valid any proceedings which had been had in the courts, but which were void for want of jurisdiction over the parties."

Relying on the above Mr. Mani proceeded to argue that the wording of s. 4 of the Amending Act was not a question of mere form and that it was a decree purporting to operate as such. According to him unless s. 3 was retrospective, s. 4 would be meaningless and should be struck down. Mr. Mani relied particularly on the decision of the Federal Court in Basanta Chandra Ghose v. King Emperor [[1944] F.C.R. 295.] where it was held by this Court that Ordinance No. III of 1944 and not take away the power of the court to investigate and interfere with orders of detention or deprive the court of its power to pass orders under Ss 491 of the Criminal Procedure Code and the court was still at liberty to investigate whether an order purporting to have been made under r. 26 of the Defence of India Rules and deemed to be made under the Ordinance or a new order purporting to be made under the Ordinance was in fact validly made, in exactly the same way as immediately before the promulgation of the Ordinance; and if on a consideration the Court came to the conclusion that it was not validly made on any ground other than the ground that r. 26 of the Defence of India Rules was ultra vires, s. 10 of the Ordinance would no more prevent it from so finding than s. 16 of the Defence of India Act did. We shall deal with the argument based on this case later on.

The learned Solicitor General first dealt with the question as to whether Parliament was competent to pass the Validating Act and whether s. 4 of the Amending Act could be given effect to unless the legislature gave retrospective operation to section 3. According to the Solicitor General - and that is undoubtedly the position in law - the legislative competence of Parliament is only circumscribed by the scope of the entries in the appropriate Lists under the Seventh Schedule and the fundamental rights enshrined in Part III of the Constitution. The power of Parliament to make laws for the whole or any part of the territory of India is dealt with by the Constitution in Arts. 245 to 250, 252 and 253. Acquisition and requisitioning of property is an entry in List III and Parliament is competent to make laws enumerated in that List under Art. 246(2) of the constitution. As early as in the year 1878 it was pointed out by the Judicial Committee of the Privy Council in The Queen v. Burah [L.R. 5 I.A. 178 at 194.] that the Indian Legislature when acting within the limits prescribed (by the Act of the Imperial Parliament which created it) had plenary powers of legislation as much, and of the same nature as those of Parliament itself and

> "If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

In that case the question before the Judicial Committee was whether Act XXII of 1869 of the Indian Legislature which excluded the jurisdiction of the High Court within certain specified districts was not inconsistent with the Indian High Courts Act or with the Charter of the High Court and so in its

general scope within the legislative power of the Governor-General in Council. Under s. 4 of that Act the territory known as Garo Hills was removed from the jurisdiction of the Courts of Civil and Criminal Judicature and from the control of the officers of revenue, constituted by the regulations of the Bengal Code and the Acts passed by any Legislature established in British India as well as from the law prescribed for such courts or officers by the Regulations and Acts aforesaid. This section further provided that no Act thereafter passed by the Council of the Governor-General for making laws and regulations shall be deemed to extend to any part of the said territory unless the same was specially named therein. Under s. 9 of the Act the Lieutenant-Governor was authorised by notification in the Calcutta Gazette to extend mutatis mutandis all or any of the provisions contained in the other sections of the Act to the Jaintia Hills, the Naga Hills, and such portion of the Khasi Hills as might for the time being form part of British India. The Lieutenant-Governor of Bengal, acting under powers conferred by s. 9, extended the provisions of Act XXII of 1869 to the territory of Khasi and Jaintia Hills and excluded therefrom the jurisdiction of the courts of civil and criminal judicature. The High Court of Calcutta held that the 9th section was not legislation but was a delegation of legislative power. This was not accepted by the Judicial Committee and it was observed (at p. 195) :

> ". . . . . it is a fallacy to speak of the powers thus conferred upon the Lieutenant-Governor (large as they undoubtedly are) as if, when they were exercised, the efficacy of the acts done under them would be due to any other legislative authority than that of the Governor-General in Council. Their whole operation is, directly and immediately, under and by virtue of this Act (XXII of 1869) itself."

> Reference was made by counsel to the case of Abeyesekra v. Jayatilake [[1932] A.C. 260.]. The question there arose as to whether an Order in Council of 1928 amending another of 1923 making provision that the action of a common informer brought to recover penalties under the Order in Council of 1923 be dismissed and further amending the 1923 Order so as to except the office held by the respondent from its operation was valid and constituted an effective defence to the action although it was retrospective in operation. In upholding the validity of 1928 Order, it was observed by the Judicial Committee that legislators "have certainly the right to prevent, alter or reverse the consequences of their own decrees."

The effect and validity of retrospective legislation has had to be considered by the Federal Court of India and this Court on a number of occasions. In the case of The United Provinces v. Atiqa Begum [[1940] F.C.R. 110.] a question arose as to whether the Regularisation of Remissions Act, 1938 of the United Provinces Legislature was within its competence. There was an Act in force, namely, the Agra Tenancy Act, 1926 the purpose whereof was to consolidate and amend the law relating to agricultural tenancy and certain other matters. Section 73 of that Act provided that "when for any cause the Local Government or any authority empowered by it, remitted or suspended for any period the whole or any part of the revenue payable in respect of any land, a Collector might order that the rents of the tenants should be remitted or suspended to an amount which shall bear the same proportion to the whole of the amount payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land." In 1931 there was a catastrophic fall in agricultural prices followed by threats on the part of tenants to withhold rent on a large scale. The Government of the United Provinces devised a scheme for the systematic reduction of rents, varying with the circumstances of the different districts, followed later by consequential adjustment in land revenue. The Allahabad High Court had held in Mohammad Abdul Qaiyum v. Secretary of State for India [I.L.R. 1938 Allahabad, 114.] that

remissions made in pursuance of the orders of Government had no legal effect. In 1938 the Provincial Legislature passed the Regularisation of Remissions Act which precluded any question as to the validity of the orders of remission being raised in the courts of law. The Allahabad High Court took the view that the Act was contrary to the provisions of s. 292 of the Government of India Act, 1935 because it amounted to an attempt to legislate retrospectively. Section 2 of the Act of 1938 provided that

> "notwithstanding anything in the Agra Tenancy Act, 1926, ... or in any other law for the time being in force where rent has been remitted on account of any fall in the price of agricultural produce which took place before the commencement of this Act, under the order of the Provincial Government or any authority empowered by it in that behalf, such order, whether passed before or after the commencement of this Act, shall not be called in question in any civil or revenue court."

Referring to the case of Queen v. Burah [L.R.I.A. 178.] Gwyer, C.J., said that there was nothing in s. 292 which suggested any intention on the part of Parliament to impose a fetter against retrospective legislation. According to the learned Chief Justice, the impugned Act was an Act with respect to "remission of rents" although it might also be an act with respect to something else, that is to say, the validation of doubtful executive orders. The learned Chief Justice said :

> "It is true that "Validation of executive orders" or any entry even remotely analogous to it is not to be found in any of the three Lists; but I am clear that legislation for that purpose must necessarily be regarded as subsidiary or ancillary to the power of legislating on the particular subjects in respect of which the executive orders may have been issued."

His Lordship further opined that powers of the court were not affected merely because certain executive orders were not allowed to be questioned in any court.

In Piare Dusadh & others v. The King Emperor [[1944] F.C.R. 61.] one of the questions raised was whether it was competent for the Legislature by retrospective legislation to make valid any proceedings which had been had in the courts but which were void for want of jurisdiction over the parties. In this case the facts were as follows. The appellants had been convicted by courts functioning under the Special Criminal Courts Ordinance (Ordinance No. II of 1942). On 4th June, 1943, the Federal Court held that the courts constituted under that Ordinance had not been duly invested with jurisdiction, in view of the nature of the provisions contained in Ss. 5, 10 and 16 of that Ordinance. The next day, the Governor-General made and promulgated another Ordinance (Ordinance No XIX of 1943) whereby Ordinance No II of 1942 was repealed and certain provisions were made in respect of sentences which had been passed by the special courts and in respect of cases which were pending before them on that date. By sub-s. (2) of s. 3 of the new Ordinance, a right of appeal against sentences which had already been passed by the special courts was given and appeals were accordingly preferred to the High Court in some cases. In certain other cases applications for a writ in the nature of habeas corpus were made. In both sets of cases, it was contented on behalf of the accused that the new Ordinance did not, and in any event could not, give validity to the sentences which had been passed by the special courts, and it was claimed that the sentences should be treated as void or set aside. Section 4 of the new Ordinance provided that :

> "Where the trial of any case pending before a court constituted under the said Ordinance has not concluded before the date of the commencement of this

> Ordinance, the proceedings of such court in the case shall be void and the case shall be deemed to be transferred"

to the ordinary criminal courts for enquiry or trial in accordance with the Code of Criminal Procedure. Section 3 of the Ordinance provided as follows :

> "(a) Any sentence passed by a Special Judge, a Special Magistrate or a Summary Court in exercise of jurisdiction conferred or purporting to have been conferred by or under the said Ordinance shall have effect, and subject to the succeeding provisions of this section shall continue to have effect, as if the trial at which it was passed had been held in accordance with the Code of Criminal Procedure, 1898 by a Sessions Judge, an Assistant Sessions Judge or a Magistrate of the first class respectively, exercising competent jurisdiction under the said Code.
>
> (2) Notwithstanding anything contained in any other law, any such sentence as is referred to in sub-section (1) shall, whether or not the proceedings in which the sentence was passed were submitted for review under section 8, and whether or not the sentence was the subject of an appeal under Section 13 or Section 19, of the said Ordinance, be subject to such rights of appeal as would have accrued, and to such powers of revision as would have been exercisable under the said Code if the sentence had at a trial so held been passed on the date of the commencement of this Ordinance.
>
> (3) Where any such sentence as aforesaid has been altered in the course of review or on appeal under the said Ordinance, the sentence as so altered shall for the purpose of this section be deemed to have been passed by the Court which passed the original sentence."

Learned counsel for the accused conceded that the principle of validation by subsequent legislation was quite applicable to judicial as to ministerial proceedings but relying on Cooley's Constitutional Limitations, 8th ed., p. 205 and also pp. 773-776, they contended -

> (a) that while such legislation might seek to aid and support judicial proceedings, the legislature could not under the guise of legislation be permitted to exercise judicial power, and
>
> (b) that it was not competent to the legislature by retrospective legislation to make valid any proceedings which had been held in the courts, but which were void for want of jurisdiction over the parties.
>
> Spens, C.J., observed (see at p. 100) :
>
> "As a general proposition, it may be true enough to say that the legislative function belongs to the legislature and judicial function to the judiciary. Such differentiation of functions and distribution of powers are in a sense part of the Indian law as of the American law. But an examination of the American authorities will show that the development of the results of this distribution in America has been influenced not merely by the simple fact of distribution of functions, but by the assumption that the Constitution was intended to reproduce the provision that had already existed in many of the State Constitutions positively forbidding the legislature from exercising

> judicial powers . . . . One result of the application of this rule in the United State has been to hold that "legislative action cannot be made to retroact upon past controversies and to reverse decisions which the courts in the exercise of their undoubted authority have made." The reason given is that "this would not only be the exercise of judicial power, but it would be its exercise in the most objectionable and offensive form, since the legislature would in effect sit as a court of review to which parties might appeal when dissatisfied with the ruling of the courts. . . In India, however, the legislature has more than once enacted laws providing that suits which had been dismissed on a particular view of the law must be restored and retried."

The learned Chief Justice referred to the Australian case, Federal Commissioner of Taxation v. Munro [38 Com. L.R. 153.] where a Board of Appeal constituted under an Act of 1922 had given certain decisions in appeals in income-tax matters. The law courts declared that the Australian Parliament had no power to invest this Board of Appeal with judicial power. A later Act established what was described as a Board of Review and assigned to it functions which were held to be different in character from those assigned to the former Board of Appeal. This Act however went on to provide that decisions which had already been pronounced by the Board of Appeal "should be deemed to be and at all times to have been decisions of a Board of Review given in pursuance of the provisions of the later Act." This later Act was challenged as vesting judicial power in the Board of Review, but this contention was overruled. Reference may be made to the judgment of Starke, J. quoted by Spens, C.J. that

> "Parliament simply takes up certain determinations which exist in fact, though made without authority, and prescribes not that they shall be acts done by a Board of Review, but that they shall be treated as they would be treated if they were such acts. The sections, no doubt, apply retrospectively, but they do not constitute an exercise of the judicial power on the part of the Parliament."

The learned Chief Justice observed that this aptly described what had happened in the case before the Federal Court and answered the argument that it was an impossible feat to convert what was not a trial under the Code of Criminal Procedure into a trial under the Code.

According to the learned Chief Justice, the real question was, whether the Ordinance was covered by any of the entries in the Seventh Schedule to the Constitution Act. "It was not contented said the Chief Justice "that the mere absence of a specific provision about validating laws" was by itself of much significance." As observed by this Court in Atiqa Begum's case [[1940] F.C.R. 110.], "the power of validation must be taken to be ancillary or subsidiary to the power to deal with the particular subjects specified in the Lists."

There is nothing in Basanta Chandra Ghose's case [[1944] F.C.R. 295.] which detracts from the propositions of law laid down in Atiqa Begum's case [[1940] F.C.R. 110.] or Piare Dusadh's case [[1944] F.C.R. 61.]. In Basant Chandra Ghose's case [[1944] F.C.R. 295.] cl. (2) of s. 10 provided :

> "If at the commencement of this Ordinance there is pending in any Court any proceeding by which the validity of an order having effect by virtue of section 6 as if it had been made under this Ordinance is called in question, that proceeding is hereby discharged."

Spens, C.J. said with regard to this clause that :

> "here there has been no investigation or decision by any Tribunal which the legislating authority can be deemed to have given effect to. It is a direct disposal of cases by the legislature itself." (see at p. 309).

It was pointed out that the nature of the provision considered in Piare Dusadh's case [[1944] F.C.R. 61.] was essentially different from cl. (2) of s. 10 of the impugned Ordinance.

The question has engaged the attention of this Court in a number of cases and we may refer to the case of West Ramnad Electric Distribution Co. Ltd. v. State of Madras [[1963] 2 S.C.R. 747.] by way of illustration. In that case, the Madras Legislature had passed an Act (43 of 1949) on January 24, 1950 for the acquisition of undertakings supplying electricity in the Province of Madras. In pursuance of s. 4(1) of the Act the State of Madras passed an order on May 17, 1951 declaring that the appellant undertaking shall vest in the respondent from September 21, 1951. The Chief Electrical Inspector took over possession of the appellant and all its records etc. The State paid to the appellant Rs. 8,34,000 and odd as compensation. According to the appellant, about Rs. 1,00,000 still ramained to be paid. Some of the electrical undertakings in Madras which had been taken over filed writ petitions in the High Court which upheld the validity of the impugned Act in so far as it related to the licencees other than municipalities. In Rajahmundry Electric Supply Corporation Ltd. v. The State of Madras [[1954] S.C.R. 779.] this Court had held that the impugned Act of 1949 was ultra vires on the ground that it went beyond the legislative competence of the Madras Legislature inasmuch as there was no entry in any of the three Lists of the Seventh Schedule of the Government of India Act, 1935 relating to compulsory acquisition of any commercial or industrial undertaking. After the decision in this case, the Madras Legislature passed Act XXIX of 1954 which received the assent of the President on 9th October, 1954. This Act incorporated the main provisions of the earlier Act and purported to validate action taken under the earlier Act. The appellant then filed a writ petition alleging that to the extent to which the Act purported to validate acts done under the earlier Act of 1949 it was ultra vires. It was further urged that the three bases of compensation as laid down by the Act were inconsistent with the requirement of Art. 31 of the Constitution. Section 24 of the Act ran as follows :

> "Orders made, decisions or directions given, notifications issued, proceedings taken and acts or things done, in relation to any undertaking taken over, if they would have been validly made, given, issued, taken or done, had the Madras Electricity Supply Undertakings (Acquisition) Act, 1949 (Madras Act XLIII of 1949), and the rules made thereunder been in force on the date on which the said orders, decisions or directions, notification, proceedings, acts or things, were made, given, issued, taken or done are hereby declared to have been validly made, given, issued, taken or done, as the case may be, except to the extent to which the said orders, decisions, notifications, proceedings, acts or things are repugnant to the provisions of this Act."

It was held by this Court that this was

> "a saving and validating provision and it clearly intends to validate actions taken under the relevant provisions of the earlier Act which was invalid from the start. The fact that s. 24 does not use the usual phraseology that the notifications issued under the earlier Act shall be deemed to have been issued under the Act, does not alter the position that the second part of the section has and is intended to have the same effect."

The contention that the impugned notification contravened Art. 31(1) because of want of existence of an antecedent law depriving the citizen of his property was turned down with the observation :

> "In our opinion, this argument is not well-founded. If the Act is retrospective in operation and s. 24 has been enacted for the purpose of retrospectively validating actions taken under the provisions of the earlier Act, it must follow by the very retrospective operation of the relevant provisions that at the time when the impugned notification was issued, these provisions were in existence. That is the plain and obvious effect of the retrospective operation of the statute."

Reference was made to the case of the United Provinces v. Mst. Atiqa Begum [[1940] F.C.R. 110.], Piare Dusadh v. The King Emperor and also to the decision in Union of India v. Madan Gopal Kabra [[1954] S.C.R. 541 at 544.] and it was finally said (at p. 766) :

> ".... there is no doubt about the competence of the Legislature to enact a law and make it retrospective in operation in regard to topics included within the relevant Schedules of the Constitution."

Reference may also be made to the case of Rai Ramkrishna v. The State of Bihar [[1964] 1 S.C.R. 897.].

All these decisions lay down that the power to legislate for validating actions taken under statute which were not sufficiently comprehensive for the purpose is only ancillary or subsidiary to legislate on any subject within the competence of the legislature and such Validating Acts cannot be struck down merely because courts of law have declared actions taken earlier to be invalid for want of jurisdiction. Nor is there any reason to hold that in order to validate action without legislative support the Validating Act must enact provisions to cure the defect for the future and also provide that all actions taken or notifications issued must be deemed to have been taken or issued under the new provisions so as to give them full retrospective effect. No doubt legislatures often resort to such practice but it is not absolutely necessary that they should do so so as to give full scope and effect to the Validating Acts. By way of illustration reference may be made to the following Acts. (1) The Professions Tax Limitation (Amendment and Validation) Act, 1949 where s. 3(i) provided that

> "Notwithstanding anything to the contrary in any other law for the time being in force, -
>
> (i) no tax on circumstances and property imposed before the commencement of this Act under clause (ix) of sub-section (1) of section 128 of the United Provinces Municipalities Act, 1916, or clause (b) of section 108 of the United Provinces District Boards Act, 1922, shall be deemed to be, or ever to have been invalid merely on the ground that the tax imposed exceeded the limit of Rs. 50/- per annum prescribed by the said Act, and the validity of the imposition of any such tax shall not be called in question in any Court;"
>
> (2) The Hindu Marriages (Validation of Proceedings) Act, 1960 (Act 19 of 1960) was passed to obviate the shortcomings in the Hindu Marriage Act pointed out by the Punjab High Court in Janak Dulari v. Narain Das (A.I.R. 1959 Punjab 50). There the High Court held that the court of an additional Judge cannot be regarded as a principal court of civil jurisdiction within the meaning of the Hindu Marriage Act

and that a District Judge to whom a petition under the Act is presented cannot transfer it to an additional Judge for trial. The object of the Validation Act was to validate all proceedings taken and decrees and orders passed by any of the Courts specified in cl. (2) exercising or purporting to exercise jurisdiction under the Hindu Marriage Act. Section 2(1) ran as follows :-

"All proceedings taken and decrees and orders passed before the commencement of this Act by any of the Courts referred to in sub-section (2) exercising or purporting to exercise jurisdiction under the Hindu Marriage Act, 1955 shall, notwithstanding any judgment, decree or order of any court, be deemed to be as good and valid in law as if the court exercising or purporting to exercise such jurisdiction had been a district court within the meaning of the said Act."

The courts referred to in sub-section (1) are : the court of an additional Judge, additional district Judge, etc.

In our opinion the contentions raised about the invalidity of the Amending Act on the round that s. 3 thereof was not made expressly retrospective or that it encroached upon the domain of the judiciary by seeking to nullify judicial decisions cannot be sustained. The American doctrine of well-defined separation of legislative and judicial powers has no application to India and it cannot be said that an Indian Statute which seeks to validate invalid actions is bad if the invalidity has already been pronounced upon by a court of law.

In view of the decisions of the Judicial Committee, the Federal Court and this Court referred to above, it must be held that the absence of a provision in the Amending Act to give retrospective operation to s. 3 of the Act does not affect the validity of s. 4 as contended for. It was open to Parliament to adopt either course, e.g. (a) to provide expressly for the retrospective operation of s. 3, or, (b) to lay down that no acquisition purporting to have been made and no action taken before the Land Acquisition (Amendment and Validation) Ordinance, 1967 shall be deemed to be invalid or ever to have become invalid because inter alia of the making of more than one report under s. 5-A or more than one declaration under s. 6 of the Land Acquisition Act, notwithstanding any judgment, decree or order to the contrary. Parliament was competent to validate such actions and transactions, its power in that behalf being only circumscribed by the appropriate entries in the Lists of the Seventh Schedule and the fundamental rights setforth in Part III of the Constitution. As shown above, there have been instances where the latter course had been adopted by the Indian Parliament in the past.

Section 4 of the Amending Act being within the legislative competence of Parliament, the provisions thereof are binding on all courts of law notwithstanding judgments, orders or decrees to the contrary rendered or made in the part.

We find ourselves unable to accept the contention about the violation of Art. 31(2) of the Amending Act. It is not suggested that the Validating Act in express words enacts any law which directly affects compensation payable in respect of the property acquired or lays down any principles different from those which were alrea__dy in the Land Acquisition Act of 1894. After the amendment of the Constitution in 1955 the question of adequacy of compensation is not justiciable and it is enough if the law provides that a person expropriated must be given compensation for his property or lays down the principles for the determination thereof. There is not a word about "compensation" in s. 4 of the Validating Act. Indirectly however, it would affect a person's right to

compensation, inasmuch as but for the Validating Act the notification under s. 4 issued on 13th November 1959 could not be resorted to for the purpose of making more than one declaration under s. 6 of the Act. Schemes of the magnitude of the plan for the development of Delhi or for thestablishment of an iron and steel plant did not have to be considered in pre-Constitution days. The Land Acquisition Act of 1894 contained sufficient measures to allow acquisition of small parcels of property for the different schemes of the extent and magnitude which had to be considered in the past. Even then, the law with regard to compensation did not remain static from the days of the Act of 1870 to 1923. In the Act of 1894 the date of declaration under s. 6 was made to take the place of the date in s. 24 of the Act of 1870. Under the Act of 1870 the market value of the land at the time of awarding compensation was the criterion. The date for the assessment of compensation was further shifted to the date of notification under s. 4 only in 1923.

The Legislature might well have provided in the Act of 1894 that it would be open to the appropriate government after issuing a notification under s. 4 to consider objections raised under s. 5 with regard to different localities from time to time enabling different reports to be made under s. 5-A with consequent adjustments in s. 6 providing for declarations to be made as and when each report under s. 5-A was considered. By the validation of actions taken under s. 6 more than once in respect of a single notification under s. 4, the original scheme of acquisition is not altered. The public purpose behind the notification under s. 4 remains the same. It is not as if a different public purpose and acquisition of land for such purpose were being interpolated by means of the Validating Act. The principle of compensation remains the same under the Validating Act as it did under the principal Act of 1894. Only the shortcomings in the Act as to want of provision to enable more than one declaration under s. 6 are being removed. In our opinion, the Validating Act does not fall within the mischief pointed out by this Court in various decisions starting from the State of West Bengal v. Mrs. Bela Banerjee [[1954] S.C.R. 558.] :

Entry 42 in List III of the Seventh Schedule before its amendment read :

> "Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the forms and the manner in which such compensation is to be given."

In Mrs. Bela Banerjee's case [[1954] S.C.R. 558.] s. 8 of the impugned West Bengal Land Development and Planning Act 1948 provided that the compensation to be awarded for acquisition of land was not to exceed the market value thereof on December 31, 1946. This provision was held to arbitrary by this Court inasmuch as it fixed the ceiling on compensation by reference to the market value of the land on the above-mentioned date no matter when and how long afterwards the acquisition took place. Similarly in dismissing the appeal of the State in State of Madras v. D. Namasivaya Mudaliar [[1964] 6 S.C.R. 936.] where the Madras Act XI of 1953 provided that compensation was payable on the basis of the valuation of the land on April 28, 1947 together with some improvements made thereon up to the date of notification under s. 4(1) of the Land Acquisition Act because of the discovery of the presence of lignite in certain taluks in 1947 and the announcement by Government by a press note that it proposed to undertake legislation to compel persons purchasing such lands after a date to be prescribed in 1947, it was held that "a law which authorises acquisition of land not for its true value, but for value frozen on some date anterior to the acquisition, on the assumption that all appreciation in its value since that date is attributable to purposes for which the State may use the land at some time in future, must be regarded as infringing the fundamental right" and "there was no true relation between the acquisition of the land... and the

fixation of compensation based on their value on the market rate prevailing on April 28, 1947." Referring to the provision in the Land Acquisition Act for assessment of compensation on the basis of the market value of the land not on the date on which the interest of the owner was extinguished under section 16 but to the date of the notification under s. 4(1) it was observed that "any principle for determination of compensation denying to the owner all increments in value between a fixed date and the date of issue of the notifications under s. 4(1) must prima facie be regarded as denying to him the true equivalent of the land which is expropriated.

In our opinion, the Amending Act cannot be said to lay down any principle which suffers from the vice of the Act struck down in the above decisions. The date of valuation is that of the issue of notification under s. 4(1) - a principle which has held the field since 1923. It is true that the underlying principle of the Act of 1894 was that all increments due to the setting on foot of the acquisition proceedings were to be ignored whereas due to the ever spiralling of all prices all over India land values are mounting up all the time in all the States, specially round about big cities - an occurrence quite unconnected with the issue of a notification under s. 4(1) - but it cannot be said that because owners of land are to be deprived of all the increments due to the latter phenomenon it must be held that there is a violation of Art. 31(2). Legislative competence to acquire land under the provisions of the Land Acquisition Act cannot be challenged because of constant appreciation of land values all over the country due to the prevalent abnormal inflation. There must be some time lag between the start and conclusion of land acquisition of land acquisition proceedings and in principle there is nothing wrong in accepting the said start as the date for valuation. Sections 4 and 23 of the Land Acquisition Act are protected by Art. 31(5)(a) of the Constitution. Only sections 5-A and 6 of the Act have been amended. The amendments do not alter the principle of compensation fixed by the Act nor contravene Act. 31 of the Constitution in any way.

The Amending Act does not really derogate from the principle that the valuation on the date of issue of notification affords the criterion for determining compensation of all lands to be acquired. It only keeps alive the said notification for sustaining more than one declaration under s. 6 to meet the exigencies of the situation where it was not possible to make one comprehensive declaration under s. 6 and where the State has been obliged to validate actions which could not be supported under the principal Act. It cannot be said of the Validating Act that it was fixing an arbitrary date for the valuation of the property which bore no relation to the acquisition proceedings. At the same time when the notification under s. 4 was issued on 13th November 1959, the State had considered that a very large area round about Delhi would have to be acquired so that the development of the city could proceed in an orderly manner step by step not only to meet the immediate needs of the then population of the city but with an eye to the ever-increasing demands of the exploding population in all cities in India and specially in its capital. It was before November 1959 that the State had to consider the acquisition of a large tract of land for the purposes of development of Delhi but it was not possible to take up simultaneously all schemes for the future development of the city. It was also not practically possible to take up all schemes in all directions at the same time. The resources of the State were not adequate to take up the schemes for improvement of the city by the acquisition of an area like Ac. 34,000,00, at the same time keeping in mind not only the need of land for housing purposes but also for other purposes like education, industry and manufacture not to speak of amenities for recreation, entertainment etc. Of necessity, the area under the proposed acquisition would have to be carved into blocks and the development of one or more blocks at a time could only be taken up in consonance with the resources available. Even contiguous blocks could be developed gradually and systematically. If a particular area, say block 'A' was meant to provide lands for building houses for residential purposes only a block contiguous thereto, say block 'B' might be set apart for industrial purposes. There may be nothing common between Block A and

Block B to require their simultaneous development although both the Blocks would form part of a composite whole - to serve the needs of a growing city. Can it be said that acquisition of lands for Block A and Block B must be made simultaneously and is the law to be struck down because it enables a declaration under s. 6 with respect to Block B to be made some time after a similar declaration in respect of Block A ? In such a case, it would be incongruous to award compensation for lands acquired in Block B on a basis different from that in respect of lands in Block A covered by an earlier declaration under s. 6. The scope of Art. 31(2) as amended was considered by this Court in P. V. Mudaliar v. Deputy Collector [[1965] 1 S.C.R. 614.]. It was there pointed out that after the amendment "what is excluded from the courts' jurisdiction is that the said law cannot be questioned on the ground that the compensation provided by that law is not adequate;" and "if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art. 31(2) of the Constitution." In that case it was also observed by this Court that "in the context of continuous rise in land prices from year to year depending upon abnormal circumstances it cannot be said that fixation of average price of over five years is not a principle for ascertaining the price of the land in or about the date of acquisition." The decision is also an authority for the proposition that the omission of one of the elements that should properly be taken into account in fixing the compensation might result in the inadequacy of compensation but such omission in itself did not constitute fraud on power. It is also to be noted that in this case this Court upheld the Land Acquisition (Madras Amendment) Act, 1961 although the said Act substituted a new clause for the first clause in s. 23(1) of the Land Acquisition Act. The substituted clause provided for payment of compensation on the basis of the market value of the land at the date of the publication of the notification under s. 4(1) or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever was less. It is significant that the Act which was a post-Fourth Constitution Amendment Act, was upheld although by its own terms and independently of the Land Acquisition Act it provided for payment of compensation on the basis of the market value of the land at the date of the publication of the notification under s. 4(1). It may therefore be inferred that in upholding the Land Acquisition (Madras Amendment) Act, 1961, this Court was of the view that the principle of fixing compensation on the basis of the price prevailing on the date of the notification under s. 4(1) of the Land Acquisition Act was a relevant principle. In the result the court turned down the contention about the violation of Art. 31(2) because of the modification of some of the principles for assessing compensation laid down in s. 23 of the Act.

In the present case, there has been no variation of the law formulated in s. 23 of the Act. As such, in opinion, there has been no violation of Art. 31(2) merely because the actions already taken have been sought to be validated. Nor are we satisfied that there has been any colourable or fraudulent exercise of legislative power.

With regard to the question as to discrimination violative of Art. 14, it goes without saying that whether an Amending Act is passed, there is bound to be some difference in treatment between transactions which have already taken place and those which are to take place in the future. That by itself will not attract the operation of Art. 14. Again, even with respect to transactions which may be completed in the future, a reasonable classification will not be struck down as was held by this Court in Jalan Trading Co. v. Mazdoor Union [[1967] 1 S.C.R. 15 at 36.].

> "If the classification is not patently arbitrary, the Court will not rule it discriminatory merely because it involves hardship or inequality of burden. With a view to secure a particular object a scheme may be selected by the Legislature wisdom whereof may be open to debate; it may even be demonstrated that the scheme is not the best in the

> circumstances and the choice of the Legislature may be shown to be erroneous, but unless the enactment fails to satisfy the dual test of intelligible classification and rationality of the relation with the object of the law, it will not be subject to judicial interference under Act. 14. Invalidity of legislation is not established by merely finding faults with the scheme adopted by the Legislature to achieve the purpose it has in view."

Before scrutinising the provisions of the Amending Act, we must examine the objects of the Act. They may be summed up as follows :-

> (a) To amend the Act for the future by empowering the making of more than one declaration under s. 6
>
> (b) To validate completed acquisitions on the basis of more than one declaration under that section.
>
> (c) To authorise more than one declaration under the said section in cases where there is already in existence a notification under s. 4
>
> (d) To prescribe a time limit for future acquisitions as also pending proceedings not yet completed; and
>
> (e) To provide additional compensation by way of interest in all cases where acquisition has not yet been completed and where a declaration under s. 6 is issued more than three years after the notification under s. 4.

There is nothing arbitrary or irrational about the said objects. It is well known that in some cases there has been unusual delay in the issue of declaration under s. 6 after a notification under s. 4. The Amending Act puts an end to this harsh treatment by providing that in respect of notifications under s. 4 made before the date of the Ordinance i.e. 20th January 1967, a declaration under s. 6 must be made within two years after that date. If such a declaration is not made, then it will not be open to Government to make use of the old s. 4 notification and the State would be obliged to issue a fresh notification under s. 4. The Act also limits the time within which a declaration under s. 6 may be made when a notification under s. 4 is issued after 20th January, 1967. This period is limited to three years there having been no time in the past. We are not impressed by the argument that a person whose land may be covered by a notification under s. 4 issued more than one year before 20th January 1967 would seemingly be treated differently from a person whose land comes under the notification under s. 4 after that date. The Legislature has sought to improve upon the existing provisions of the Land Acquisition Act and there is no discriminatory treatment which should be struck down as violative of Art. 14. The Legislature in its wisdom thought that some time limit should be fixed in respect of s. 4 notifications issued before 20th January, 1967 and that a time limit should also be fixed for acquisition where such a notification is issued after that date. No fault can be found with the Legislature because it has provided for a period of two years in one case and three years in the other. As was pointed out in Jalan Trading Co. v. Mazdoors Union [[1967] 1 S.C.R. 15.].

> "Equal protection of the laws is denied if in achieving a certain object persons, objects or transactions similarly circumstanced are differently treated by law and the principle underlying that different treatment has no rational relation to the object

> sought to be achieved by the law."

It is not possible to say that because the legislature thought of improving upon the Act of 1894 by prescribing certain limits of time as from 20th January 1967 the difference in treatment in cases covered by notification before the said date and after the said date denies equal protection of laws because the transactions are not similarly circumstanced. Some of the notifications issued under s. 4 must have been made even more than 3 years before 20th January 1967 and such cases obviously could not be treated in the same manner as notifications issued after that date. Art. 14 does not strike at a differentiation caused by the enactment of a law between transactions governed thereby and those which are not so governed. As was pointed out by this Court in Hatisingh Manufacturing Co. Ltd. v. Union of India [[1960] 3 S.C.R. 528 at 543.].

> "When Parliament enacts a law imposing a liability as flowing from certain transactions prospectively, it evidently makes a distinction between those transactions which are not covered by the Act and those which are not covered by the Act, because they were completed before the date on which the Act was enacted."

With respect, the dictum can also be applied as between cases where the transaction was in the course of completion and those which had to be started after a particular date. On the whole the Amending Act seeks to improve the legislation which covered the field acquisition of land. The Legislature might have made more liberal provisions for improvement but it is not for this court to strike down a piece of legislation because the improvement falls short of the expectation of the litigants.

With regard to the provision for payment of interest, in addition to compensation or by way of additional compensation no grievance can be made in that interest is not allowed in respect of transactions which have been already completed and compensation taken. The Legislature felt that because there has been unreasonable delay in the payment of compensation, interest should be allowable where the period of three years has already expired or may expire between the date of s. 4 notification and the date of declaration under s. 6. No grievance can be made because interest is denied to persons who have already taken the compensation. Even here the classification is not unreasonable and cannot be said to be unrelated to the object of the Act.

As regards violation of Art. 14, in the case of Sohan Lal who filed Writ Petition No. 85 of 1967 the learned Solicitor General drew our attention to a few facts which are not clearly brought out in the affidavit in opposition and will be referred to presently. Here the attack is on an executive act, namely, the differential treatment meted out to 16 colonies whose lands were covered by the notification dated 13th November, 1959 but in respect of which de-notification orders were issued subsequently. It would appear that some of the letters which were received by Sohan Lal did not bring out the full facts and the policy underlying the apparent discrimination in this case. It is pointed out in paragraph 36 of the affidavit in opposition :

> "After the issue of the notification No. F.15(III)/59-LSG dated 13-11-1959, it was decided by the Government that the colonies in respect of which the layout and service plans had been sanction before the date of notification viz., 13-11-1959, may be released from the purview of acquisition..... The petitioner's colony known as Kanwal Park could not be released from the purview of acquisition because in its case only the layout plans had been sanctioned and not the service plans."

This policy is corroborated by the records of the Land and Housing Department, Delhi Administration which were made available to us at the hearing. It appears from that record that after the notification of 13th November 1959 private owners of land who wanted to lay out colonies and had taken steps in respect thereof by making some arrangement and spent money - thereon had approached the Administration for release of their lands from the notification and a proposal for de-notification of the colonies was considered at a high level. It appears that a meeting was held on 29th June 1960 at which were present a number of persons including the Chief Secretary, Vice Chairman, Delhi Development Authority, Engineer-Member, Architect, Town Planning Organisation, Deputy Commissioner, Delhi Municipal Corporation, Architects of Delhi Municipal Corporation, Secretary, Local Self Government and Under Secretary to the State Government. The records show that the case of each notified colony was considered separately and it was felt that cases in which the layout and service plans had been finally approved in all respects before 13th November, 1959 should be recommended for de-notification. On 1st of July, 1960, the Commission, Delhi Municipal Corporation went into the matter and recommended that :

> "All those colonies in respect of which both lay-out plans and service plans had been approved by the Delhi Development Provisional Authority the Delhi Development Authority or the Delhi Municipal Corporation may be de-notified irrespective of whether security was demanded or not and whether the time limit for completion of development was imposed or not and irrespective of whether security has been paid or not and whether development has been completed or not."

According to this recommendation, 16 colonies named therein fell in this category. Sohan Lal's colony was not one of those sixteen.

It is unfortunate that the petitioner who submitted the lay out plan of the colony as early as June 18, 1956 had not the service plan approved before 13th November, 1959. It is clear from the annexures to the petition that the details of the lay-out of the colony were submitted on 30th August, 1956. The petitioner submitted service plans on 15th September, 1959. There was nothing wrong with the plans intrinsically except that there were more than one small pocket of land within the colony to which the petitioner could not prove his ownership satisfactorily. Mr. Agarwala appearing for the petitioner submitted that the only difficulty was that in respect of the small pockets they were owned not by the petitioner alone but in co-ownership with others and the petitioner subsequently excluded these pockets from the purview of his lay-out plan : but this was done only on March 19, 1961. The petitioner's subsequent efforts to have his colony denotified were of no avail even though he had excluded these pockets on 20th January, 1960. On these facts, we cannot hold that the petitioner was subjected to any discrimination. There was a policy behind the de-notification and it has not been suggested that the policy was vitiated by any malafides on the part of the authorities.

All the points urged by the petitioners, therefore, fail and the petitions will stand dismissed. There will be no order as to costs.

SHELAT J. 

The facts in these five writ petitions have been sufficiently set out by our learned brother Mitter J. in his judgment and therefore need not be repeated here. Though thy differ in some particulars, the contentions raised by Counsel for the petitioners are common except the additional contentions raised by Mr. Mani in Writ Petition 223 of 1966 and by Mr. Agarwala in Writ Petition 85 of 1967.

These writ petition arise as a result of and challenge inter alia the validity of the following notifications. No November 13, 1959 the Chief Commissioner, Delhi, issued a notification under Sec. 4 of the Land Acquisition Act I of 1894 (hereafter referred to as the Principal Act) notifying that land measuring 34070 acres marked in blocks A to T and X in the map enclosed there with was required by the Delhi Administration for the planned development of Delhi. In pursuance of that notification, the Delhi Administration issued Sec. 6 notification dated June 14, 1961 in respect of the land situate in village Kilkori measuring 97 bighas 14 biswas only from out of the said notified area. The notification directed the Collector to take order for its acquisition under s. 7 of the Act. The Collector thereafter made his award on August 31, 1961 in respect of the said 97 bighas of land at Rs. 2500 a bigha, the total amount including the solatium awarded being Rs. 2,80,887.50. Nothing thereafter was done till March 18, 1966 when another notification under Sec. 6 was issued in respect of 1752.2 bighas of land situated in Mandawali Fazilpur, Khuraj Khas and Shakarpur Khas.

On February 9, 1966 this Court delivered its judgment in M. P. State v. V. P. Sharma [[1966] 3 S.C.R. 557.] where facts were similar to the facts in the present cases and where the land was required for the erection of a steel plant in public sector. In that case the notification under Sec. 4 covering land in eleven villages was issued in May 1949. This was followed by several notifications under Sec. 6, the last of them being in 1960. After examining the provisions of Secs. 4, 5A and 6 of the Act, this Court declared as follows :-

> "At the stage of Sec. 4, the land is not particularised but only the locality is mentioned; at the stage of s. 6 the land in the locality is particularised and thereafter the notification under s. 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the intention to acquire under s. 4 to the declaration under Sec. 6, leads to the conclusion that once a declaration under s. 6 particularising the area is issued, the remaining non-particularised area in the notification under s. 4(1) stands automatically released. The intention of the legislature was that one notification under s. 4(1) should be followed by survey under s. 4(2), objections under s. 5A heard, and thereafter, one declaration under Sec. 6 issued. If the Government requires more land in that locality, there is nothing to prevent it from issuing another notification under s. 4(1) making a further survey if necessary, hearing objections and then making another declaration under s. 6, whereas there is likely to be prejudice to the owner of the land if there is great delay between the notifications under s. 4(1) and s. 6."

One of the contentions urged in that case was that where the land is required for a small project and the area is not large the government may be able to make up its mind once for all what land it needs but where, land is required for a large project requiring a large area of land, government may not be able to make up its mind at once. This contention was rejected on the ground that even if it be so there is nothing to prevent the government from issuing another notification under Sec. 4 followed by a notification under Sec. 6, that the government's power to acquire land in a particular locality is not exhausted by issuing one notification under Sec. 4(1) followed by a notification under s. 6 and that it can proceed to do so by a fresh nofification under Section 4(1) and a fresh declaration under Sec. 6 and such a procedure would be fair to all concerned. Sarkar J. who delivered a separate judgment also repelled the contention by observing that he could not

> "imagine a government which has vast resources not being able to make a complete plan of its project at a time. Indeed, I think, when a plan is made it is a complete

> plan. I should suppose that before the government starts acquisition proceedings by the issue of a notification under Sec. 4 it has made its plan for otherwise it cannot state in the notification, as it has to do, that the land is likely to be needed. Even if it had not then completed its plan it would have enough time before the making of a declaration under section 6 to do so. I think therefore that the difficulty of the government, even if there is one, does not lead to the conclusion that the Act contemplates the making of a number of declarations under Sec. 6."

In the view taken Sharma's case [[1966] 3 S.C.R. 557.] Sec. 6 notification dated March 18, 1966 was invalid as Sec. 4 notification dated November 13, 1959 on which it was founded ceased to be efficacious and became exhausted after Sec. 6 notification dated June 14, 1961 was issued and the rest of the land not covered by it became as a result released from acquisition. Depending on the declaration of law made in this decision the petitioners filed these writ petition in April 1966 and thereafter.

Realising that if the view taken in Sharma's case [[1966] 3 S.C.R. 557.] were to stand the government would have to issue a fresh Sec. 4 notification and would have to pay compensation on the basis of the market value of the land on the date of such new notification instead of on November 13, 1959, the government promulgated an Ordinance dated January 20, 1967 called the Land Acquisition (Amendment and Validation) Ordinance 1 of 1967. It is not necessary to set out the provisions of the Ordinance as it has been substituted by Land Acquisition (Amendment and Validation) Act, 13 of 1967 (hereafter referred to as the Amendment Act) passed on April 12, 1967. There can be no manner of doubt that the Ordinance and the Amendment Act were enacted with the object of setting at naught the decision in Sharma's case [[1966] 3 S.C.R. 557.].

Section 2 of the Amendment Act substituted the following words in Sec. 5A(2), viz.,

> "Submit the case for the decision of an appropriate government together with the record of the proceedings held by him and a report containing his recommendations on the objections." by the following words viz., "either make a report in respect of the land which has been notified under Sec. 4 sub-sec. (1) or make different reports in respect of different parcels of such land."

Section 3 added the following words in Sec. 6(1) after the words 'certify its orders', viz.,

> "and different declaration may be made from time to time in respect of different parcels of any land covered by the same notification under Sec. 4 sub-sec. (1) irrespective of whether one report or different reports has or have been made (wherever required) under Sec. 5A sub-section (2)."

Section 3 also substituted the existing proviso to Sec. 6(1) by the following :-

> "provided that no declaration in respect of any particular land covered by a notification under Sec. 4(1) published after the commencement of the said ordinance (after 20-1-1967) shall be made after the expiry of three years from the date of such publication."

Sec. 4(1) of the Amendment Act is a validating provision. By clause (a) it provides that no acquisition purporting to have been made before the commencement of the said Ordinance (i.e., before 20-1-67) and no action taken or thing done including any notification published in

connection with such acquisition shall be deemed to be invalid or ever to have become invalid on the ground that

> (i) one or more collectors have performed the functions of collector in respect of the entire land covered by s. 4 notification.
>
> (ii) one or more reports have been made under s. 5A(2) whether in respect of the entire land or different parcels thereof covered by the same notification, and
>
> (iii) that more than one declaration are made under Sec. 6 in respect of different parcels of land covered by the same notification under Sec. 4(1).

Clause (b) of Sec. 4(1) provides that any acquisition in pursuance of a Sec. 4 notification published before 20-1-67 may be made after that date and no such acquisition and no action taken or thing done including any order, agreement or notification made or published whether before or after 20-1-67 in connection with such acquisition shall be deemed to be invalid merely on the said grounds mentioned in clause (a).

Sub-sec. (2) of Sec. 4 provides that no declaration under Sec. 6 shall be made in respect of land covered by Sec. 4 notification published before 20-1-67 after the expiry of two years from that date, that is, 20-1-69. Sec. 4(3) provides for payment of interest in the circumstances set out therein.

The result of the Amendment Act clearly is that an area of land notified under Sec. 4(1) can be acquired piecemeal at any time, the only restriction being that under Sec. 3 in the case of land covered by a Sec. 4 notification published after 20-1-67, Sec. 6 notification can be issued within 3 years from the date of such notification and in respect of land notified under Sec. 4(1) before 20-1-67 within two years after 20-1-67. The direct consequence of the Amendment Act is that the unitary character of acquisition by a single inquiry, a single report, a single declaration and single award under the Principal Act is done away with. The government can freeze an area by issuing a Sec. 4(2) of the Amendment Act, go on acquiring parcels of such area at its convenience irrespective of the time when it makes up its mind to acquire and pay compensation on the basis of the value at the date of Sec. 4 notification. In the case of land notified under Sec. 4(1) after 20-1-67 the owner is deprived of appreciation in the value of his land during three years by reason of limitation prescribed in Sec. 3 but in the case of land notified before 20-1-67 such deprivation can be for an uncertain period from the date of Sec. 4 notification up to two years from 20-1-67 i.e., up to 20-1-69 depending upon when its acquisition is made. As has happened in the instant cases the entire area of 34070 acres was frozen for the purpose of computation of compensation as from Nov. 13, 1959 portions of that area were acquired as late as 1966 and the remaining area can still be acquired until 20-1-69, each owner being thus deprived of the appreciation in value of his land depending upon when during all this long period the government decides to acquire it. Thus, if the land is notified in 1959 and is acquired in 1960, the loss of appreciation in value is only of one year. But the owner of another plot even if it is contiguous to it, if the government decides to acquire it in 1969, would be deprived of the appreciation in value which has taken place right from 1959 to 1969. The entire area is in the meantime frozen both for the purpose of compensation and as pointed out in Sharma's Case [[1966] 3 S.C.R. 557.] from its full beneficial enjoyment, the owner not knowing until government chooses to make Sec. 6 declaration whether it will ultimately be acquired or not. Under the Principal Act as construed in Sharma's Case [[1966] 3 S.C.R. 557.] once a Sec. 6 notification is issued Sec. 4 notification would become exhausted and the land not declared as needed thereunder would be relieved from acquisition. If government then desires to acquire any land in addition to the one so

declared it would have to be notified afresh and the government would be obliged to pay compensation at the market rate prevailing on such date. The practical effect of the Amendment Act is that by keeping alive Sec. 4 notification and by declaring the declarations made after the first declaration valid, the legislature dated back the basis of compensation which would have been, put for this validation, the rate prevailing at the date of Sec. 4 notification howsoever belated necessary. The real purpose of enacting Sec. 4 is thus to enable government to freeze an unlimited area by first notifying it under Sec. 4 and then to acquire bit by bit and pay compensation at the rate of prevailing at the date of Sec. 4 notification howsoever belatedly it may choose to acquire such bits provided it does so before 20-1-69 where the land is notified before 20-1-67 and before the expiry of three years where s. 4 notification is issued after 20-1-67 and thus avoid compensating the appreciation in value in the meantime to which the owner would have been entitled to. Though in the form the Amendment Act purports to validate acquisitions including orders and declarations made therefor, the real purpose of enacting the Amendment Act is to avoid having otherwise to compensate for the appreciation in the land value during the intervening period. It is well-settled principle that in determining the constitutionality of a provision impugned on the ground of its being an invasion on a fundamental right the courts must weigh not its from which may apparently look innocuous but its real effect and impact on such fundamental right. (cf. Re Kerala Education Bill [[1959] S.C.R. 995.]; Gajapati Deo v. State of Orissa [[1953] S.C.R. 357.].

It will be seen that Secs. 2 and 3 which enable piecemeal and multiple inquires and reports of a Collector or Collectors under s. 5A, diverse declarations, and awards in respect of different parcels of land covered by Sec. 4 notification are prospective. It is only Sec. 4 which is made retrospective. But it merely seeks to nullify the decisions in Sharma's Case [[1966] 3 S.C.R. 557.] and purports to keep alive Sec. 4 notifications which would have otherwise lost their efficacy and validates acquisitions including orders and Sec. 6 declarations purported to have been made on the basis of such Sec. 4 notifications. Section 4, however, does not contain any provision retrospectively amending Sec. 4 or Sec. 5A or Sec. 6 and merely seeks to revitalise Sec. 4 notifications already exhausted. The section does not also provide that an acquisition or an order or declaration under Sec. 6 made on the basis of such exhausted notification will be deemed to have been made or issued under Secs. 2 and 3 of the Amendment Act and as if the Amendment Act was in force at that date as is usually done in such validating Acts. A notification under Sec. 4 having exhausted itself after a declaration under Sec. 6 in respect of a part of the land covered by it and the rest of the land being relieved from acquisition there would be prima facie no basis for Sec. 6 declaration or acquisition unless such notification is retrospectively validated by a supporting amendment of Sec. 4 of the Principal Act or by making Secs. 2 and 3 of the Amendment Act retrospective and by a fiction deeming it to have been made under such amending provision.

Counsel for the petitioners raised the following contentions :-

> (1) that Act 13 of 1967 does not revive Sec. 4 notification dated November 13, 1959 which became exhausted after the first Sec. 6 declaration in 1961 was made and therefore no acquisition in respect of the rest of the land could be made without a fresh Sec. 4 notification. The contention was that Secs. 2 and 3 being prospective they did not resuscitate the Sec. 4 notification though subsequent acquisitions including orders and declarations under Sec. 6 are validated and that such validation has no efficacy as there would be no basis by way of Sec. 4 notification for such acquisition or order or declaration.
>
> (2) that Act 13 of 1967 is in derogation of the requirements of Art. 31(2) as it

purports to authorise acquisition without a fresh Sec. 4 notification thereby allowing compensation to be paid on the basis of an exhausted Sec. 4 notification and on the value of the land prevailing on the date of such exhausted notification.

(3) that the Amendment Act is in violation of Art. 14 in that

(a) where a Sec. 4 notification is made before 20-1-1967, Sec. 6 declaration can be made within 2 years from the said date, i.e., on or before 20-1-69. But where the land is notified after 20-1-67, Sec. 6 declaration would have to be made within 3 years from the date of such notification. In the former case a much longer period is provided for a Sec. 6 declaration than in the latter case;

(b) where a Sec. 4 notification is made after 20-1-67 compensation would be fixed on the basis of the value on that date but where a Sec. 4 notification is made before 20-1-67 compensation would be on the basis of the value on the date of the exhausted notification howsoever long a period has elapsed since such notification;

(c) if compensation has not been paid before 20-1-67 interest has to be paid on the compensation amount, but if compensation has been paid before 20-1-67 no interest is payable though acquisition in both the cases springs from the same Sec. 4 notification;

(d) in the case of Sec. 4 notification issued after 20-1-67 if Sec. 6 declaration is not made within three years a fresh Sec. 4 notification is necessary and compensation would be on the basis of the value on the date of such fresh notification but where a s. 4 notification is issued before 20-1-67 there is no defined period and Sec. 6 declaration can be made until 20-1-69. Therefore the owner gets compensation on the value at the date of s. 4 notification howsoever long the intervening period may be. A person affected by Sec. 4 notification issued after 20-1-67 is thus differently treated than the one who is affected by such a notification issued before 20-1-67. In Writ Petition No. 85 of 1967 an additional point was raised, viz., that though 16 colonies in village Kilkori were denotified under s. 48, the land of the petitioner though situate within the same notified area was not denotified thus wrongly discriminating him. In Writ Petition No. 223 of 1966, Mr. Mani contended that the Amendment Act merely seeks to reverse the decision of this Court, that the Act is not a legislative but a judicial act that though the Constitution has not brought about separation of powers nonetheless it does not confer unlimited powers on the legislature to encroach upon the judicial power. In other words, the legislature seeks to control the courts function by requiring of them a construction of law according to its views. The legislative action cannot be made to retroact upon past transactions and controversies and reverse decisions which the courts in exercise of their undoubted authority have made, for, that would mean not only exercise of a judicial function but in effect to sit as a court of review to which the past transactions and controversies are referred to. The question as formulated by him is whether a statute which simply validates acts and orders pronounced upon by a court as invalid is sustainable without a retrospective law providing that such acts and orders are deemed to have been made under the validating Act and as if such validating Act was in existence at the date of such acts and orders.

On the question whether the Amendment Act is in derogation of the requirements of Art. 31(2), the contention of the Solicitor-General was that it is not the law contemplated by Art. 31(2) as it merely amends Ss. 5A and 6 of the Principal Act and does not touch either s. 4 or s. 23 which deal with compensation, that it amends only the procedural provisions and that Sec. 4 thereof merely validates acquisitions including orders and notifications purported to have been made or passed to get over the difficulty create by Sharma's Case [[1966] 3 S.C.R. 557.].

The impugned Act does not frankly deal with compensation But as already stated it is not the form of a statute under challenge which matters but its substance and the direct impact it has on the constitutional requirements. Though Secs. 2 and 3 amend Ss. 5A and 6 of the Principal Act enabling multiple inquiries, reports and declarations in respect of different in respect of parcels of land notified under s. 4, the validating provisions of s. 4 have a direct impact on the question of compensation payable under the Act where a Sec. 4 notification has been issued at any time before 20-1-67, as has happened in the instant cases, a large area can be notified under Sec. 4 say, in 1959, and yet Sec. 6 declarations can be made by reason of s. 4 of the impugned Act at different times and as late as 1969. Yet, the compensation would be on the value in 1959 irrespective of the fact that such value has appreciated in the meantime due to the general spiralling of prices and not as a consequence of its having been notified under Sec. 4. It is manifest that but for the validating provisions of s. 4 of the Amendment Act government would have had either to proceed with the acquisition of the whole of the notified land or to proceed with part of it and thus exhaust the Sec. 4 notification and release the rest of the land from acquisition. If further land is subsequently needed a fresh notification under s. 4 would have been necessary and compensation would have to be paid on the basis of the value on that date. The impugned Act enables government to acquire the land once it is notified under Sec. 4 in different parcels and if the notification is of a date prior to 20-1-67 pay the same compensation depriving the owner of the appreciation of value during the intervening period. Such appreciation would have had to be compensated for but for Sec. 4 of the impugned Act. Each parcel of land in an area notified under Sec. 4 would thus be dealt with differently depending on at what point of time it is acquired. A piece of land would fetch compensation at X amount even though its market value has doubled by the time Sec. 6 declaration in respect of it is made. Another piece of the very same land would be awarded the same compensation even if the appreciation in its value is four-fold only because government can now acquire it at a subsequent date. The deprivation of the appreciated value to different owners or to the same owner if both the parcels of land belong to the same would vary depending upon when government chooses to acquire each of such parcels. Therefore, from the mere fact that the impugned Act does not amend Sec. 4 or Sec. 23 it is not possible to say that it is not an Act dealing with or affecting compensation. Besides, by amending Secs. 5A and 6 and validating acquisitions, orders and declarations the Amendment Act bring about changes of a fundamental character in the Act by converting the unitary character of an acquisition into a diversified one, in that instead of one inquiry and one report by the same officer, one declaration under Sec. 6 and one award, it permits several inquiries and several reports by different officers, several declaration and even several awards thus altering the very structure of the Principal Act. It is thus impossible to say that the impugned Act is not the law of acquisition contemplated by Art. 31(2).

It was, however, contended that even so, (1) the impugned Act does not alter the principle in s. 23 of the Act that compensation is to be fixed on the basis of market value at the date of s. 4 notification and that such mode of compensation is based on a long standing principle that the owner is not entitled to any increase in value as a result of the land having been notified; and (2) that the basis of compensation emerging from the Amendment Act has a bearing on the adequacy of compensation and hence the court is barred under the amended Art. 31(2) from making any

scrutiny.

The principle on which compensation is to be ascertained has undergone changes from time to time. In the Act of 1870, s. 24 provided that it should be fixed on the basis of the value at the time of paying compensation. That was changed in the Act of 1894 under which the date of s. 6 notification was made the crucial date for ascertaining compensation. This was changed in 1923 when the market value on the date of s. 4 notification was made the measure of compensation. This was done as s. 5A was then introduced for the first time in the Act. It was felt that the insertion of s. 5A would create a time gap between the notification under s. 4 and the actual acquisition. The date of s. 4 notification was accepted as the crucial date on the principle that in calculating compensation it was fair to exclude appreciation due to the land having been notified for a scheme for which it was sought to be acquired. The principle on which appreciation in value after the issuance of s. 4 notification was excluded is no longer valid or in accord with the present day realities for it is a notorious fact that prices of properties have been continuously rising for reasons into which it is neither necessary nor relevant to go into. The principle excluding appreciation as a result of s. 4 notification has been there for a long time. But the argument that s. 23 is not altered by the Amendment Act dose not lead us any further, for, the inquiry is what is the impact of the impugned Act on the question of compensation payable to the expropriated owner. If the impugned Act had not nullified the decision in Sharma's Case [[1966] 3 S.C.R. 557.] and had not ruled that s. 4 notification would not become exhausted, fresh notification under s. 4 would have become necessary and higher compensation would have become payable than now. The fact that neither s. 4 nor s. 23 is altered therefore dose not make any difference.

The impugned Act being a legislation after the 4th Constitution amendment of 1955 the question as to the adequacy of compensation is no longer amenable to judicial scrutiny but the amendment of Act. 31(2) in 1955 has not affected the constitutional requirement that no property can be compulsorily acquired except under a law providing for compensation or which provides principles fixing such compensation. As to what the term "compensation" in Art. 31 means has been the subject-matter of several decisions of this Court and the term has as result acquired a well settled interpretation. In Bela Banerjee's Case [[1954] S.C.R. 558. at P. 563-64.] Patanjali Sastri C.J. in repelling the contention that compensation in Entry 42 of List III could not mean full cash equivalent laid stress on the distinction between the word "compensation" in Art. 31 and the said Entry and the words "the acquisition of property on just terms" in s. 51 (XXXI) of the Australian Constitution Act and held that compensation meant just equivalent and the principles which should govern the determination of compensation amount to be given to the expropriated owner must ensure that what is determined must be such compensation, i.e., just equivalent. In striking down the proviso to s. 8 of the West Bengal Land Development and Planning Act, XXI of 1948 he observed that the fixing of an anterior date which has no relation to the value of the land when it is acquired, may be many years later, cannot but be regarded as arbitrary. Similarly in Namasivaya Mudaliar's Case [[1964] 6 S.C.R. 936.] this Court held, following Bela Banerjee's Case [[1954] S.C.R. 558. at p. 563-64.], that any principle for determination of compensation denying the owner all increments in value between a fixed date and the date of s. 4 notification must be regarded as denying to the owner the true equivalent of the land which is expropriated and that it is for the State to show that fixation of compensation on the market value on an anterior date does not constitute violation of the constitutional guarantee. This decision was in respect of a law before the 1955 amendment and the court expressed no opinion on the question whether it was possible by enacting legislation after the 1955 amendment to provide that compensation may be fixed on the basis of value prevailing on a certain anterior date. (cf. Jeejeebhai v. Assist. Collector [[1965] 1 S.C.R. 636.]).

It was thus well settled before the amendment of Art. 31(2) in 1955 that there could not be a valid acquisition unless the law authorising it provided compensation, i.e., just equivalent or principles fixing such compensation, i.e., just equivalent of what the owner is deprived of. The question as to the impact of the 1955 amendment of Act. 31(2) on this principle arose in P. Vajravelu Mudaliar v. Deputy Collector [[1965] 1 S.C.R. 614.]. This decision laid down the following propositions :-

> (i) whether the principles laid down in an impugned Act take into account all the elements to make up the true value of the property and exclude matters which are to be included is a justiciable issue;
>
> (ii) that the law fixing compensation or laying down principles governing its fixation cannot be questioned on the ground of inadequacy;
>
> (iii) that the connotation of "compensation" and the question of justiciablity are distinct concepts and should be kept apart while considering the validity of the impugned provision;
>
> (iv) that the fact that the amended Article uses the same words, viz., "compensation" and "principles" - shows that Parliament used them in the sense in which they were construed by this Court, and
>
> (v) that the legislature must provide for a just equivalent or lay down principles fixing such just equivalent and if that is done, such a law cannot be questioned on the ground of inadequacy of compensation.

As to how and in what manner the question of adequacy would arise was illustrated by giving various examples. Article 31(2) as amended means therefore that if the impugned Act either fixes just equivalent as compensation or lays down principles for fixing such just equivalent it cannot be impeached on the ground that such compensation is inadequate or that when working out those principles the resultant compensation is inadequate. But this does not mean that the amendment permitted the legislature to fix inadequate compensation or to lay down principles fixing compensation which is not just equivalent. Such a theory attributes an intention to the legislature to enact a law in terms of contradiction, for, compensation which is not just equivalent is no compensation as interpreted by this Court and understood when Art. 31(2) was amended and giving any such meaning to that Article would be contrary to the well settled principle of construction that where the legislature uses in an Act a legal term which has received judicial interpretation it must be assumed that it is used in the sense in which it has been judicially interpreted unless a contrary intention appears. At p. 629 of the report it has clearly been laid down that

> "If the legislature though ex facie purports to provide for compensation or indicates the principles for ascertaining the same but in effect and substance takes away a property without paying compensation for it, it will be exercising power which it dose not possess. If the legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all one can easily hold that the legislature made the law in fraud of its powers."

Following this decision this Court held in the Union of India v. Metal Corporation of India [[1967] 1 S.C.R. 255.] that the principles laid down in the impugned Act were not in accord with Art. 31(2) and that an acquisition law "to justify itself has to provide for the payment of a just equivalent to the property acquired or lay down principles which are not arbitrary but which are relevant to the fixation of compensation. It is only when the principles stand this test that the adequacy of the resultant compensation falls outside the judicial scrutiny under the second limb of Art. 31(2)."

It is true that in Vajravelu's Case [[1965] 1 S.C.R. 614.] it was held that in the context of the continuous rise in land prices, fixation of an average price over 5 years amounted to ascertaining the price of the land in or about the date of acquisition and that omission of one of the elements which should properly be taken into account for fixing compensation though resulting in inadequacy of compensation would not constitute fraud on power. But there is no analogy between the provisions of the impugned Act in that case and the instant cases. Though that Act varied the method of ascertainment of compensation provided by s. 23 of the Principal Act it provided for taking the average of prices prevailing during the 5 years in or about the date of acquisition. By striking the average of prices during those 5 years the Act actually took into account the appreciation in value 5 years the Act actually took into account the appreciation in value during the 5 years preceding the acquisition for fixing the compensation. The position in the instant cases is quite different. The impugned Act does not provide for any such average price as was done in Vajravelu's Case [[1965] 1 S.C.R. 614.]. Though s. 4 apparently validates acquisitions, orders and notifications made on the basis of s. 4 notification issued before 20-1-67, in effect and substance it seeks to treat such a notification under s. 4 which had lost its efficacy and had become exhausted where s. 6 declaration has been made for a part of the land covered by such s. 4 notification as still outstanding. This is sought to be done without any legislative provision in the impugned Act revitalising the notification which had become dead and inefficacious. Such a thing could not be done by merely validating acquisitions, orders and declarations without revitalising by some provision the notifications under s. 4 which had become exhausted and on which such acquisitions including orders and declarations are founded. Not could it validate inquiries and reports under s. 5A and declarations under s. 6, all of which are made on the basis of a notification which was no longer alive except by retrospectively amending s. 4 and declaring such s. 4 notification as having been made under such amended s. 4. Not having so done, the direct result of the validating provisions of s. 4 of the impugned Act is to fix compensation on the basis of the market value existing on the date of s. 4 notification which had exhausted itself. By validating the acquisitions, orders and declarations made on the basis of such an exhausted notification the impugned Act saves government from having to issue a fresh s. 4 notification and having to pay compensation calculated on the market value as on the date of such fresh notification and depriving the expropriated owner the benefit of the appreciated value in the meantime. The real object of s. 4 of the impugned Act is thus to save the State from having to compensate for such appreciation under the device of validating all that is done under an exhausted s. 4 notification and thus in reality fixing an anterior date, i.e., the date of such a dead s. 4 notification for fixing the compensation. We apprehend that s. 4 of the impugned Act suffers from a two-fold vice : (i) that it purports to validate acquisitions, orders and notifications without resuscitating the notification under s. 4 by any legislative provision of the basis of which alone the validated acquisitions, orders and declarations can properly be sustained and (2) that its provisions are in derogation of Art. 31(2) as interpreted by this Court by fixing compensation on the basis of value on the date of notifications under s. 4 which had become exhausted and for keeping them alive no legislative provision is to be found in the impugned Act. It is therefore not possible to agree with the view that the purpose of s. 4 is to fill in the lacuna pointed out in Sharma's Case [[1966] 3 S.C.R. 557.] nor with the view that it raises a question of adequacy of compensation. The section

under the guise of validating the acquisitions, orders and notifications camouflages the real object of enabling acquisitions by paying compensation on the basis of values frozen by notifications under s. 4 which by part acquisitions thereunder had lost their efficacy and therefore required the rest of the land to be notified afresh and paying compensation on the date of such fresh notifications.

In this view, it is not necessary to go into the other questions raised by the petitioners and we refrain from expressing any opinion on them. We would declare s. 4 as invalid and allow the petitions with costs.

ORDER

In accordance with the opinion of the majority the petitions are dismissed. No order as to costs.

G.C.

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