BOMBAY HIGH COURT

Ganesh Narayan

Vs.

Commissioner

Special Civil Appln. No. 458 of 1902 with Spl. Civil Appln. No. 6 of 1963 and Spl. Civil Appln. No. 62 of 1963

(Tambe and Abhyankar, JJ.)

10.08.1964

JUDGMENT

Tambe, J.

1. All these applications can be disposed of together as one of the questions raised in these applications is common and that question relates to the legality and validity of sub-sec. (4) of Section 3 of the Bombay Commissioners of Divisions Act, 1957, (Bombay Act No. VIII of 1958). It is the contention of the petitioners in all the three cases that Sub-Section (4) of Section 3 of the aforesaid Act suffers from the vice of excessive delegation of legislative power or authority. The facts in all these three cases are similar. It would be sufficient if facts in one case are fully stated, and we proceed to state facts in Special Civil Application No. 62 of 1963 inasmuch as that was the case in which arguments were advanced by Mr. D.T. Mangalmurti and which had been adopted by Mr. Kukday and Mr. Mandlekar, Counsel appearing for the petitioners in the other two cases, Mr. Kukday also had supplemented the argument of Mr. Mangalmurti on one aspect of the case relating to the main question.

2. The four petitioners in Special Civil Application No. 62 of 1963 are tenure holders (Bhumiswami) of certain survey numbers situate in mouza Wadgaon, in Chanda Tahsil of Chanda District. Chanda District is situate in the Nagpur Commissioner's Division. Petitioner No. 1 holds S. No. 85/1, area 4.33 acres, petitioner No. 2 holds S. No. 85/2, area 4.33 acres, petitioner No. 3 holds S. No. 95, area 4.71 acres and petitioner No. 4 holds y. No. 94, area 7.40 acres.

3. The Commissioner of Nagpur Division in exercise of the powers conferred on him under Section 4 of the Land Acquisition Act, issued a notification of date 28-1-1961 saying that certain lands in mouza Wadgaon including the portions of the aforesaid lands of the petitioners, were

needed or were likely to be needed for a public purpose. That notification was published in the Government Gazette of 2-2-1961. That notification however was cancelled and another notification under Section 4 of the Land Acquisition Act was issued by the Commissioner Nagpur Division and it was published in the Government Gazette of 19-7-1962. That notification is in the following terms :

> "Whereas it appears to me that lands in the village Wadgaon in the Chanda tahsil of the Chanda District as shown in the schedule below, are needed or likely to be needed for a public purpose, namely for the extension of gaothan, notice is hereby given to all whom it may concern that, in exercise of the powers conferred by Section 4 of the Land Acquisition Act, I of 1894, as amended by Act No. XXXVIII of 1923, I have authorized the Special Land Acquisition Officer, Chanda, for the time being engaged on this undertaking, to enter upon and survey the lands, and to do all other acts required for the proper execution of his work, as provided for or specified in the said section;

And whereas I am of the opinion that the said lands are arable lands and their acquisition is urgently necessary, it is further directed under Sub-Section (4) of Section 17 of the said Act, that the provisions of Section 5-A of the said Act, shall not apply in respect of the said lands." in the schedule attached to this notification, lands at mouza Wadgaon in the Chanda tahsil which Were likely to be needed for a public purpose were shown as follows :

S. No.	Approximate area to be acquired (more or less)Acres.
85/1	2.10
85/2	1-90
94	0-16
95	0.84

4. Subsequently, the Commissioner of Nagpur Division issued a further notification in exercise of the powers under See. 6 of the Land Acquisition Act and it was published in the Government Gazette of date 29-11-1962. In this notification it had been declared under Section 6 of the Land Acquisition Act, as amended, that the Commissioner was satisfied that the said land (land mentioned in the schedule attached to the notification issued under Section 4) was needed for the public purpose as stated in the notification. In the said notification, the Commissioner also in exercise of the powers under See. 17(1) of the said Act, directed that possession of the said lands may be taken on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1) of the Act, It is these aforesaid two notifications i.e. notification under Section 4 published in the Government Gazette of date 19-7-1962 and the notification under Section 6 published in the Government Gazette of date 29-11-1962 which the petitioners seek to set quashed by this petition under Articles 226 and 227 of the Constitution of India. The petitioners have also prayed that this Court may be pleased to issue appropriate writ or order restraining the respondents from taking any action under the said notifications or taking possession of the

petitioners' lands. The respondents to this petition are, the State of Maharashtra, the Commissioner Nagpur Division, the Collector of Chanda and the Special Land Acquisition Officer, Chanda.

5. Turning to the facts of Social Civil Application No. 458 of 1962, the petitioners 16 in number are residents of Tillage Dhapewada situate in Gondia tahsil of Bhandara District. Bhandara District is within the Nagpur Commissioner's Division. The petitioners are cultivators and agriculturists. It may be stated that though the petition shows that there are 17 petitioners the petition of petitioner No. 1 was dismissed.

6. The Commissioner, Nagpur Division, in exercise of the powers under Section 4 of the Land Acquisition Act issued a notification of date 13-12-1961 declaring that certain lands including the lands of the petitioners were needed or were likely to be needed for a public purpose, namely for the shifting of abadi of village Dhapewada. In this notification it is further stated that the Commissioner being of the opinion that the said lands being arable lands and their acquisition being urgently necessary it was directed that the provisions of Section 5-A of the Act would not apply in respect of the said lands. The Commissioner also published a notification on 15-2-1962 in exercise of the powers under Section 6 of the Land Acquisition Act. It is these notifications that the petitioners are challenging before us by this petition under Articles 226 and 227 of the Constitution of India. The reliefs claimed by them are similar to those claimed by the petitioners in Special Civil Application No. 62 of 1963.

7. The facts in Special Civil Application No. 6 of 1963 are. The three petitioners are residents of Mouza Kasba Digras, situate in Darwha Tahsil of Yeotnial District and they have got cultivation at Chincholi. Yeotmal District is within the Nagpur Commissioner's Division. The petitioners are cultivators and are Bhumiswamis of the agricultural lands in their possession.

8. The Commissioner Nagpur Division in exercise of the powers under Section 4 of the Land Acquisition Act issued a notification which was published in the Government Gazette of date 8-11-1962, that certain lands mentioned in the schedule, Including the portions of the land of which the petitioners are Bhumiswamis, were needed or were likely to be needed for a public purpose, namely for the extension of gaothan for flood sufferers. In this notification the Commissioner also has declared that he was of the opinion that the lands were arable lands and their acquisition was urgently necessary. He has therefore directed under Sub-Section (4) of Section 17 of the said Act that the provisions of Section 5-A of the said Act shall not apply in respect of the lands mentioned in the schedule. It is this notification that the petitioner is challenging by this petition filed under Articles 226 and 227 of the Constitution of India. The reliefs claimed by the petitioners are similar to those claimed in Special Civil Application No. 62 of 1963. We do not consider it necessary to reproduce the notifications in these two latter cases because in substance they are similar to the notifications in Special Civil Application No. 62 of 1963. We have fully reproduced the material part of the said notification above.

9. In order to appreciate the principal common contention raised by counsel in all the three cases,

it would be convenient at this stage to notice certain provisions of the Land Acquisition Act and then certain provisions of the Bombay Commissioners of Divisions Act.

10. Now, the Land Acquisition Act had been enacted as far back as 1894 by the Central Legislature as it was found expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition.

11. Sections 1 to 3 are preliminary in nature dealing with the name of the Act, and definitions of certain terms and expressions used in the Act. Sub-Section (1) of Section 4 provides that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Sub-Section (2) enables any Officer authorized, by the Government to enter upon and survey the lands mentioned in the notification for the purpose of determining whether the lands should be acquired or not. Sub-Section (5) provides for payment of damages by the Officer who is authorized to go on the lands to the cultivators whose lands may get damaged on account of survey, Sub-Section (1) of Section 5-A gives a right to a person interested in any land which has been notified under Section 4, Sub-Section (1) as being needed or likely to be needed for a public purpose, to file his objections to the acquisition of his land or any part thereof, within thirty days of the publication of the notification. Sub-Section (2) of Section 6-A requires the Collector before whom the objections have been lodged to make enquiries after giving the objector a reasonable opportunity of being heard into the objections. After the objections have been heard by the Collector, the Collector is required to make his report and forward the same along with relevant papers together with the record of proceedings to the appropriate Government, and after considering the objections of various people and the report of the Collector the appropriate Government has to take a final decision. The decision when taken by the appropriate Government becomes final. If the appropriate Government after considering the objections and the report of the Collector is satisfied that a particular land is required for a public purpose, notification under Section 3 of the Land Acquisition Act is required to be issued declaring that a particular land is needed for a public purpose or for a Company. Sub-Section (2) of Section 6 requires the aforesaid notification relating to the declaration of the Government to be published in the Official Gazette. Sub-Section (3) provides that the said declaration shall be conclusive evidence that the land is needed for a public purpose or a Company, as the case may be. The said Sub-Section further requires the appropriate Government after making such declaration to acquire the land in the manner prescribed in the Act, which it declared to be needed for a public purpose or for a Company. Sections 7 to 11, 13 and 14 relate to the procedure to be followed by the Collector in making an enquiry relating to the compensation to be held to the persons whose lands are being acquired under the notification after hearing them. Section 12 requires that the Collector shall file his award in his office relating to the amount of compensation directed to be paid to the persons whose lands had been acquired. Section 15

provides that the Collector in determining the amount of compensation shall be guided by the provisions of Sections 23 and 24 of the Land Acquisition Act. It is not necessary to go in details as to the provisions of Sees. 23 and 24. Section 16 provides that after an award has been made by the Collector under Section 11, he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Section 18 gives a right to any person interested and who has not accepted the award to make an application in writing to the Collector to refer the matter to a Civil Court together with the objection to the correctness of the measurement of the land, or the amount of compensation awarded by the Collector or to the determination of the question as to the person to whom compensation is held payable by the Collector. Section 19 requires the Collector before whom an application under Section 18 is made to refer the matter to the Civil Court. Thus the normal scheme of the Land Acquisition Act is that the decision whether a particular land is needed for a public purpose or for a Company or not is to be taken by the appropriate Government. This decision however has to be arrived at after hearing objections of the persons who are likely to be affected by the acquisition. When such decision is taken land acquisition proceedings are to be conducted by the Collector and the provisions of the Act require that the acquisition would be only on determination of the amount of compensation. The authority to determine the amount of compensation is conferred on the Collector. However, there is no absolute finality given to his award. A person aggrieved by his award has a right to take the matter by the Civil Court and it is ultimately the Civil Court that determines the amount of compensation payable to the person whose land has been acquired under the provisions of the Land Acquisition Act; It is only when the amount of compensation has been determined that the Collector is empowered, to take possession of the land and on his so taking possession the land vests in the Government. This is, in short, the scheme of the Land Acquisition Act.

12. There is however little variation in the said general scheme and that is provided in Section 17 of the Act. Sub-Section (1) of Section 17 provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-Section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government free from all encumbrances. Sub-Section (2) of Section 17 provides that whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the Immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river side or ghat station, or of providing convenient connection with or access to any such station, the Collector may. Immediately after the publication of the notice mentioned in Sub-Section (4) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances. Sub-Section (3) requires the Collector to pay compensation for such sudden dispossession to the persons who have been deprived of the possession of their lands. If the amount of compensation

is not accepted then the amount gets determined in proceedings for determining the amount of compensation for the acquisition of the land. Sub-Section (4) provides that in the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-Section (1) or Sub-Section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4, Sub-Section (1). Thus the variation is that in a case of urgent need it is open to the appropriate Government to give a direction that the hearing of objections to the acquisition of the land would be dispensed with and the section enables the Government to direct the Collector to take immediate possession before an award determining the amount of compensation is made. But it must be noticed that the land relating to which orders could be made under Section 17 are lands which are arable or waste lands.

13. Now, "appropriate government" has been defined in clause (ee) of Section 3 of the Land Acquisition Act and it means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government. It would thus be seen that the powers conferred on the State Government or the Central Government under the Land Acquisition Act may be summarized as under. Power under Section 4 is conferred to make a declaration that any particular land is needed or is likely to be needed for a public purpose or for a Company. Under Section 5-A, power is conferred to finally decide after considering the objections whether the land is needed for a public purpose or for a Company or not and then power is conferred to issue a notification under Section 6 making a declaration to that effect. There is also special power under Section 17 to decide whether there is an urgent need for dispensing with the hearing of the objections to the acquisition and ordering taking immediate possession of arable and waste land before an award determining the amount of compensation has been made to meet the emergency or the urgent need. It is not in dispute that these powers were exercised by the State Government in this State till the State Government had empowered sometime in the year 1958 the Commissioners to exercise these powers.

14. and this brings us to the provisions of 'the Bombay Commissioners of Divisions Act. Now, in the year 1958, the Legislature of the then State of Bombay thought it expedient to provide for the offices of Commissioners of divisions in the State of Bombay. The Legislature therefore enacted the Bombay Commissioners of Divisions Act to provide for the offices of Commissioners of divisions in the State of Bombay, for prescribing their powers and duties and to make provisions consequent on the provision for such offices and for certain other matters. This Act was published in the Government Gazette on 10-1-1958, after having previously received the assent of the President to its enactment. We would consider in some detail the material provisions of this Act.

15. Section 1 gives the title of the Act and provides that the Act extends to the whole of the State of Bombay and that it shall come into force on such date as the State Government may, by

notification in the Official Gazette, appoint. Section 2 gives definitions of certain terms and expressions used in the Act, Commissioner has been defined as the Commissioner of a division appointed under the law relating to land revenue as amended by the Schedules to this Act. Sub-Section (1) of Section 3 is in the following terms :

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

Sub-Section (2) runs as under :

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

Sub-Section (3) provides :

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

Sub-Section (4) provides :

> "The State Government may confer and impose on the Commissioner powers and duties tinder any other enactment for the time being in force and for that purpose may, by a notification in the Official Gazette, add to or specify in the Schedule the necessary adaptations and modifications in that enactment by way of amendment and thereupon -
> (a) every such enactment shall accordingly be amended and have effect subject to the adaptations and modifications so made, and (b) the Schedule to this Act shall be deemed to be amended by the inclusion therein of the said provision for amending the enactment."

Sub-Section (5) provides that the State Government may at any time in like manner cancel a notification under Sub-Section (4), and thereupon the relevant enactment shall stand unamended by the cancelled notification and the Schedule shall be altered accordingly.

16. Now, the State Government issued a notification in the Official Gazette bringing this Act into force. This Act came into force by the notification published in the Official Gazette of 3-3-1958. It is not necessary to go in details; suffice It to say that the State of Bombay was divided into six

divisions and by a notification issued on 3-3-1958, the Commissioners of these divisions were appointed.

17. In exercise of the powers conferred by Sub-Section (4) of Section 3 of the said Act, the State Government issued the following notification.

> "Bombay Commissioners of Divisions Act (Bom. VIII of 1958), Section 3(4) - Notfn. No. LAQ 2558/V, In exercise of the powers conferred by Sub-Section (4) of Section 3 of the said Act, the Government of Bombay has conferred and imposed on the Commissioner concerned the powers and duties under the enactments hereinafter specified and for that purpose has added to and specified in the Schedule to the said Act the following adaptations and modifications in those enactments by way of amendment, as follows :

The Land Acquisition Act, 1894, (1 of 1894), in its application to the Vidharbha region of the State of Bombay.

1. In Section 4 -

> (1) in Sub-Section (1), after the words "appropriate Government" the words "or the Commissioner" shall be inserted.
> (ii) in Sub-Section (2), after the words "such Government" the words "or, as the case may be, toy the Commissioner" shall be inserted.

2. In Section 5A, in Sub-Section (2) after the words "appropriate Government", where they occur at two places the words "or, as the case may be, of the Commissioner" shall be inserted.

3. In Section 6 –

> (i) in Sub-Section (i)
> (a) after the words "appropriate Government" the words "or, as the case may be, the Commissioner" shall be inserted.
> (b) after the words "its orders" the words "or, as the case may be, under the signature of the Commissioner" shall be inserted.
> (ii) In Sub-Section (3), after the words "appropriate Government" the words "or, as the case any be, the Commissioner" shall be inserted.

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

5. in Section 17 –

> (i) in Sub-Section (1), after the words "appropriate Government" the words , "or, the

Commissioner" shall be inserted.
(ii) In Sub-Section (2), -
(a) after the words "the State Government" the words "or the Commissioner" shall be inserted;
(b) after the words "appropriate Government" the words "or, as the case may be, of the Commissioner" shall be inserted;
(iii) in Sub-Section (4) -
(a) after the words "appropriate Government" where they occur at two places, the words "or, as the case may be, of the Commissioner" shall be inserted;
(b) for the words "it does so direct" the words "it or he does so direct" shall be substituted."

18. It would be seen that the aforesaid notification issued by the State Government in exercise of its powers under Sub-Section (4) of Section 3 of the Bombay Commissioners of Divisions Act confers powers on the Commissioners and enables them to exercise the powers under Sections 4, 5A, 6 and 17 which were upto the publication of the notification exercisable by the State Government alone, and it is in exercise of the powers derived under the aforesaid notification that the Commissioner of Nagpur Division has issued notifications under Sections 4 and 6 in these three cases which have been challenged by the petitioners and which the petitioners seek to get quashed.

19. It may be stated that neither Mr. Mangalmurti nor Mr. Kukday nor Mr. Mandlekar contend that the aforesaid notification issued by the State Government and which has been published in the Government Gazette of 11-9-1958 is bad on the ground that it is in excess of the powers conferred on the State Government under Sub-Section (4) of Section 3 of the Act. The contention on the other hand is that the notification is bad because it is a delegated legislation and Sub-Section (4) of Section 3 is ultra vires because the Legislature in enacting the Sub-Section has delegated to the State Government its legislative powers. In the first instance, Mr. Mangalmurti argued that though it is open to the Legislature to allow municipalities or local bodies to make bye-laws or rules for the purpose of carrying out the provisions of the Act, or leave it to the executive to bring a legislation into force on such date as it likes, it is not open to the Legislature to so anything further than that and if the Legislature does it then the legislation is liable to be struck down on the ground that it is excessive delegation of legislative powers not permissible under the authority derived by it under Article 245 or Article 246 of the Constitution. Mr. Mangalmurti has referred us to the decision in *Jatindra Nath Gupta v. Province of Bihar*[1]*,*

20. Now, the question as to whether a Legislature could delegate its legislative functions to any other authority and its limits has been examined in detail by the Supreme Court in In re, the Delhi Laws Act (1912), 1951 SCR 747 . It may be stated that as some doubt was felt by the Government of India on account of the decision in Jatindra Nath's case, 1949 FCR 595 which is referred to by Mr. Mangalmurti, reference was made to the Supreme Court by the President under Article 143 of the Constitution for its opinion as to the validity of the Central Acts

mentioned therein. The theory had been examined in detail by all the learned Judges who heard the case. It may be stated in brief that the theory that the Legislature cannot delegate its legislative functions to anybody was tried to be supported on three doctrines. The first doctrine was separation of power. It was canvassed that the governmental powers were divided into three units, executive, judiciary and legislature. It was contended that the division of power is so exclusive and absolute that it is not open, to any unit to part with its power and allow the other unit to perform it. It was therefore not open to a Legislature to delegate any legislative function to an executive unit. The second doctrine was that a delegate cannot further delegate its powers, it was canvassed that the Legislature was a delegate of people for the purpose of Legislation. It may be stated that at one time it had been canvassed In Indian Courts that the Indian Legislature was a delegate of Parliament and therefore it had no power to, further delegate its legislative powers to the executive, and the third doctrine that was canvassed was that the Legislature was a trustee to which legislative powers had been entrusted by the Constitution. First two doctrines, namely, the doctrine of separation of power and the doctrine of the Legislature being a delegate and, therefore it was not open to it to further delegate its legislative powers, have not been accepted by the Supreme Court. The third doctrine, namely that the legislative powers had been entrusted to the Legislature by the Constitution and therefore it was the Legislature that must discharge its responsibility and duty entrusted to it, has been accepted by the Supreme Court. The Supreme Court how ever has defined the scope and ambit of the trust which the Constitution has entrusted to the Legislature. The principles enunciated and deducible from the Delhi Laws Act case have been considered in various cases. It is not now necessary to refer to these decisions. Suffice it to say that now it is well settled that what the Legislature must do is to perform its essential legislative function and not that it must itself legislate as regards all details. It has been held by the Supreme Court that it is inherent in the exercise of the legislative powers to delegate to an outside agency subordinate or ancillary legislative functions for the purpose of carrying out the purpose of the Act. This is how Mr. Justice Gajendragadkar, as he then was, has expressed the view of the Supreme Court in delivering the judgment in *Vasanlal Maganbhai v. State of Bombay*[2], The learned Judge observed :

[1]1349 FCR 595

[2] AIR 1961 SC 4

> "It is now well established that the power of delegation is a constituent element of the legislative power as a whole, and in modern times when the legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts.

The extent to which such delegation is permissible is also now well settled. The legislature cannot delegate its essential legislative function in any case. It must lay down the legislative policy and principle, and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf."

It is in the light of these well settled principles that the provisions of each enactment which has been challenged on the ground of excessive delegation will have to be examined.

21. In view of these well settled principles it is difficult to accept Mr. Mangalmurti's first contention that what is permissible to the Legislature to do is to permit only municipalities or local bodies to make rules or bye-laws or permit the executive to decide the point of time at which an Act enacted by the Legislature is to be brought into force.

22. It is next contended by Mr. Mangalmurti that Sub-Section (4) of Section 3 of the Bombay Commissioners of Divisions Act authorizes the State Government to confer powers on the Commissioners to do certain acts which the State Government is required to do under the provisions of certain enactments. It is the argument of Mr. Mangalmurti that conferral of power on a person to do a thing under the provisions of all Act is an essential legislative function. Mr. Mangalmurti concedes that it being now open to the State Legislature to amend the Land Acquisition Act, the Legislature could by enacting a law empower the Commissioners to exercise powers and perform duties under the Land Acquisition Act which were formerly exercisable by the State Government but the Legislature has not done that. On the other hand, it has allowed the State Government to do it. Though it was open to the State Legislature to confer power on the Commissioners, it was not open to the Legislature to empower the State Government to confer such power on the Commissioner. In doing so, under Sub-Section (4) of Section S of the Act, the State Legislature has parted with its essential legislative function and therefore the provisions of the said Sub-Section were ultra vires.

23. It is not in dispute and Mr. Mudholkar, who appears for the State Government, has not disputed that conferral power is a legislative function. It is however his contention that it cannot be stated as a broad proposition of law that leaving it to the executive to confer certain powers on certain authorities would necessarily amount to delegation of an essential legislative function. Each case will have to be considered in the context of the provisions of that Act. In our opinion, there is force in the contention raised by Mr. Mudholkar. Her Majesty the *Queen v. Burah*[3], to which Mr. Mangalmurti has also drawn our attention, to a certain extent supports Mr. Mudholkar's contention. Facts in that case were : The Governor-General of India in Council enacted an Act XXII of 1S69 entitled as "An Act to remove the Garo Hills from the jurisdiction of the tribunals established under the General Regulations and Act, and for other purposes." Section 2 of Act provided that this Act shall come into operation on such day as the Lieutenant-Governor of Bengal shall

[3]5 Ind App 178. (PC)

by notification in the Calcutta Gazette-direct. Section 3, provided for the repeal of certain enactments. Section 4, provided, "save as hereinafter provided, the territory known as the Garo Hills, bounded on the north and west by the district of Gawalnara, on the south by the district of Mymensingh, as defined by the Revenue Survey and on the east by the Khasi Hills, is hereby removed from the jurisdiction of the Courts of Civil and Criminal Judicature, and from the control of the offices of revenue constituted by the Regulations of the Bengal Code and the Acts passed by any Legislature now or heretofore established in British India, as well as from the law

prescribed for the said Courts and offices by the Regulations and Acts aforesaid. and no Act hereafter 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 be specially named therein." Section 5 provided that the administration of civil and criminal justice, and the superintendence Of the settlement and realization of the public revenue, and of all matters relating to rent, within the said territory, are hereby vested in such Officers as the said Lieutenant Governor may, for the purpose of tribunals of first instance or of reference and appeal, from time to time appoint. The officers so appointed shall, in the matter of the administration and superintendence aforesaid, be subject to the direction and control of the said Lieutenant-Governor, and be guided by such instructions as he may from time to time issues. Section 9 enabled the Lieutenant-Governor to extend the provisions of this Act or any of them to the Jaintia Hills, the Naga Hills, and to such portion of the Khasi Hills as for the time being forms part of British India.

24. Under the provisions of the said Act, the Lieutenant-Governor of Bengal, on the 14th of October, 1871, issued a notification, which was published in the Calcutta Gazette, and extended the provisions of the Act to the Khasi and Jaintia Hills and excluded therefrom the jurisdiction of the Courts of Civil and Criminal Judicature, and specified in the notification the boundaries of the said territory from which the jurisdiction of the Courts of Civil and Criminal Judicature was excluded. By another notification dated 14th October 1871, the Lieutenant-Governor conferred on the Commissioner the powers of the High Court in the civil and criminal cases triable in the Courts of the said district. Respondent Burah was tried by the Deputy Commissioner of the Khasi and Jaintia Hills on the charge of murder and he was sentenced to the punishment of death. The sentence was afterwards commuted to transportation for life. The accused preferred an appeal in the High Court of Calcutta. The question whether the jurisdiction of the High Court to deal with the appeal was taken away by reason of the provisions of the aforesaid Act and the notification issued thereunder was considered by a Full Bench of the Calcutta High Court and the majority decision was that the High Court had jurisdiction to decide the appeal and the jurisdiction was not taken away. Against this decision of the High Court, an appeal was taken to the Privy Council and the question that was agitated before their Lordships was whether the provision purporting to authorize the Lieutenant-Governor of Bengal to extend the Act of 1869 to the Khasi and Jaintia Hills, was in excess of the legislative powers of the Governor-General in Council. It was contended on behalf of Burah that it was in excess of the legislative powers of the Governor-General in Council, hut the contention was not accepted by their Lordships. At p. 194 their lordships observed :

> "What has been done is this. The Governor-General in Council has determined, in the due and ordinary course of legislation, to remove a particular district from the jurisdiction of the ordinary Courts and offices, and to place it under new Courts and offices, to be appointed by and responsible to the Lieutenant-Governor of Bengal; leaving It to the Lieutenant-Governor to say at what time that change shall take place; and also enabling

him, not to mate what laws he pleases for that or any other district, but to apply by public notification to that district any law, or part of a law, which either already was, or from time to time might be, in force, by proper legislative authority, 'in the other territories subject to his government.' This according to their Lordships was open for the competent Legislature to do. At p. 195, it was observed.

"The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute. Where plenary powers of legislation exist as to particular subjects, whether in an imperial or in a provincial Legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted "by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient."

25. It would thus be seen that a legislation which empowers an outside agency to confer certain powers on certain officers is not necessarily bad simply on account of the fact that it empowers outside agency to confer powers on others. What is required to be seen is whether in enacting the law the Legislature has exercised its Judgment and laid down its policy. If that has not been done by the Legislature hut untrammelled powers have been conferred on an outside agency then that would be open to challenge on the ground of excessive delegation of legislative powers. It is in this light that the provisions of the Act will have to be examined when we proceed to examine the provisions of the Act.

26. Mr. Mangalmurti then argued that by virtue of Sub-Section (4) of Section 3, the State Government has been empowered to amend enactments for the time being in force. According to Mr. Mangalmurti, effecting an amendment in an enactment is an essential legislative function. The State Legislature instead of performing this function by itself has delegated its legislative function to the State Government. The delegation therefore is in excess of the permissible limits. Mr. Manualmurti referred us to the following passages from the judgments delivered by some of the presiding Judges in the Delhi Laws Act case, 1951 SCR 747 . He first referred us to the following two observations from the judgment of Mahajan, J. At p. 932 (of SCR) : at p. 384 (of AIR) his Lordship observed :-

"This case brings out the extent to which conditional legislation can go, hut it is no authority justifying delegation of legislative power authorizing an external authority to modify the provisions of a legislative enactment."

At page 959 (of SCR) it was observed :

"Power to repeal or amend laws is a power which can only be exercised by an authority that has the power to enact laws. it is a power co-ordinate and co-extensive with the power of the legislature itself. In bestowing on the Central Government and clothing it

with the same capacity as is possessed by the legislature itself the Parliament has acted unconstitutionally."

At p. 1009 (of SCR) MuKherjea, J. observed :

> "To repeal or abrogate an existing law is the exercise of an essential legislative power, and the policy behind such acts must be the policy of the legislature itself."

At page 139 of Basil's Commentary on the Constitution of India, Fourth Edn., Volume 4, it has been observed :

> "The power to repeal or amend a law is a legislative power. What the Legislature can validly delegate is the power to make regulations for carrying out the purposes of the Act, not to amend it."

27. it is true that these observations read by themselves appear to support the contention of Mr. Mangalmurti that it is not open to the Legislature to authorize an outside agency to amend or modify an existing law whatever may be the nature of the amendment. But, in our opinion, such a proposition in this absolute form does not follow when these observations are understood in the context in which they have been made. Now, the observations of Mahajan, J. at p. 932 (of SCR) are in the context of repelling an argument that the decision in *King Emperor v. Benoari Lal*[4] was an authority for holding that the legislature was competent to authorise an external authority to modify the provisions of a legislative enactment. The observations at page 959 are In the context of the extent of the power to amend and repeal conferred on the Central Government by Section 2 of Part C States (Laws) Act, 1950. Similarly, the observations of Mukherjea, J. at page 1009 have also been made in the context of the extent of the power of repeal or amendment conferred on the State Government by the same section. The passage from Basu's book is founded on the paid observations in the Delhi Laws Act case 1951 SCR 747 .

28. The decision in the Delhi Laws Act case, 1951 SCR 747 was examined by their Lordships of the Supreme Court in *Rajanarain Singh v. Chairman, Patna Administration Committee*[5], where the question directly arose whether the conferral of power by a Legislature on an outside agency to effect modifications in other enactments was ultra vires. It is not necessary to state in detail the facts of this case. Suffice it to say that Section 3(1)(f) of the Patna Administration Act of 1915 empowered the Local Government to extend to Patna the provisions of any section of the Bengal Municipal Act of 1884 subject to such restrictions and modifications as the Local Government may think fit. Section 6(b) empowered the Local Government to include within Patna any local area in the vicinity of the same and defined in the notification. The Local Government included within Patna certain adjoining area and to that area in exercise of the powers under Section 3(1)(f) and thereafter by a notification dated 23rd April 1951, the Governor of Bihar picked Section 104 out of the Bihar and Orissa Municipal Act of 1922, modified it and extended it in its modified firm to the Patna Administration and Patna Village areas. The result was that the

residents in the area to which the Act was extended became liable to pay certain taxes which formerly they were not required to pay prior to the publication of the notification. One of the persons affected moved the Supreme Court challenging Section 3(1)(f) as well as the notification issued under it. The claim was that the notification was a delegated legislation and was therefore

[4](AIR 1945 PC 48)

[5](1953) 1 SCR 290

bad. Similarly Sections 3(1)(f) and 5 of the Act which permitted this delegation were ultra vires inasmuch as the Legislature delegated its legislative function to the executive. After examining the decision in the Delhi Laws Act case, 1951 SCR 747 their Lordships laid down the principle which has been summarized in the placitum in the following terms :

> "An executive authority can be authorized by a statute to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms but it is clear that modification cannot include a change of policy. Essential legislative function consists in the determination of the legislative policy and its formulation as a binding rule of conduct. Modifications which are authorized are limited to local adjustments or changes of minor character and do not mean or involve any change of policy or change in the Act."

In the light of the principle laid down there their Lordships held that Section 3(1)(f) of the Patna Administration Act was ultra vires. Their Lordships however held that the notification issued by the Governor of Bihar in exercise of the powers under Section 3(1)(f) was bad as it effected a radical change in the policy of the Act. A similar question also arose in the *Edward Mills Co. Ltd. Beawar v. State of Ajmer*[6], and therein inter alia the vires of Section 27 of the Minimum Wages Act was challenged on the ground that it suffered from the vice of excessive delegation of legislative power. Now, in 1948, the Central Legislature of India passed an Act called the Minimum Wages Act. The object of the Act was to provide for fixing minimum rates of wages in certain employments. The schedule attached to the Act specified under two parts, the employments in respect of which the minimum wages of the employees could be fixed; and Section 27 authorized the appropriate Government to add to either part of the schedule, any other employment, in respect of which it was of the opinion that minimum rates of wages should be fixed under the Act. It would thus be seen that the section authorized the state Government to amend the schedule by adding to the list of employment in respect of which minimum wages payable to the employees could be fixed. The contention raised was that the provisions of Section 27 of the Act were illegal and ultra vires inasmuch as it amounts to an illegal and unconstitutional delegation of legislative powers by the Legislature in favour of the appropriate Government. This contention was not accepted by their Lordships. We would like to state here so that we may not nave to come back to this case in dealing with the argument of Mr. Mangalmurti, that one of the arguments advanced by Mr. Chatterjee was that the preamble as well as the title of the Minimum Wages Act indicated that the intention of the Legislature was to provide for fixing minimum wages in certain employments only as mentioned in the schedule and the Legislature

did not intend that all employments should be brought within the purview of the Act. Under Section 27 power has been given to the appropriate Government to add to the list of employments mentioned in the schedule. It was argued that the Act nowhere formulated the legislative policy according to which, any other employment should be included in the schedule, there were no principles prescribed and there was no standard laid down, which could furnish guidance to the administrative authorities in making selection. The matter is left entirely to the discretion of the appropriate Government which can amend the schedule in any way it likes and such delegation of power virtually amounts to surrender by the

[6](1955) 1 SCR 735 : AIR 1955 SC 25

legislature and cannot be held valid. This argument was repelled by Mukherjea, J. who delivered the Judgment of the Court. At p. 750 (of SCR) of the Report the learned Judge observed :

> "We do not think that this is the correct view to take. The legislative policy is apparent on the face of the present enactment. What it aims at is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. The Legislature undoubtedly intended to apply this Act not to all industries but to those industries only where by reason of unorganized labour or want of proper arrangements for effective regulation of wages or for other causes the wages of laborers in a particular industry were very low. It is with an eye to these facts that the list of' trades has been drawn up in the schedule attached to the Act but the list is not an exhaustive one and it is the policy of the Legislature not to lay down at once and for all time to which, industries the Act should be applied. Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular state. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in. regard to a particular trade or industry which is not already included in the list. We do not think that in enacting Section 27 the Legislature has in any way stripped itself off its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to parry out the purpose and the policy of the Act."

It is not necessary to refer to certain other decisions of their Lordships of the Supreme Court Where the power given by the Legislature to an outside agency to effect modifications in certain provisions of an enactment has been held intra vires.

29. Considering the decisions of their Lordships to which we have made reference, in our opinion, following principles are deducible. A Legislature cannot delegate to any authority its essential legislative function. It can only delegate to an outside body subordinate or ancillary legislative functions for carrying out the purpose and the policy of the Act. Essential legislative

function consists in determination of the legislative policy and its formulation as a binding rule of conduct. A provision in law authorizing the executive authority to modify either an existing or future law for the purpose of giving effect to the provisions of the Act, is not bad provided the power to modify an Act does not include power to effect an essential change in the Act sought to be modified or of its policy. It is in the light of these principles that the impugned provisions of the Commissioners Act will have to be examined.

30. Before we actually proceed to consider provisions of the Bombay Commissioners of Divisions Act, we think it would not only be convenient but also useful to deal with the legislative history relating to the office of the Commissioner. We have already pointed out that the office of Commissioner created under the aforesaid Act of 1958 is one appointed under the law relating to land revenue. The State of Maharashtra, as it now stands, consists of territories which formerly were parts of the former state of Bombay, the former State of Madhya Pradesh, now Known as Vidarbha area, and parts of the former Hyderabad State, now known as Marathwada area. In these three different areas laws relating to land revenue were different. We would first deal with the relevant provisions in the revenue law in the Vidarbha area. In this area again laws relating to land revenue were different. The law prevailing in the four districts of Nagpur, Wardha, Bhandara and Chanda was the Central Provinces Land Revenue Act and the law prevailing in the four districts known as Berar districts, namely, Amravati, Akola, Buldhana and Yeotmal, was the Berar Land Revenue Code.

31. Under the Central Provinces Land Revenue Act, 1881, the Chief Commissioner, subject to the control of the Governor-General in Council, was the Chief Controlling Revenue authority. Besiow stands, consists of territories which formerly were parts of the former state of Bombay, the former State of Madhya Pradesh, now Known as Vidarbha area, and parts of the former Hyderabad State, now known as Marathwada area. In these three different areas laws relating to land revenue were different. We would first deal with the relevant provisions in the revenue law in the Vidarbha area. In this area again laws relating to land revenue were different. The law prevailing in the four districts of Nagpur, Wardha, Bhandara and Chanda was the Central Provinces Land Revenue Act and the law prevailing in the four districts known as Berar districts, namely, Amravati, Akola, Buldhana and Yeotmal, was the Berar Land Revenue Code.

31. Under the Central Provinces Land Revenue Act, 1881, the Chief Commissioner, subject to the control of the Governor-General in Council, was the Chief Controlling Revenue authority. Besides the Chief Commissioner other Revenue Officers were, Commissioners, Deputy Commissioners, Assistant Commissioners, Tahsildars and Naib-Tahsildars. Powers conferred on the Commissioners were only powers conferred by the provisions of the Land Revenue Act. In this area was in force the Court of Wards Act of 1889 and under Section 3 of the Act the Commissioner was a Court of Wards. Thus at that time the duties performed by the Commissioner were those under the Land Revenue Act and the Court of Wards Act. This Central Provinces Land Revenue Act was repealed in 1917 and another Act, the Central Provinces Land

Revenue Act, 1917, was passed. Now, under this Act the Revenue Officers were the Chief Commissioner. The Financial Commissioner, Commissioners, Deputy Commissioners Assistant Commissioners and so on and so forth. Section 4 provided that the Chief Commissioner was the principal revenue authority subject to the control of the Governor-General in Council. Section 5(1) empowered the Chief Commissioner to appoint the financial Commissioner. Sub-Section (2) of Section 5 is important, it provides that the Chief Commissioner, with the previous sanction of the Governor-General in Council, may by notification, assign to the Financial Commissioner, subject to such conditions and restrictions if any, as may be prescribed, all or any powers or functions assigned to the Local Government or to the Chief Commissioner or to the Chief Controlling Revenue Authority by this or by any enactment for the time being in force. Section 7 empowered the Chief Commissioner to appoint Commissioners of Divisions and the same section empowered the Commissioner to exercise the powers and discharge the duties conferred and imposed on a Commissioner by the Land Revenue Act or by any enactment for the time being in force. This was the position in the four districts till 1948.

32. We would now turn to the Berar area. As already stated, the earliest legislation is the Berar Land Revenue Code, 1896, and the Revenue Officers were, the Chief Commissioner, the Financial Commissioner, the Commissioner, Deputy Commissioners, Assistant Commissioners and Tahsildars. The Chief Commissioner was the principal Revenue Authority.

33. Section 8 of the Berar Land Revenue Code, 1896, provided that the Commissioner shall be appointed by the Chief Commissioner and he shall exercise the powers and perform the duties conferred and imposed on him by the revenue law, or any law, rule or order for the time being in force. This Act was repealed in 1928 and the hierarchy of the revenue officers created by this Act as provided in Section 3 was, the Commissioner, Deputy Commissioners, Assistant Commissioners, Tahsildars and Naib Tahsildars, and under Section 5 power was conferred on the Governor in Council to appoint a Commissioner of a Division and the section further provided that the Commissioner shall exercise the powers and discharge the duties conferred and imposed on the Commissioner by this law or by any enactment for the time being in force. It would thus be seen that in the four districts which were governed by the provisions of the C.P. Land Revenue Act, the head of the State was assisted by the .Financial Commissioner and the Commissioner in revenue matters while in the four districts which were governed by the Berar Land Revenue Code the head of the State was assisted by the Commissioner in revenue matters. The powers conferred on the Commissioners in both these areas, were to perform the duties imposed on them by the Land He venue Act as well as by any enactment for the time being in force. However, in the four districts in which there was a Financial Commissioner, the C.P. Land Revenue Act empowered the Chief Commissioner or the Governor to confer on the Financial Commissioner such powers and duties as the head of the state was required to perform under any other enactment. The office of the Financial Commissioner was abolished by the Adaptation Order of 1937, and the office of the Commissioner in both these areas was abolished by Section 2 of the C.P. and Berar Commissioners (Construction of References) Act, 1948, which came into force on

1-11-1948. Section 4 of the Act provided that wherever there were references to the Commissioner in the Land Revenue Code, or any other enactments they should be read as references to the State Government or to such authority as the State Government may, by notification, appoint. More or less, simultaneously with the abolition of the office of the Commissioner, an Ordinance was issued by the Governor of the Central Provinces and Berar creating a Board of Revenue, and that is Ordinance No. 19 of 1948. This Ordinance was published in the Gazette Extraordinary of 31st October 1948. Section 6 of the Ordinance provided that the Board shall exercise the powers and discharge the functions of the provincial Government which are specified in the Schedule and such other functions as have been conferred or may be conferred under any Central or Provincial Act on the Chief Revenue Authority or the Chief Controlling Revenue Authority. Sub-Section (2) of Section 6 further provided that the Provincial Government may, subject to such conditions as it may deem fit to impose by notification, confer upon, or entrust to the Board or any particular member of the Board, additional powers or functions assigned to the Provincial Government or to the Chief Controlling Revenue Authority by or under any enactment for the time being in force. Reading of the Schedule of the Act relating to the abolition of Commissioner's office would disclose that State Government was to be read in place of Commissioner wherever the word Commissioner occurred. By the Ordinance and the Schedule thereto, the powers of the Commissioner which were made exercisable by the State Government were again transferred to and were made exercisable by the Board. Further, under the Schedule, powers were conferred on the Board to exercise the powers and perform the duties which had been conferred and assigned to the State Government under certain enactments, such as, the Co-operative Societies Act, The Central Provinces and Berar Local Fund Audit Act and the Central Provinces and Berar Local Government Act. The provisions of the Ordinance were embodied in the Act. Board of Revenue Act No. 12 of 1949. In 1954, the Legislature of the Central Provinces and Berar enacted an Act, called the Madhya Pradesh Land Revenue Code. This Act repealed the C.P. Land Revenue Act, 1917, the Berar Land Revenue Code, 1928 as well as the Board of Revenue Act. However all the material provisions of the Board of Revenue Act were adapted and incorporated in Chapter II of this Code, it may be stated that Sub-Section (2) of Section 6 of the M.P. Land Revenue Act also empowered the State Government to confer upon or entrust to the Board or any member of the Board additional powers or functions assigned to the State Government by or under any enactment for the time being in force. Thus, in the area which now is known as Vidarbha, right from year 1948, the Board of Revenue was exercising the powers which were being exercised by the Commissioner as well as it was exercising certain powers and performing certain duties which had been assigned to the State Government under certain Acts mentioned in the Schedule. This state of affairs continued till the date the States Reorganization Act, 1956, came into force on 1st November 1956.

34. We may now turn to the area which is known as Marathwada area. The revenue Officer equal in rank with the Commissioner known as Subhedar was appointed under the Hyderabad Land Revenue Act 8 of 1317 Fasli, Powers conferred on him however were only to exercise the

powers and discharge duties conferred and imposed on him under this Act or under any other law for the time being in force. The Hyderabad Board of Revenue Act abolished the office of Subhedar and Sub-Section (2) of Section 4 provided that references in the Hyderabad Land Revenue Act and in any other law for the time being in force to the subhedar shall be read as referring to the Board. Section 8 of the Act empowered the Government by a notification in the Gazette to delegate to the Board any power or duty of the Government under any law for the time being in force. This state of affairs continued till the date the states Reorganization Act came into force on 1st November 1956.

35. In the area which was part of the former State of Bombay, a Commissioner was appointed under the Bombay Land Revenue Code of 1879 and under Section 5 thereof the Governor in Council was empowered to appoint Commissioners and it provided that the Commissioners shall exercise the powers and discharge the duties conferred and imposed on a Commissioner under this Act, or under any other law for the time being in force. The office of the Commissioner was abolished by virtue of Section 3 of the Bombay Commissioners (Abolition of Office) Act, 1950 and the Section further provided that wherever the reference was to the Commissioner the reference should be read as reference to the State Government or to such authority as the State Government may, by a general or special order, appoint. The Parliament enacted the States Reorganization Act and it received the assent of the President on 31st August 1956, it is under the provisions of this enactment that these three territories got integrated together in the State of Bombay as and from 1st November 1956 with some additional territories which are known as Gujarat and Saurashtra. Section 120 of the States Reorganization Act empowered appropriate Government by order to make such adaptations and modifications of the law, whether by way if repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority, in exercise of these powers amendments were effected to the law in force relating to land Revenue in the Vidarbha and Marathwada areas. It would be sufficient to refer to the amendment effected to the M.P. Land Revenue Code. By the amendment, Section 9-A was introduced and it provided that notwithstanding anything contained in the foregoing provisions of this Chapter, if by reason of the reorganization of the States under the provisions of the States Reorganization Act, 1956, a Board is not or cannot for any reason be reconstituted on the 1st day of November 1956 in accordance with the foregoing provisions for the area to which this Act extends, then until such Hoard is so reconstituted the Government may appoint such authority, officer or person to exercise or discharge such of the powers or duties conferred or imposed on the Board by this Act or any other taw for the time being in force and subject to such conditions as may be specimen in the order. There was a similar amendment to the Land Revenue Code in force in Marathwada area. In exercise of the powers conferred on the State Government under Section 120, office of the Divisional Officer was created in both these areas as and from 1st November 1956 and the powers exercised by the Divisional Officer were the powers of the Board of Revenue, that is the powers formerly exercised by the State Government under the Land Revenue Act, powers

conferred on the Commissioners under different Acts and further such powers as were conferred on them in respect of those matters which had been assigned to the State Government under certain enactments which were in force.

36. So far as the territory which formed part of the former State of Bombay the Legislature had already amended the Land Revenue Code prior to the coming into force of the States Reorganization Act.

37. By the Amending Act No. 45 of 1956, the State Government was empowered to create a Division and appoint a Divisional officer. In exercise of the powers conferred on the State Government the State Government freshly appointed a Divisional Officer as and from 1st November 1956 in this area also. Thus, on 1st November 1956 in the entire reorganized State there were Divisional Officers in various Divisions. We have already discussed the duties performed by the Divisional Officers. This was the situation prevailing when the present Act, namely the Bombay Commissioners of Divisions Act 1957, was enacted, and the preamble to the Act would show that this Act was enacted because it was found expedient to provide for the offices of Commissioners of divisions in the State of Bombay, for prescribing their powers and duties and to make provisions for matters consequent on the provision for such offices and for certain other matters. The Statement of objects and reasons indicates that the increased tempo of development activities, particularly, community development, land reforms measures and other administrative requirements of the State such as the need for coordination, supervision and decentralization made it necessary that a supervising, coordinating and inspecting agency of a higher status and powers should be established at divisional headquarters and for this reason this enactment was passed. We are not referring to the objects and reasons for the purpose of the construction of the Act but only for the purpose of ascertaining the conditions prevailing which necessitated enacting such a legislation.

38. We nave already reproduced relevant provisions earlier and it would be seen that by this enactment office of the Divisional Commissioner was revived by amending respective provisions of the land revenue legislation, Acts or Codes. The Legislature for the purpose of constituting office Of the Commissioner of a Division and conferring powers and imposing duties on the Commissioner amended certain enactments as shown in the Schedule. Sub-Section (2) of Section 3 provided that the Commissioner of a division, appointed under the law relating to land revenue shall exercise the powers and discharge the duties conferred and imposed on the Commissioner by any law for the time being in force, including the enactments referred to in Sub-Section (1) as amended by the said Schedule. Study of the Schedule would show that the Commissioners have been empowered to exercise powers and perform the duties which had been conferred and imposed on the State Government under the enactments other than the enactments relating to land revenue, for instance, the Bombay Ferries and Inland Vessels Act, Bombay Hereditary Offices Act, Bombay Irrigation Act, Bombay General Clauses Act, Bombay Court of Wards Act, Bombay Public Conveyances Act, Bombay Co-operative Societies Act, Bombay Agricultural Produce Markets Act, Bombay Warehouses Act, Bombay Taluqdari Tenure Abolition Act,

Bombay Police Act, Bombay Cinema (Regulation) Act. Sub-Section (3) empowers the State Government by notification to amend or delete any entry in the Schedule for the purpose of imposing any conditions or restrictions on the exercise of powers and discharge of duties conferred or imposed on the Commissioner or withdrawing them, as the case may be. and then comes the provision which has been challenged before us. As already stated, that Sub-Section (Sub-Section 4) empowers the State Government to confer and impose on the Commissioner by a notification powers and duties under any other enactment for the time being in force with necessary adaptations and modifications in the enactment. The scheme of the Act thus is clear that the Legislature has thought it fit to create the office of Commissioner having regard to the increased tempo of activities. The legislature has found it necessary to provide a delegate to the State Government to perform not only certain duties under the enactment relating to land revenue but also to perform duties and exercise powers which had been conferred on the State Government by other enactments in force at the time. The Legislature has itself conferred on the Commissioner certain powers and imposed certain duties which upto that time were conferred on the State Government or imposed on the State Government under these various enactments. By making a reference to some we have illustrated the matter. After doing so, the Legislature has empowered the State Government to confer on. the Commissioner powers and impose on him the duties Which had been conferred or imposed on the State Government under other enactments which have not been mentioned in the Schedule and for that purpose issue a notification effecting modifications by way of amendment in the Schedule of the Act. Having regard to the history of the Legislature, surrounding circumstances and the scheme of the Act, it is clear that the policy of the Legislature is to provide a delegate to the State Government for the purpose of exercising its powers or performing its duties which had been imposed on the State Government by the various enactments. As far as possible the Legislature has projected its mind in future needs and has provided a delegate to the State Government and in the schedule itself has conferred powers on the Commissioner which, were till then exercisable by the State Government, but it is not possible for the Legislature to project itself in future and provide for each and every contingency, it has therefore left it to the State Government to confer on the Commissioner such powers as and when the State Government finds it necessary to do so. These being the circumstances, in our opinion, the Legislature has not in. enacting Sub-Section (4) of Section 3 parted with its essential legislative function. The Legislature has clearly laid down Its policy and has left It only to the State Government subsidiary or ancillary matters to implement the policy of the State Legislature. The Legislature has not left it to the State Government to choose its delegate. The Legislature itself has chosen the delegate, namely, the Commissioner's office which the Legislature constituted by this enactment. Things which could be delegated by the State Government to the Commissioner also have been stated by the Legislature. Powers which the State Government could part and delegate to the Commissioner have been mentioned by the Legislature and they are only such powers and duties which had been assigned to the State Government under different enactments. These being the circumstances of the case, in our opinion, Sub-Section (4) of Section 3 does not suffer from the vice of excessive delegation of legislative power.

39. The contention of Mr. Mangalmurti that by enacting Sub-Section (4) the Legislature has empowered the State Government to amend other enactments also cannot be sustained in view of the language of the Sub-Section. Close reading of Sub-Section (4) would show that what the State Government is empowered to do is to issue a notification. A notification has not the force of amending an enactment or effecting modifications therein. On the other hand, it is by virtue of the provisions of clause (a) of Sub-Section (4) of Section 3 that the enactments get amended. It is thus clear that it is the legislation that effects amendments in other enactments and not the notification.

40. Lastly Mr. Mangalmurti contended that the impugned notification has the effect of changing the instrumentality provided for in the Land Acquisition Act and has therefore effected alterations in the essential legislative policy underlying the Land Acquisition Act. The argument of Mr. Mangalmurti is that the decision in matters whether a particular land should be acquired as needed for a public purpose or for a company is a very important matter. It results in a person being deprived of his property which is ultimately acquired under the scheme of the Act. The framers of the Land Acquisition Act have therefore conferred this power on the State Government. The legislation has empowered the State Government to delegate its function to the Commissioner. It is not possible for us to accept this argument of Mr. Mangalmurti. In our opinion, the essential legislative policy underlying the Land Acquisition Act is that land must not be acquired for anything but for a public purpose or for a company and acquisition must be on payment of adequate compensation as provided under the Act. Essential thing is the fixation off price and fixation of compensation which the person who is deprived of his land must get. We have already discussed the scheme of the Land Acquisition Act and the instrumentality for fixation of price is firstly the Collector and when any person whose land is acquired is not satisfied with the award given by the Collector then to have recourse to the civil Court. Ultimately it is the civil Court that decides the amount of compensation to be paid. The role of the State Government is only restricted to the determination of the question as to whether any particular land is required for any public purpose. By permitting the State Government to delegate this function to the Commissioner, who also is an officer of high status, the legislature has not permitted the State Government to effect a change in the essential policy of the Land Acquisition Act. It is not in dispute that it was competent to the State Legislature to amend the Land Acquisition Act itself and confer these powers on the Commissioner. It would also be seen that in the notification issued the State Government has not completely withdrawn itself but all that has been done is similar powers are also conferred on the Commissioner by providing that wherever the words 'State Government' occur in certain sections, the words 'State Government or Commissioner' are substituted. It would also be seen that Sub-Section (5) of Section 3 empowers the State Government to cancel any time the notification issued by it under Sub-Section (4) of the Act.

41. These are all the arguments advanced by Mr. Mangalmurti and for reasons stated above, in

our opinion, it is not possible for us to accept any one of them.

42. Mr. Kukday, learned counsel for the petitioners in Special Civil Application No. 458 of 1962 contended that the provisions of Sub-Section (4) of Section 3 are invalid in law inasmuch as they conferred untrammelled powers on the executive. He has referred us to a decision reported in *Hamdard Dawakhana v. Union of India*[7], and argued that the powers conferred on the State Government are similar to the powers conferred on the State Government under clause (d) of Section 3 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. We have already discussed that the Legislature has clearly laid down Its legislative policy, that it has named the delegate to whom the State Government could delegate its powers and that it has also stated the limits and ambit within which delegation of these powers could be made. It would be seen that the powers which the State Government is allowed to confer on the Commissioner by notification are only the powers which have been conferred on the State Government by "other enactments for the time being in force." The expression "other enactments for the time being in force" is synonymous with 'existing law'. The expression 'existing law' has been defined in clause (e) of Section 2 of the Bombay Commissioners Act and it provides that existing law means any enactment of a Legislature or other competent authority in relation to matters specified in Lists II and III in the Seventh Schedule to the Constitution in force in any part of the State immediately before the commencement of this Act and includes any rule, bye-law, regulation, order, notification, scheme, form or other instrument having the force of law made, prescribed or issued under any such enactment. When this definition of existing law is kept in view. It would be seen that the powers of the State Government still get limited and it can only delegate its powers in respect of such enactments which relate to matters specified in List II or III in the Seventh Schedule in other words, which relate to matters over which the State Legislature has legislative sway. The Legislature thus has not abdicated itself. If the Legislature finds that any notification issued by the State Government is not approved by it, it can by an enactment amend the Act and repeal the amendment resulting from the notification issued by the State Government. Powers under Sub-Section (4) of Section 3 of the Bombay Commissioners of Divisions Act are thus distinguishable from the powers which had been conferred on the State Government under clause (d) of Section 3 of the Drugs and Magic Remedies Act. The scheme of the" Act as observed by their Lordships of the Supreme Court was for prevention of self-medication and self-treatment by prohibiting instruments which may be used to advocate the same or which tended to spread the evil. Its object was not merely the stopping of advertisements offending against morality and decency. Clause (d) of Section 3 prevented publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for the diagnosis, cure, mitigation, treatment or prevention of any venereal disease or any other disease or condition which may be specified in rules made under this Act. It would be seen that the

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power conferred enabled the State Government to make the provisions of Section 3 applicable to "any disease or condition which may be specified in rules made under the Act" but there was no guidance at all any where in the Act given to the State Government as regards the nature of the

disease relating to which the State Government could make rules. We have shown that such is not the case here. The State Legislature itself has laid down to whom the powers could be delegated and also the scope and ambit of such delegation. The State Government is not free to delegate to the Commissioner any of its powers, as it likes, under the provisions of Sub-Section (4) of Section 3 of the Act.

43. This contention of Mr. Kuteday also therefore must fail.

44. These are all the arguments advanced before us relating to the validity of Sub-Section (4) of Section 3 of the Act and for reasons stated above we bold that the said Sub-Section is not ultra vires of the legislative powers of the State Legislature.

45. We would now refer to the arguments other than those relating to the validity of Sub-Section (4) of Section 3 of the Act. Mr. Mangalmurti then contended that, at any rate, the latter part of the notification of 8-7-1962 under which the Commissioner purported to direct under Sub-Section (4) of Section 17 of the Act that the provisions of Section 5-A of the said Act shall not apply in respect of the said lands was bad in law. It is the contention of Mr. Mangalmurti that it is open to the Commissioner to give such a direction only in respect of lands which are arable or waste lands. The lands of the petitioners are lands under actual cultivation of the petitioners and therefore are neither arable nor waste lands.

46. The petitioners in paragraph 4 of the petition have stated that the property mentioned in the schedule in the notification has been under the petitioners' cultivation for the last many years, at any rate since before the notification was issued by the Commissioner, wheat crop is even now standing in survey No. 95 while the Jawar crop was very recently cut from the other khasra numbers. These averments made by the petitioners in paragraph 4 of the petition have not been controverted or denied by any of the respondents. We will have therefore to proceed on the assumption of the fact that the petitioners' lands which are sought to be acquired were under actual cultivation prior to and also on the date of the issuing of the aforesaid notification. A division Bench of this Court in Special Civil Appln. No. 93 of 1962, D/d. 09-11-1962 (Bom), has held that where lands sought to be acquired were cultivated at the time of the issuing of the notification under Sub-Section (4) of Section 17 of the Land Acquisition Act, such lands could not tie regarded as arable lands and consequently the notification, under Section 17(4) of the Act to the effect that the provisions of Section 5-A would not apply as the lands were urgently required will have to be quashed. We have not been shown any decision contrary to the view taken toy the Division Bench of this Court, nor have we been shown any reason to take a view different from that taken by the Division Bench of this Court. We, therefore, with respect, agree with the aforesaid" view expressed toy the learned Judges of this Court. Latter part of the aforesaid notification issued by the Commissioner under Section 4 of the Act dispensing with the enquiry under Section 5-A of the Act will therefore have to be quashed. Consequently, the notification dated 15-11-62 published in the Official Gazette of 29-11-1962 issued by the

Commissioner under Section 6 of the Land Acquisition Act will also have to be quashed inasmuch as the said notification had been issued with out following the procedure prescribed by law under Section 5-A of the Act.

47. Now under Section 5-A, objections to the proposed acquisition have to be lodged within a period of 30 days from the date of issuance of the notification under Section 4. Section 4 notification was issued on 8-7-1952. As already stated, that notification had dispensed with the observance of the requirements of Section 5-A of the Act. The petitioners are undoubtedly persons interested; they had no opportunity of placing their objections to the proposed acquisition before the appropriate authorities, namely the Collector and the Commissioner. That in its turn would call for the quashing of the entire notification under Section 4 also. However, in our opinion, it would not be necessary to quash the entire notification under Section 4. If the petitioners are ensured of an opportunity of placing their objections before the aforesaid appropriate authorities. Mr. Mudholkar, learned Additional Government Pleader, appearing for the respondents, stated that in this matter be would take instructions from the respondents and make a statement in this respect within 10 days.

48. These are all the contentions which have been raised in Special Civil Application No. 62 of 1963.

49. Turning to Special Civil Application No. 458 of 1962 the contention of Mr. Kukday is founded on the provisions of Section 226 of the M.P. Land Revenue Code. That section provides that where the area reserved for abadi is in the opinion of the Deputy Commissioner insufficient, he may reserve such further area from the unoccupied land in the village as he may think fit; where unoccupied land for purposes of abadi is not available, the State Government may acquire any land for the extension of abadi and the Deputy Commissioner shall dispose of such land on such terms and conditions as may be prescribed. Sub-Section (3) provides that the provisions of the Land Acquisition Act, 1894, shall apply to such acquisition and compensation shall be payable for the acquisition of such land in accordance with the provisions in that Act. It is the contention of Mr. Kukday that there has been no enquiry made in this case by the Deputy Commissioner nor has he found that any unoccupied land was not available for the purpose of extension of abadi. The land proposed to be acquired is for the purpose of abadi. The notification therefore is bad on this ground. There is little force in this contention.

50. In the return filed by respondents 1 to 3, that is, the Commissioner, the Land Acquisition Officer and the State of Maharashtra, It has been stated in paragraph 7(vi) that enquiry under Section 228 of the M.P. Land Revenue Code had been made by the Sub-Divisional Officer and it had been found that suitable lands were not available for extension of gaothan (abadi), as mentioned in Section 226. The argument of Mr. KuKday is that the enquiry by the Sub-Divisional Officer is no compliance with the provisions of Section 226 of the M.P. Land Revenue Code, which required the Deputy Commissioner to enquire into the matter. There is no force in

this argument. Sub-Divisional Officer is an immediate subordinate of the Deputy Commissioner. Sub-section (2) of Section 18 of the Code empowers the state Government to confer on the Sub-Divisional Officer such powers of the Deputy Commissioner as it may by notification direct. A Notification has been issued, by the State Government on 16-10-1057 empowering the Sub-Divisional Officer to exercise the powers under Section 226 of the M.P. Land Revenue Code which are exercisable by the Deputy Commissioner. The enquiry held by the Sub-Divisional Officer is therefore not in any manner vitiated. Consequently the notification issued under the Land Acquisition Act is not vitiated in any manner. For the reasons stated above, Special Civil Application No. 458 of 1962 is liable to be dismissed.

51. and this brings us to Special Civil Application No. 6 of 1963. Mr. Mandlekar has also raised a contention based on the provisions of Section 226 similar to one raised by Mr. Kukday with one more aspect of it. According to Mr. Mandlekar, an appeal is pending against that order of the Sub-Divisional Officer before the Collector, it has not been shown that the petitioners have any right of appeal in respect or such an order. At any rate, pendency of an appeal cannot affect the validity of the order made by the Sub-Divisional Officer under Section 226, nor can it affect the validity of the notification issued under the provisions of the Land Acquisition Act. Mr. Mandlekar also had raised a contention that the lands which, have been proposed to be acquired under the notification, published in the Gazette dated. 8-11-1962 under Section 4 of the Land Acquisition Act were actually under the cultivation of the petitioners prior to the date of the issuance of the notification. That part of the notification issued under Section 4 of the Land Acquisition Act which dispensed with the enquiry will have to be quashed. The petitioners have averred that the lands were actually under cultivation. There is no return filed by the respondents controverting that fact. For the reasons stated by us in dealing with a similar contention raised by Mr. Mangalmurti in Special Civil Application No. 62 of 1963, an order similar to one which we propose to pass in Special Civil Application No. 62 of 1963 will have to be passed. It has however to be noticed that in this case there is no notification issued under Section 6 of the Land Acquisition Act and therefore the only question to toe considered is of ensuring an opportunity to the petitioners to place their objections to the proposed acquisition. Mr. Mudholkar also wants time to make a statement on behalf of the respondents in this case. We grant Mr. Mudholkar time till 10th August.

52. Let the cases be put up before us on 10th August 1964.

53. Mr. Mudholkar, Additional Government Pleader, states before us that he has now obtained instructions from the Commissioner and the Commissioner has agreed that he would instruct the Collector to consider the objections by the petitioner in Special Civil Application No. 6 of 1963 and Special Civil Application No. 62 of 1963 under Section 5-A of the Land Acquisition Act. In view of this undertaking, in our opinion, it is not necessary to quash the entire notification issued under Section 4 of the Land Acquisition Act, but it would tee sufficient if the latter part of the notification dispensing with the enquiry under Section 5-A and permitting the appropriate officer

to take immediate possession is quashed.

54. In the result, Special Civil Application No. 458 of 1962 is dismissed and Special Civil Application Nos. 6 of 1963 and 62 of 1963 are partly allowed. The notification issued under Section 6 of the Land Acquisition Act in Special Civil Application No. 62 of 1963 is hereby quashed. Further, the latter part of the notification under Section 4 is also quashed. In Special Civil Application No. 6 of 1963 there had been no notification issued under Section 6. So the question does not arise of quashing of notification under Section 6 in that case. The latter part of the notification under Section 4 in special Civil application No. 6 of 1963 is hereby quashed. We direct that petitioners in both the Special civil Applications Nos. 6 of 1963, and 12 of 1963 shall lodge their objections under Section 5-A before the Collector within one month from today. As already stated, Mr. Mudholkar has given an undertaking on behalf of the Commissioner that those objections will be heard and considered in accordance with law, in the circumstances, parties shall bear their own costs in all the three matters.
Order accordingly.