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taken by the Madras High Court and we see no reason to differ from it. Therefore, the challenge to the validity of the Act on the ground that its important provisions contained in section 5 offend against Art. 31 (2) must be rejected. That being our view, we must held that the High Court was right in rejecting both the writ petitions filed by the appellant. On that view, it is unnecessary to consider whether appellant would have been entitled to get the relief of possession or mesne profits which it purported to claim by its two petitions.

The appeals accordingly fail and are dismissed with costs. One set of hearing fees.

Appeals dismissed.

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May 2.

SMT. SOMAVANTI AND OTHERS

v.

THE STATE OF PUNJAB AND OTHERS

(And Connected Petitions)

(B. P. SINHA, C. J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

Land Acquisition—Public purpose—Government declaration as to public purpose—If justiciable—"Conclusive evidence" "Conclusive proof", Meaning of—Compensation—Government's contribution of cost—If should be substantial—Indian Evidence Act, 1872 (1 of 1872), ss. 3, 4—Land Acquisition Act, 1894 (1 of 1894), ss. 4, 5A, 6—Constitution of India, Art. 14.

In February, 1961, the petitioners purchased over six acres of land situate in the State of Punjab for a sum of Rs. 4,50,000 and claim to have done so for the purpose of establishing a paper mill. The sixth respondent, private limited company, which had a licence from the Government of India for starting a factory for the manufacture of various

ranges of refrigeration compressors and ancillary equipment, requested the State of Punjab for the allotment of an appropriate site for the location of the factory. In the official Gazette of August 25, 1961, was published a notification of the Governor of Punjab dated August 18, 1961, under s. 4 of the Land Acquisition Act, 1894, to the effect that the land belonging to the petitioners was likely to be needed by the Government at public expenses for a public purpose, namely, for setting up a factory for manufacturing various ranges of refrigeration compressors and ancillary equipment. The Government directed that action under s. 17 of the Act shall be taken because there was urgency and that the provisions of s. 5A shall not apply to the acquisition. In the same Gazette another notification under s. 6 of the Act dated August 19, 1961, was published to the effect that the Governor of Punjab was satisfied that the land was required by the Government at public expense for the said purpose. The notification provide for the immediate taking of possession of the land under the provisions of s. 17 (2) (c) of the Act. On September 29, 1961, the Government of Punjab sanctioned an expense of Rs. 100 for the purpose of acquisition of the land. The petitioners filed an application under Art. 32 of the Constitution of India challenging the legality of the action taken by the Government on the grounds, inter alia, (1) that the acquisition was not for a public purpose either under s. 4 or s. 6 of the Land Acquisition Act; (2) that the land was in reality being acquired for the benefit of the sixth respondent and that the action of the Government amounted to discrimination against the petitioners and violated Art. 14 of the Contitution of India; (3) that the alleged contribution of Rs. 100 made by the Government was a colourable exercise of power inasmuch as the amount was so unsubstantial sum compared to the value of the property that it could not raise an inference of Government participation in the proposed activity; and (4) that the notifications under ss. 4 and 6 could not have been made simultaneously and were, therefore, without efficacy.

Held (*per* Sinha, C. J., Rajagopala Ayyangar, Mudholkar and Venkatarama Aiyar, JJ.), (1) that the declaration made by the Government in the notification under s. 6 (1) of the Land Acquisition Act, 1894, that the land was required for a public purpose, was made conclusive by sub-s. 3 of s. 6 and that it was not open to a court to go behind it and try to satisfy itself whether in fact the acquisition was for a public purpose.

Whether in a particular case the purpose for which land was needed was a public purpose or not was for the

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Government to be satisfied about and the declaration of the Government would be final subject to one exception, namely that where there was a colourable exercise of the power the declaration would be open to challenge at the instance of the aggrieved party.

Hamabai Framjee Petit v. *Secretary of State for India*, (1914) L. R. 42 I. A. 44 and *R. L. Arora* v. *The State of Uttar Pradesh*, (1962) Supp. 2 S. C. R. 149 distinguished.

Vedlapatla Suryanarayana v. *The Province of Madras*, I. L. R. (1946) Mad. 153, approved.

(2) that there was no difference between the effect of the expression "conclusive evidence" in s. 6 (3) of the Act from that of "conclusive proof", the aim of both being to give finality to the establishment of the existence of a fact fro n the proof of another.

(3) that the conclusiveness in s. 6 (3) must necessarily attached not merely to a "need" but also to the question whether the purpose was a public purpose. There could be no "need" in the abstract.

(4) that the provisions of the Act which provided that the declaration made by the State that a particular land was needed for a public purpose, shall be conclusive evidence of the fact that it was needed, did not infring the Constitution.

State of Bihar v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga & Ors.*, [1952] S. C. R. 889, *Babu Barkya Thakur* v. *State of Bombay & Ors.*, [1961] 1 S. C. R. 128, and *State of Bombay* v. *Bhanji Munji & Anr.*, [1955] 1 S. C. R. 777, relied on.

(5) that it was for the State to say which particular industry might be regarded as beneficial to the public and to decide that its establishment would serve a public purpose; therefore, no question of discrimination would arise merely from the fact that the Government had declared that the establishment of a particular industry was a public purpose. Accordingly, the notifications in question, did not contravene Art. 14 of the Constitution.

(6) that as s. 5A was out of the way the publication in the same issue of the Gazette of the both the notifications that is the one dated August 18, 1961, and that dated August 19, 1961, was not irregular.

Held, further (Subba Rao, J, *dissenting*), that the notification dated August 19, 1961, under s. 6 of the Land Acquisition Act, 1894, was not invalid on the ground that the

amount contributed by the State towards the cost of the acquisition was only nominal compared to the value of the land.

The expression "party out of public revenues", in the proviso to s. 6 (1) of the Act did not necessarily mean that State's contribution must be substantial; but whether a token contribution by the State towards the cost of acquisition would be sufficient compliance with the law would depend upon the facts of each case and it was open to the court in every case which came before it to ascertain whether the action of the State was a colourable exercise of power.

Sanja Naicken v. *Secretary of State*, (1926) I. L. R. 50 Mad. 308 and *Vadlapatla Suryanaryana* v. *The Province of Madras*, I. L. R. [1946] Mad. 153, approved.

Ponnaia v. *Secretary of State*, A. I. R. 1926 Mad. 1099, disapproved.

Chatterton v. *Cave*, (1878) 3 App. Cas. 483 and *Maharajah Luchmeswar Singh* v. *Chairman of the Durbhanga Municipality*, (1890) L. R. 17 I. A. 90 held inapplicable.

Per Subba Rao, J.—in interpreting the proviso to s. 6 (1) of the Act a reasonable meaning should be given to the expression "wholly or partly." The payment of a part of a compensation must have some rational relation to the compensation payable in respect of the acquisition for a public purpose. So construed "part can only mean substantial part of the estimated compensation. What was substantial part of a compensation depended upon the facts of each case. In the instant case, it was impossible to say that a sum of Rs. 100 out of an estimated compensation which might go even beyond Rs. 4,00,000 was in any sense of the term a substantial part of the said compensation. The Government had clearly broken the condition and, therefore, it had no jurisdiction to issue the declaration under s. 6 of the Act.

ORIGINAL JURISDICTION : Petitions Nos. 246 to 248 of 1961.

Petitions under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

G. S. Pathak, Rameshwar Nath, S. C. Andley and *P. L. Vohra*, for the petitioners (in petition No. 246 of 1961).

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Rameshwar Nath, S. N. Andley and *P. L. Vohra* for the petitioners (in petitions Nos. 247 and 248 of 1961).

S. M. Sikri, Advocate-General for the State of Punjab, N. S. Bindra and *P. D. Menon,* for respondent No. 1 (in all the petitions).

S. P. Varma, for respondent No. 6 (in all the petitions).

H. N. Sanyal, Additional Solicitor-General of India, R. H. Dhebar and *P. D. Menon,* for the State of Gujarat (Intervener) (in all the petitions).

1962. May 2. The following judgments were delivered. The judgment of Sinha, C. J., Rajagopala Ayyangar, Mudholkar and Venkatarama Aiyar, J J., was delivered by Mudholker, J.

Mudholkar J.

MUDHOLKAR, J.—The petitioners who have acquired over six acres of land by purchase for Rs. 4,50,000 in February. 1961, under five sale deeds and one lease deed claim to have done so for the purpose of establishing a paper mill in collaboration with Messrs. R. S. Madhoram and Sons who had been granted a licence for the establishment of a paper plant in Ghaziabad in Uttar Pradesh. The aforesaid land is situate in the village Meola Maharajpur, Tehsil Ballabhgarh, District Gurgaon, and abuts on the Mathura Road, and is only about 10 or 12 miles from New Delhi. Respondent No. 6, Air Conditioning Corporation (P) Ltd., is a private limited concern and holds a licence from the Government of India for starting a factory for the manufacture of various ranges of refrigeration compressors and ancillary equipment. We may mention here that initially this project was allotted to the State of West Bengal but at the request of State of Punjab its location was shifted to the State of Punjab.

Respondent No. 6 requested the State of Punjab for the allotment of an appropriate site for the location of the factory. The petitioners contend that respondent No. 6 being interested in acquiring land in the village Meola Maharajpur approached the State of Punjab in or about the month of March, 1961, for the purpose of acquiring land for their factory under the Land Acquisition Act, 1894 (hereinafter referred to as the Act). One of the petitioners having learnt of this made an application on March 23, 1961, to the Deputy Commissioner, Gurgaon, requesting him that none of the lands purchased by the petitioners should be acquired for the benefit of respondent No. 6. Owners of adjacent lands Mr. Om Prakash, Mr Ram Raghbir, Mr. Atmaram Chaddha and Mr. Hari Kishen who are petitioners in W. P. 247 and 248 of 1961 which were heard along with this petition made similar requests. The petitioners allege that they were assured by the Deputy Commissioner that their lands would not be acquired for the benefit of respondent No. 6. Thereafter respondent No. 6 purchased by private treaty a plot of land measuring approximately 70,000 sq. yards contiguous to the land owned by the petitioners on or about April 21, 1961.

The petitioners' grievance is that notwithstanding the assurances given to them by the Deputy Commissioner, Gurgaon, the Governor of Punjab, by notification dated August 25, 1961, under s. 4 of the Act declared that the lands of the petitioners in this petition as well as those of the petitioners in the other two writ petitions were likely to be needed by Government at public expense for a public purpose, namely, for setting up a factory for manufacturing various ranges of refrigeration compressors and ancillary equipment. It accordingly notified that the land in the locality described

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in the notification was required for the aforesaid purpose. Similarly it authorised the Sub-Divisional Officer and Land Acquisition Officer, Palwal, to enter upon and survey the land in the locality and to do all other acts required or permitted by s. 4 of the Act. It further directed that action under s. 17 of the Act shall be taken because there was urgency and also directed that the provisions of s. 5A shall not apply to the acquisition. On August 19, the Governor of Punjab made a notification under s. 6 of the Act to the effect that he was satisfied that the land specified in the notification was required by Government at public expense for public purpose, namely, for setting up a factory for the manufacture of refrigeration compressors and other ancillary equipment and declared that the aforesaid land was required for the aforesaid purposes. This declaration was made "to all whom it may concern" and the Sub-Divisional Officer, Palwal, was directed to take all steps for the acquisition of this land. Finally the notification provided for the immediate taking of possession of the land under the provisions of s. 17 (2) (c) of the Act. Both these notifications were published in the Punjab Government Gazette of August 25, 1961.

The petitioners contend that these notifications and the land acquisition proceedings permitted to be taken under them violate their fundamental rights under Art. 19 (1) (f) and (g) to possess the said land and carry on their occupation, trade or business and that, therefore, they must be quashed.

It is their contention that they have purchased this land *bona fide* for industrial purposes as land in the vicinity of this land is being acquired by industrialists for establishing various industries. The purpose is said to be the establishment of a paper manufacturing plant. According to them

they have entered into an arrangement with Messrs. R. S. Madho Ram & Sons who hold industrial licence No. L/24 (1)/N-60/62. The proposed industry, according to them, would employ about 200 people. The industry they wish to start is a new one so far as they are concerned, whereas according to them, the respondent No. 6 is already engaged in refrigeration industry and as far as they know, it has established a factory for manufacturing refrigeration equipment at Hyderabad in the State of Andhra Pradesh.

It may be mentioned that some time after the notification was published, that is, on September 29, 1961, the Government of Punjab sanctioned the expense of Rs. 100 for the purpose of acquisition of this land. According to the petitioners this was an after-thought and besides, a token contribution of this kind is not sufficient to show that the acquisition is being made partly at public expense.

The petition was opposed not only by respondent No. 6 but also by the State of Punjab which is respondent No. 1 to the petition. The respondent No. 1 denied that the petitioners had purchased the land for a *bona fide* industrial purpose and would in fact use it for such purpose. It also denied that any assurance was give to the petitioners that their lands would not be acquired. It admitted that the respondent No. 6 had made an application in December, 1960 for acquiring land for setting up its factory and that, therefore, the Punjab Government agreed to do the needful. According to respondent No. 1 the acquisition proceedings have been undertaken for a public purpose and at public expense as stated in the notification and that the State Government would make part contribution towards the payment of compensation of the land out of public revenues. In the circumstances it is

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contended that the petitioners would not be entitled to any relief whatsoever. They would of course get compensation for the land as determined by the Land Acquisition Officer.

The action of the State Government is said to be legal and in accordance with the provisions of the law because what was done was permissible under ss.4 and 6 of the Act, that it was done *bona fide*, that part of the compensation would be paid out of the public revenues, that the declaration made by the Government is conclusive evidence under sub-s.(3) of s.6, that the land is needed for a public purpose, that the notifications were made on different dates though they were published in the same issue of the Gazette and are perfectly valid, that the land is not being acquired for a company but for a public purpose, that, therefore, the provisions of Part VII of the Act are inapplicable and that the lands are lying vacant and their owners will be paid compensation. No question of depriving them of their fundamental rights under Art. 19(1)(f) and (g) or of violation of their right under Art. 14 therefore arises.

According to respondent No. 1 it would be open to the petitioners to make their claim for compensation to the Land Acquisition Officer for such loss as the acquisition would entail on them. It also stated that as the land purchased by the respondent No. 6 through private negotiation has no access to the main road and as the land is inadequate to meet the minimum essential requirements the acquisition of the lands in question became necessary.

On behalf of the respondent No. 6 it is stated that the need for a factory like the one in its contemplation is acutely felt in India inasmuch a manufacture of compressors and the compones nts of big and small air-conditioners, refrigerators,

water coolers and cold storage cabinets is not being carried out anywhere in the country so far. The import of these goods naturally drains away a considerable amount of foreign exchange. It was, therefore, felt that by starting manufacture of these articles in our country not only will foreign exchange be saved, but some foreign exchange will eventually be earned by the export of manufactured goods. They further contend that the purpose for which the factory is being set up must be regarded as a public purpose because *inter alia* it is intended by manufacturing the aforesaid goods, to cater to the needs of the public at large. It is in view of these circumstances that the Government of India, accepting the recommendation made in this regard by the licensing committee under the Industries Development and Regulation Act, 1951, issued a licence in its favour on April 8, 1951. It then pointed out that it has secured the collaboration in this project of a well-known American Company named Borg-Warner International Corporation of Chicago, which is the biggest manufacturers of air conditioning plants and equipment in the world, and that the collaboration agreement has been approved by the Government of India in the Ministry of Commerce. Its grievance is that this agreement has not been implemented so far because it has not been able to get the land for constructing the building in which the necessary machinery and 'implements' could be installed. Finally it says that originally the licence was issued for setting up a factory in the State of West Bengal and that it was at the instance of the Government of Punjab that the Central Government permitted the location of the factory to be shifted from West Bengal to Punjab. According to it once the factory gets going it is likely to employ at least 1,000 workers.

It is not necessary to refer to the other affidavits and the rejoinder affidavits except to some

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portions of the additional affidavit filed by Mr. M.R. Bhagat, Under Secretary on behalf of the respondent No. 1. We are referring only to those portions which were relied on during the arguments before us. In that affidavit it is denied that any licence had been granted to Messrs. R. S. Madho Ram & Sons for the establishment of a paper plant in the Punjab. According to respondent No. 1 Messrs. R. S. Madho Ram & Sons were granted a licence on August 17, 1960, for the establishment of an industrial undertaking in Ghaziabad (U.P.) for the manufacture of writing and printing paper and pulp. It further stated that even this licence has been cancelled by the Government of India by their letter dated January 31, 1962. Since the said licensee did not take any effective steps to establish the same. It then stated that the Air Conditioning Corporation which was incorporated as a private limited company has since, with the permission of the Central Government, been converted into a public limited company with the name and style of "York India Ltd.", and that the company has been granted a licence to manufacture refrigeration equipment by the Industrial Licensing Committee. There is an agreement between York India Ltd., and Messrs. York Corporation, U.S.A. a subsidiary of Borg-Warner of the U.S.A. whereunder the latter have undertaken to give all technical assistance and technical training to the Indian personnel as also to contribute 50% of the initial investment in the undertaking. The respondent No. 6 expects to manufacture 70% of the equipment in the very first year and cent. per cent. by the end of 1966. It further stated that the foreign collaborators also have agreed to sell the products of the firm outside India at prices and on terms and conditions most favourable to the Indian firm, thereby enabling it to obtain access to the foreign market. The foreign collaborator would make available to the Indian

personnel the technical 'know-how' and other information necessary for the manufacture of refrigeration materials and that such assistance will itself be very valuable. It denied that the respondent No. 6 has established a factory similar to the one now intended to be established in Hyderabad as alleged by the petitioners. It is admitted that licences have been granted to two other concerns in India for the manufacture of similar equipment. Neither of those licensees has actually started production, at any rate, so far, and, therefore, it is not correct to say that similar equipment is already being manufactured in India. Then it stated "the products that are to be manufactured by the respondent till now were being imported into India from foreign countries and goods worth about Rs. 3,83,70,000 in 1960 and for the first ten months in 1961 Rs. 3,55,50,000 were imported by the various licensees holding import licences." It also stated that the respondent No. 6 was granted licence to establish a factory in West Bengal but since no one had been granted a licence to establish a factory of this kind in the Punjab its licence was transferred to Punjab. The proposed factory would employ a large number of persons and thus help to solve to some extent the exisiting problem of unemployment in Punjab. Finally it stated that the establishment of the factory as such is in furtherance of the industrial development of the Punjab State and is, therefore, for a public purpose.

On behalf of the petitioners Mr. Pathak has raised the following five contentions :

(1) The acquisition is not for a public purpose either within s.4 or s.6 of the Land Acquisition Act or for a purpose useful to the public as contemplated in s.41 and that the action of the Government amounted to

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acquiring property from one person and giving it to another.

(2) The alleged contribution of Rs. 100 made by the Government is a colourable exercise of power, that no such intention was mentioned prior to the notification and that the amount of Rs. 100 is so unsubstantial a sum compared to the value of the property that it cannot raise an inference of Government participation in the proposed activity.

(3) That the property is in fact being acquired for a company and, therefore, the provisions of Part VII of the Act should have been complied with. Non-compliance with those provisions vitiates the acquisition.

(4) The petitioners' proposed paper mill would be as good an industrial concern as the one intended to be established by respondent No. 6 and the Government, in preferring the latter to the former, has violated the guarantee of equal protection of law provided by Art. 14 of the Constitution.

(5) That the notification under ss. 4 and 6 could not have been made simultaneously and are, therefore, without efficacy.

We may deal with the third point raised by Mr. Pathak first, that is, regarding non-compliance of provisions of Part VII. It is common ground that those provisions were not complied with. The reason for that is, that according to the respondents the acquisition is not for a company but for a public purpose, partly at public expense. Indeed, the respondents at no stage have relied on the provisions of Part VII of the Act and therefore, the main question to be considered is whether the acquisition is for a public purpose

partly at public expense or not. If it is so, then, of course, the petitions must succeed. Therefore, it is the first two contentions raised by Mr. Pathak which primarily need our consideration.

According to learned counsel for the petitioners the statements made in the affidavits on behalf of the State as well as on behalf of the respondent No. 6 make it perfectly clear that the land is being acquired for the respondents No. 6. Reliance is placed particularly upon that portion of the affidavit of the State where it is stated that the land is acquired for enabling the respondent No. 6 to have access to the main road and for meeting their minimum requirements for establishing their factory. It is further stated that the compensation for all the land which is being acquired is to come out of the pockets not of the State Government but the respondent No. 6 itself. No doubt, the Government has said that it has sanctioned the payment of Rs. 100 towards the payment of compensation but that is only an insignificant fraction of the total amount of compensation that would be payable in respect of these lands, the petitioners themselves having paid Rs. 4,50,000 to the persons from whom they acquired these lands.

On behalf of the respondents the learned Advocate-General for Punjab contended that the declaration of the Government in the notification that the land is required for a public purpose is made conclusive by sub-s. 3 of s. 6 of the Act and, therefore, it is not open to this Court to go behind it and try to satisfy itself whether in fact the acquisition is for a public purpose or not. Alternatively he contended that the land is being acquired for a public purpose because the object of the acquisition is to establish a new industry

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and do away with imports of refrigeration equipment and to enable technical education to be imparted to Indian personnel in a new field. He further said that the acquisition will not only save foreign exchange by lessening imports but will enable foreign exchange to be earned from the export of goods manufactured in the proposed factory. The new industry is said to be of great economic importance inasmuch as it will enable the preservation of food which will otherwise be destroyed. Refrigeration equipment also contributes towards the maintenance of health because it enables storage of medicines such as anti-biotics which are liable to be decomposed at normal temperatures prevailing in our country. The industry proposed to be started will open a new avenue of employment and diminish unemployment and generally advance the industrial development of the country. Finally he said that a part of the land is required for building houses and quarters for the workers of the factory and to give amenities to them. All these purposes are, therefore, said to be public purposes. Reliance was placed by him on Vol. 19 of Encyclopaedia Britannica, pp. 49 to 57 for showing the manifold applications of refrigeration in various industries and activities. Reference was also made to Vol. 18 of Encyclopaedia Britannica, p. 745 wherein facilities for providing refrigeration have been grouped under the heading 'public utility'. Reference was also made to be next page where it is stated "Every public utility must be in possession of natural resources upon which that industry is based. Their sites must have strategic locations. Limitation in the choice of this agent of production tends to make the cost of acquiring or leasing these facilities greater than it would be if the industry had a wider range of choice. Furthermore, utilities must make allowances in advance for probable increase in the required capacity. For these reasons utilities are provided

with the governmental power of *eminent domain* which makes possible the compulsory sale of private property." Relying upon the affidavit of Mr. Bhagat, to which we have referred earlier, the learned Advocate-General of Punjab said that the object of the Government in acquiring these lands is to enable a new industry to be established not only for saving foreign exchange and earning foreign exchange but also for securing the industrial advancement of the country, enabling the citizens to obtain technical education in a new field, relieving to some extent the pressure of unemployment and so on. For all these reasons he contends that the acquisition must be deemed to be for a public purpose even though the bulk of the compensation for the acquisition will come from the pockets of respondent No. 6.

In our opinion the question whether any of the aforesaid purposes falls within the expression public purpose would arise for consideration only if the declaration of the Government is not conclusive or if the action of the Government is colourable. If, as contended by the learned Advocate General, sub-s. 3 of s. 6 concludes the matter—and the validity of this provision is not challenged—and the action of the Government is not colourable the other question would not arise for consideration.

It is strenuously contended on behalf of the petitioners that sub-s. 3 of s. 6 does not debar this Court from considering whether a purposed acquisition is for a public purpose or not. It is said, in the first place, that this provision only makes the declaration "conclusive evidence" and not "conclusive proof" and then contended that the declaration is conclusive evidence only of a need and nothing more.

A distinction is sought to be made between "conclusive proof" and "conclusive evidence" and

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it is contended that where a law declares that a fact shall be conclusive proof of another, the Court is precluded from considering other evidence once such fact is established. Therefore, where the law makes a fact conclusive proof of another the fact stands proved and the Court must proceed on that basis. But, the argument proceeds, where the law does not go that far and makes a fact only "conclusive evidence" as to the existence of another fact, other evidence as to be existence of the other fact is not shut out. In support of the argument reliance is placed on s. 4 of the Indian Evidence Act which in its third paragraph defines 'conclusive proof' as follows :

> "When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it".

This paragraph thus provides that further evidence is barred where, under the Indian Evidence Act, one fact is regarded as proof of another. But it says nothing about what other laws may provide. There are a number of laws which make certain facts conclusive evidence of other facts: (see Companies Act, 1956, s. 132 ; the Indian Succession Act, 1925, s. 381 ; Christian Marriages Act, 1872, s. 61 ; Madras Revenue Act, 1869, s. 38 ; Oaths Act, 1873, s. 11). The question is whether such provision also bars other evidence after that which is conclusive evidence is produced.

The object of adducing evidence is to prove a fact. The Indian Evidence Act, deals with the question as to what kind of evidence is permissible to be adduced for that purpose and states in s. 3 when a fact is said to be proved. That section reads thus :

'Evidence' means and includes—

(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the court; such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

Since evidence means and includes all statement which the court permits or requires to be made, when the law says that a particular kind of evidence would be conclusive as to the existence of a particular fact it implies that that fact can be proved either or by evidence or by some other evidence which the Court permits or requires to be advanced. Where such other evidence is adduced it would be open to the Court to consider whether, upon that evidence, the fact exist or not. Where on the other hand, evidence which is made conclusive is adduced, the Court has no option but to hold that the fact exists. If that were not so, it would be meaningless to call a particular piece of evidence as conclusive evidence. Once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. In substance, therefore, there is no difference between conclusive evidence and

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conclusive proof. Statutes may use the expression 'conclusive proof' where the object is to make a fact non-justiciable. But the legislature may use some other expression such as 'conclusive evidence' for achieving the same result. There is thus no difference between the effect of the expression 'conclusive evidence' from that of 'conclusive proof', the aim of both being to give finality to the establishment of the existence of a fact from the proof of another.

Learned counsel contends that it is open to the Court to examine whether the action of the executive, even in the absence of an allegation that it is *malafide*, is related to the section or not and for this purpose to consider whether the acquisition is for a public purpose. In support of this contention he has relied upon the decision in *State of Bihar* v. *Maharajadhiraja Sir Kameswar singh of Darbhanga*(1). There, Mahajan, J. (as he then was,) has expressed the view that the exercise of power to acquire compulsorily is conditional on the existence of public purpose and that being so this condition is not an express provision of Art. 31 (2) but exists *aliund* in the content of the power itself. That, however, was not the view of the other learned Judges who consituted the Bench. Thus according to Mukherjea, J., (As he then was), the condition of the existence of a public purpose is implied in Art. 31(2). (See pp. 957, 958). Das. J. (as he then was), was also of the same view. (See pp. 986 .988). Similarly Patanjali Śastri, C.J., has also taken the view that the existence of public purpose is an express condition of cl. 2 of Art. 31.

The Constitution permits acquisition by the State of private property only if it is required for a public purpose. But can it; therefore, be said

(1) [1952] S.C.R. 889, 935.

that the provisions of a statute must be so construed that the declaration by the Government as to the existence of public purpose is necessarily justiciable ? We are not concerned here with a post Constitution law but with a pre-Constitution law. The Act has been in operation since 1894. The validity of the law was challenged before this Court in *Babu Barkya Thakur* v. *The State of Bombay* (1) on the ground that it infringes the provisions of Arts. 31(2) and 19(1)(f) of the Constitution. But this Court held that the law being a pre-Constitution law is protected from the operation of Art. 31(2) by the provisions of Art. 31(5)(a). It also held, following the decision in the *State of Bombay* v. *Bhanji Munji* (2) and that in *Lilavati Bai* v. *The State of Bombay* (3) that the attack under Art. 19(1)(f) of the Constitution is futile.

The argument, however, is that the protection which the Act enjoys is only to this extent that even though any of its provisions be in conflict with Art. 31(2) the Act cannot be challenged on that ground ; the protection does not however extend to other provisions of Part III of the Constitution, such as Art. 19(1)(f). As we understand the decision in *Bhanji Munji's case* (2) what this Court has held is that for a right under Art. 19(1)(f) to hold property to be available to a person, he must have the property with respect to which he can assert such right. If the right to the possession of the property is taken away by law protected by Art. 31 (5) (a), Art. 19 (1) (f) is not attracted. That is the decision of this Court and it has been followed in two other cases. All the decisions are binding upon us. It is contended that none of the decisions has considered the argument advanced before us that a law may be

(1) (1961) 1 S.C.R. 128. (2) (1955) 1 S.C.R. 777.
(3) (1957) S.C.R. 721.

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protected from an attack under Art. 31 (2) but it will still be invalid under Art. 13(2) if the restriction placed by it on the right of a person to hold property is unreasonable. In other words, for the law before us to regarded as valid it must also satisfy the requirements of Art. 19(5) and that only thereafter can the property of a person be taken away. It is sufficient to say that though this Court may not have pronounced on this aspect of the matter we are bound by the actual decisions which categorically negative an attack based on the right guaranteed by Art. 19(1)(f). The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided. That point has been specifically decided in the three decisions referred to above.

We, therefore, hold that since the Act provides that the declaration made by the State that a particular land is needed for a public purpose shall be conclusive evidence of the fact that it is so needed the Constitution is not thereby infringed.

For ascertaining the extent to which the determination by the State is conclusive it would be desirable to examine the relevant provisions of the Act. The preamble states that the law is for the acquisition of land needed for public purposes and for companies and incidental matters connected therewith. Section 2(f) defines public purpose as follows :

> "the expression 'public purpose' includes the provision of village sites in districts in which the appropriate Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision."

This is an inclusive definition and not a compendious one and therefore, does not assist us very much in ascertaining the ambit of the expression 'public purpose'. Broadly speaking the expression 'public purpose' would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Then there is s. 4 which enables the State to publish a preliminary notification whenever it appears to it that land in any locality is needed or is likely to be needed for a public purpose. The other aspects of the section have no bearing upon the point before us and we need not refer to them. Then there is s. 5A which gives to the person interested in the land which has been notified as being needed or likely to be needed for a public purpose or for a company, the right to object to the acquisition of the land. Such objection has to be heard by the Collector and after making such further enquiry as he thinks necessary the record has to be submitted to the appropriate Government along with the report containing the Collector's recommendations and the objections. Sub-section (2) of s. 5A makes the decision of the Government on the objections final. This is followed by s. 6 sub. s. (1) of which provides that when the Government is satisfied that any particular land is needed for a public purpose, or for a company, a declaration should be made to that effect and such declaration should be published in the Official Gazette. Sub-section (2) specifies the matters including the purpose for which the land is needed which are to be set out in the declaration. Sub-section (3) makes the declaration conclusive evidence of the fact that the land is needed for a public purpose or for a company, as the case may be. Section 17 of the Act confers special powers on the Government which are exercisable in cases of emergency. Sub-section (4) thereof provides

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that in those cases which fall under sub-s. (1) or Sub-s. (2) the appropriate Government may direct that the provisions of s. 5A of the Act shall not apply and also empowers the Government to make a declaration under s.6 in respect of the land to be acquired at any time after the publication of the notification under sub-s. (1) of s.4. These are the provisions which have a bearing on the point under consideration.

It is clear from these provisions that the object of the law is to empower Government to acquire land only for a public purpose or for a company, and, where it is for a company the acquisition is subject to the provisions of Part VII. As has been pointed out by this Court in *R. L. Arora* v. *The State of Uttar Pradesh* (1) the acquisition for a company contemplated by Part VII is confined only to cases where the Government is satisfied that the purpose of obtaining the land is erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith or for the construction of some work which is likely to prove directly useful to the public.

After a notification under sub.s. (1) of s.4 is published a person interested in the land is entitled to object to the acquisition. That objection may be raised on any ground as for instance that the land is not in fact needed at all for any purpose or that it is not suitable for the purpose for which it is sought to be acquired or that the purpose is not a public purpose or what is said to be a company is not a company and so on. Finality is attached to the decision of the Government which ultimately has to decide such objections. Then follows s.6 which enables the Government to make a declaration provided that it is satisfied that a particular land is needed for a public purpose or for a company. No doubt,

(1) (1962) Supp. 2 S.C.R. 149.

it is open to the State Government in an emergency by exercising its powers under sub. s. (4) of s. 17, to say that the provisions of s. 5A would not apply. But for construing the provisions of s. 6 it would be relevant to bear in mind that section. The scheme of the Act is that normally the provisions of s. 5A have to be complied with. Where, in pursuance of the provisions, objections are lodged, these objections will have to be decided by the Government. For deciding them the Government will have before it the Collector's proceedings. It would, therefore, be clear that the declaration that a particular land is needed for a public purpose or for a company is not to be made by the Government arbitrarily, but on the basis of material placed before it by the Collector. The provisions of sub-s. (2) of s. 5A make the decision of the Government on the objections final while those of sub-s. (1) of s. 6 enable the Government to arrive at its satisfaction Sub-section (3) of s. 6 goes further and says that such a declaration shall be conclusive evidence that the land is needed for a public purpose or for a company.

It is, however, argued by learned counsel that the conclusiveness or finality attached to the declaration of Government is only as regards the fact that the land is "needed" but not as regards the question that the purpose for which the land is needed is in fact a public purpose or what is said to be a company is really a company. Sub-section (1) does not effect a dichotomy between "need" and "public purpose or a company". There is no justification for making such a dichotomy. By making it, not only will the language of the section be strained but the purpose of the law will be stultified. The expression must be regarded as one whole and the declaration held to be with respect to both the elements of the expression.

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The Government has to be satisfied about both the elements contained in the expression "needed for a public purpose or a company". Where it is so satisfied, it is entitled to make a declaration. Once such a declaration is made sub-s. (3) invests it with conclusiveness. That conclusiveness is not merely regarding the fact that the Government is satisfied but also with regard to the question that the land is needed for a public purpose or is needed for a company, as the case may be. Then again, the conclusiveness must necessarily attach not merely to the need but also to the question whether the purpose is a public purpose or what is said to be a company is a company. There can be no "need" in the abstract. It must be a need for a 'public purpose' or for a company. As we have already stated the law permits acquisition only when there is a public purpose or when the land is needed for a company for the purposes set out in s. 40 of the Act. Therefore, it would be unreasonable to say that the conclusiveness would attach only to a need and not to the fact that that need is for a public purpose or for a company. No land can be acquired under the Act unless the need is for one or the other purpose and, therefore it will be futile to give conclusiveness merely to the question of need dissociated from the question of public purpose or the purpose of a company. Upon the plain language of the relevant provisions it is not possible to accept the contention put forward by learned counsel.

Learned counsel put the matter in a slightly different way and said that s. 6 (3) presupposes that the jurisdictional fact exists, namely, that there is a public purpose or the purpose of a company behind the acquisition and, therefore, the question whether it exists or not is justiciable. The Act has empowered the Government to determine the question of the need of land for a public

purpose or for a company and the jurisdiction conferred upon it to do so is not made conditional upon the existence of a collateral or extraneous fact. It is the existence of the need for a public purpose which gives jurisdiction to the Government to make a declaration under s. 6 (1) and makes it the sole judge whether there is in fact a need and whether the purpose for which there is that need is a public purpose. The provisions of sub-s. (3) preclude a court from ascertaining whether either of these ingredients of the declaration exists.

It is, however, said that that does not mean that in so far as the meaning to be given to the expression public purpose is concerned the courts have no power whatsoever. In this connection the decision of the Privy Council in *Hamabai Framjee Petit* v. *Secretary of State for India* (1) was referred to. In that case certain land in Malabar Hill in Bombay was being acquired by the Government of Bombay for constructing residences for Government officers and the acquisition was objected to by the lessee of the land on the ground that the land was not being taken or made available to the public at large and, therefore, the acquisition was not for a public purpose. When the matter went up before the High Court Batchelor, J., observed:

> "General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purposes' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular

(1) (1914) L.R. 42 I.A. 44.

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interest of individuals, is directly and vitally concerned."

In that case what was being considered was a re-entry clause in a lease deed and not provisions of the Land Acquisition Act. That clause left it absolutely to the lessor, the East India Company to say whether the possession should be resumed by it if the land was required for a public purpose. It was in this context that the question whether the land was needed for a public purpose was considered. The argument before the Privy Council rested upon the view that there cannot be a 'public purpose' in taking land if that land, when taken, is not in some way or other made available to the public at large. Rejecting it they held that the true view is that expressed by Batchelor, J., and observed:

> "That being so, all that remains is to determine whether the purpose here is a purpose in which the general interest of the community is concerned. *Prima facie* the Government are good judges of that. They are not absolute judges. They cannot say *'sic volo sic jebeo'*, but at least a Court would not easily hold them to be wrong. But here, so far from holding them to be wrong, the whole of the learned judges, who are thoroughly conversant with the conditions of Indian life, say that they are satisfied that the scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servants. From such a conclusion their Lordships would be slow to differ, and upon its own statement it commends itself to their judgment".

Mr. Pathak strongly relied on these observations and said that the Privy Council have held that the matter is justiciable. It is enough to say

that that was not a case under the Land Acquisition Act and, therefore, conclusiveness did not attach itself to the satisfaction of the Government that a particular purpose fell within the concept of public purpose.

Mr. Pathak then contended that the question as to the meaning to be given to the phrase 'public purpose' is not given conclusiveness by sub-s. (3) of s. 6. According to him, all that sub-s. (3) of s. 6 says is that the Government's declaration that particular land is needed for a public purpose or a company shall be conclusive and that it does not say that the Government is empowered to define what is a public purpose and then say that the particular purpose falls within that definition. As already stated no attempt has been made in the Act to define public purpose in a compendious way. Public purpose is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose.

It was contended on the basis of the decision of this Court in *R. L. Arora* v. *The State of U. P.* (1) that the Courts have power to consider whether the purpose for which land is being acquired is a public purpose. In that case land was being acquired, as already stated, for a company and the real question which arose for consideration was, what is the meaning to be attached to the words "useful to the public" occurring in cl. (b) of sub s. (1) of s. 40 of the Act. The land was required by the company to enable it to establish its works and it was contended before this Court that the products manufactured

(1) [1967] Supp. 2 S.C.R. 149.

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by the company will be useful to the public in general and, therefore, the acquisition would be covered by cl. (b) of sub-s. (1) of s. 40. Negativing this contention Wanchoo, J., who spoke for the Court observed :

> "It is true that it is for the Government to be satisfied that the work to be constructed will be useful to the public..... .....but this does not mean that it is the Government which has the right to interpret the words used in s. 40 (1) (b) ..... It is the Court which has to interpret what those words mean. After the court has interpreted these words, it is the Government which has to carry out the object of ss. 40 and 41 to its satisfaction. The Government cannot say that ss. 40 and 41 mean this and further say that they are satisfied that the meaning they have given to the relevant words in these sections has been carried out in the terms of the agreement provided by them..... The Government cannot both give meaning to the words and also say that they are satisfied on the meaning given by them. The meaning has to be given by the Court and it is only thereafter that the Government's satisfaction may not be open to challenge..... ..... We have already indicated what these words mean and if it plainly appears that the Government are satisfied as a result of giving some other meaning to the words, the satisfaction of the Government is of no use, for then they are not satisfied about what they should be satisfied. In the present case the Government seems to have taken a wrong view that so long as the product of the works is useful to the public and so long as the public is entitled to go upon the works in the way of

business, that is all that is required by the relevant words in ss. 40 and 41".

It was no doubt argued before the Court that the declaration made by the Government under s. 6 (1) that the land was needed for a company is conclusive and, therefore, the question as to the actual purpose of the acquisition is not justiciable. This Court pointed out that s. 6 (3) makes the declaration under s. 6 (1) conclusive evidence of the fact that the land is needed for a public purpose or for a company and that as the declaration stated that the land was needed for a company and that fact was not disputed by the parties, the provisions of s. 6 (3) were of no assistance. We may point out that even according to that decision conclusiveness attaches itself to the declaration that the land is required for a public purpose and, therefore, instead of assisting the petitioners it in fact assists the respondents. No doubt, in so far as an acquisition for a company is concerned Part VII requires that before a declaration under s. 6 (1) is made the Government should be satisfied that the land is required for one of the two purposes set out in s. 40 (1) of the Act. The Government can consent to the making of a declaration under s. 6 (1) after it is satisfied under s. 41 about the fact that the land is required for a company for the purposes set out in cl. (a) and (b) of that section. But the declaration made thereafter is confined only to one matter and that is that the land is required for a company and nothing more. The question whether in fact the land is required by the company for the purposes set out in cl. (a) and (b) of s. 40 (1) is not germane to the declaration. No doubt the power of the Government to make a declaration with respect to an acquisition for a company is circumscribed and, therefore, the Government is expected to exercise it with due regard to the limitation placed upon it. But it does not follow that sub-s. (3)

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of s. 6 makes the declaration conclusive evidence not only of the fact that the land is required for a company but also of the fact that the land is required by a company for a purpose specified in s. 40 (1) of the Act. The observations made by Wanchoo, J., therefore do not assist the petitioners.

Reliance was then placed on two decisions of this Court in which the meaning of the expression "public purpose" is considered. One is *Babu Barkya Thakur* v. *The State of Bombay* (1). There this Court observed :

> "It will thus be noticed that the expression 'public purpose' has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited."

Later in the same judgment this Court pointed out that where a large section of the community is concerned its welfare is a matter of public concern. The other is *Pandit Jhandu Lal* v. *The State of Punjab* (2). There this Court has pointed out that the purpose of public utility referred to in ss. 40 and 41 are akin to the public purpose.

No doubt in these decisions this Court stated what, broadly speaking, the expression 'public purpose' means. But in neither case the question arose for consideration as to whether the meaning to be given to the expression 'public purpose' is justiciable.

Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be

(1) [1961] 1 S.C.R. 128. (2) [1961] 2 S.C.R. 459.

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

A number of decisions were cited before us by the learned Advocate-General in support of the contention that the declaration of the Government is final. One of those decisions is *Wijeyesekera* v. *Festing* (1). In that case dealing with Ceylon Ordinance No. 3 of 1876 (Acquisition of Land Ordinance, (Ceylon), 1876) which incidentally did not contain a provision similar to that of sub-s. (3) of s. 6, their Lordships observed:

> "The whole frame of the ordinance shows that what the District Court is concerned with is the assessment of compensation, but their Lordships do not desire to rest their opinion that the decision of the Governor is final merely upon the question of the Court before which the question is raised. It appears to their Lordships that the decision of the Governor that the land is wanted for public purposes is final, and was intended to be final, and could not be questioned in any Court."

There, the land was required for a road and the contention was that the Government did not take the opinion of the Surveyor General as to its fitness

(1) [1919] A.C. 646.

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for such purpose. On this ground it was contended that the Governor's declaration could be questioned. But this was negatived by the Privy Council. Following this decision in *Vadlapatla Suryanarayana* v. *The Province of Madras* (1) a Full Bench of the Madras High Court held that a declaration by the Provincial Government under s. 6(1) of the Act that certain lands were required for a public purpose is final and, where there is no charge against the Provincial Government that it had acted in fraud of its powers its action in directing the acquisition cannot be challenged in a Court of law. Similar view has been taken in *Samruddin Sheikh* v. *Sub-Divisional Officer* (2); *V. Gopalakrishna* v. *The Secretary, Board of Revenue, Madras* (3); *S. Jagannadha Rao* v. *The State of Andhra Pradesh* (4); *Secretary of State for India in Council* v. *Akbar Ali* (5). Several other decisions to the same effect, some of them post-Constitution, were also mentioned by the learned Advocate-General, which take the same view as in these decisions. Not a single decision was however, brought to our notice in which it has been held that the question as to what is a public purpose or whether it exists can be enquired into by the Courts even in the absence of colourable exercise of power, because s. 6(3) has become void under Art. 13(2) of the Constitution.

It was next contended that sub-s. (3) of s. 6 cannot stand in the way in a proceeding under Art. 226 or under Art. 32 of the Constitution and in support of this argument reliance was placed upon the decision in *Chudalmuthu Pillai* v. *State* (6); *Maharaja Luchmeshwar Singh* v. *Chairman of the Darbhanga Municipality* (7);

(1) I.L.R. [1946] Mad. 153. (2) A.I.R. (1954 Assam 81).
(3) A.I.R. 1954 Mad. 362. (4) A.I.R. 1960 A.P. 343
(5) (1928) I.L.R. 45 All. 443. (6) I.L.R. [1952] Trav. Cochin. 488.
(7) (1890) I.R. 17 I.A. 90.

Rajindra Kumar Ruia v. *Government of West Bengal* (1); *Major S. Arjan Singh* v. *State of Punjab* (2); In the first mentioned case it was contended that the order was actuated by *mala fides* and also that there were various irregularities in the proceedings. As we have already indicated, if the declaration is vitiated by fraud, then the declaration is itself bad and what is bad cannot be protected by sub-s. (3) of s. 6. In the next case the act of the Court of Wards in handing over the ward's lands for a nominal consideration for a public purpose was challenged in a suit. The challenge was upheld by the Privy Council on the ground that lawful possession could only be taken by the State in strict compliance with the provisions of the Land Acquisition Act. The question raised here did not arise for consideration in that case. In the other two cases the declaration was challenged under Art. 226 and in both the cases the challenge failed. In the first of the two latter mentioned case it failed on the ground that there was no fraud and in the second on the ground that the provisions of sub-s. (3) of s. 6 precluded the court from challenging the validity of the declaration. None of these cases, therefore support the contention of the petitioners.

Moreover we are not concerned here with the powers of the High Court under Art. 226 but with those of this Court. It is said, however that the bar created by s. 6(3) would not stand in the way of this Court while dealing with a petition under Art. 32 and, therefore, it is open to us to ascertain whether an acquisition is for a public purpose or not. While it is true that the powers of this Court cannot be taken away by any law which may hereafter be made unless the Constitution itself is amended we are here faced with a provision of law which is a pre-Constitutional law and which is protected by the

(1) A.I.R. 1952. Cal. 573. (2) I.L.R. [1958] Punjab 1451.

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Constitution—to the extent indicated in Art. 31(5)(a) and an attack on its validity on the ground that it infringes the right guaranteed by Art. 19(1)(f) has failed. Therefore it is a good and valid law and the restriction placed by it on the powers of this Court under Art. 32 must operate.

Though we are of the opinion that the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose we must emphasise that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as s. 6(3) notwithstanding.

We were referred by the learned Advocate-General to a recent decision of the House of Lords in *Smith* v. *East Elloe Rural District Council* (1) to which reference was made by a learned Advocate General. In that case their Lordships were considering the Acquisition of Land (Authorisation of Procedure) Act, 1946, (9 and 10 Geo. 6, c. 49), Sch. I, Pt. IV, paras 15 and 16. Paragraph 15 (1) of Part IV, Sch. I to the Act provides as follows :

"If any person aggrieved by a compulsory

(1) [1956] A.C. 736.

> purchase order desires to question the validity thereof .....on the ground that the authorisation of compulsory purchase thereby granted is not empowered to be granted under this Act.....he may, within six weeks from the date on which notice of the confirmation or making of the order.....is first published.....make an application to the High Court.....".

Paragraph 16 provides as follows :

> "Subject to the provisions of the last foregoing paragraph, a compulsory purchase order.....shall not.....be questioned in any legal proceedings whatsoever....."

The land having been made the subject of compulsory purchase the owner brought an action in which among other things, a declaration was added that the order was made and confirmed wrongfully and in bad faith and that the clerk acted wrongfully and in bad faith in procuring its order and confirmation. The House of Lords held by majority that the action could not proceed except against the clerk for damages because the plain prohibited in paragraph 16 precluded the Court challenging the validity of the order. They also held that paragraph 15 gave no opportunity to a person aggrieved to question the validity of a compulsory purchase order on the ground that it was made or confirmed in bad faith. As we have already said the condition for the exercise of the powers by the State Government is the existence of a public purpose (or the purpose of a company) and if the Government makes a declaration under s. 6(1) in fraud of the powers conferred upon it by that section the satisfaction on which the declaration is made is not about a matter with respect to which it is required to be satisfied by the provision and, therefore, its declaration is open to challenge as being without any legal effect. We

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are not prepared to go as far as the House of Lords in the above case.

This brings us to the second argument advanced before us on behalf of the petitioners. The learned counsel contends that there could be no acquisition for a public purpose unless the Government had made a contribution for the acquisition at public expense. According to him the acquisition in question was merely for the benefit of a company and that the action of the Government was only a colourable exercise by it of its power to acquire land for a public purpose. The contention is that before making a declaration under sub-s. (1) of s. 6 the Government ought to have taken a decision that it will contribute towards the acquisition. In the case before us no such decision was taken by the Government till September 29, 1961, that is, just one day after this writ petition was admitted by this Court and stay order issued by it. It is then said that the contribution of the Government towards the cost of acquisition being a very small fraction of the total probable cost of acquisition the inference must be that the acquisition was not even partly at public expense and, therefore, the declaration was a colourable exercise of the power conferred by law. Then it is said that not only does the declaration omit to state that the contribution of the State towards the cost of acquisition was to be Rs. 100 only but also omits to mention that what was decided was that the Government was to bear only a part of the cost of acquisition and not the whole of it. The notification is said to be thus misleading and to create the impression that the entire cost of the acquisition is to come out of the public exchequer. Finally it is contended that the establishment of an industry by a private party for manufacturing refrigeration equipment cannot fall within the meaning of the expression 'public purpose'.

It is no doubt true that the financial sanction for the contribution of Rs. 100 as part of the expenses for acquisition was accorded by the Finance Department on September 29, 1961. No doubt also that a day prior to the according of sanction this petition had been admitted by this Court and a stay order issued. But from these two circumstances it would not be reasonable to draw the inference that the declaration made by the Government was a colourable exercise of its power. The provisions of sub-s. (1) of s. 6, however, do not require that the notification made thereunder must set out the fact that the Government had decided to pay a part of the expenses of acquisition or even to state the extent to which the Government is prepared to make part contribution to the cost of acquisition.

It is then contended that before the Goverment could spend any money from the public exchequer for acquiring land a provision has to be made in the budget and the absence of such provision would be a circumstance relevant for consideration. It is sufficient to say that the absence of a provision in the budget in respect of the cost of acquisition, whole or part, cannot affect the validity of the declaration and that if Government does spend some money without allotment in the budget, its expenditure may perhaps entitle the Accountant General to raise an audit objection or may enable the Public Accounts Committee of the State Legislature to criticise the Government. But that is all. Again, where the expenditure is of a small amount like Rs. 100 it may be possible for the Government to make payment from Contingencies and thus avoid objections of this kind. Whatever that may be, these are not circumstances which would suffice to show that the declaration was colourable. It was stated at the bar by the learned Advocate-General that the entire scheme of esta-

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blishing a refrigeration factory in Punjab was examined at various stages and at different levels of Government as well as by different ministries and it was then decided to make a part contribution towards the cost of acquisition from public funds. As required by the Financial Rules the consent of the Finance Department had to be obtained for this purpose. This particular stage occupied considerable time and that is why there was a delay in according sanction. The statement of the learned Advocate-General was not challenged on behalf of the petitioners. Moreover the declaration under sub-s. (1) of s. 6 is clear on the point that the land is being acquired at public expense, and the provisions of sub-s. (3) of s. 6 precluded a Court from going behind such a declaration unless it is shown that the Government has in fact decided not to contribute any funds out of the public revenues for that purpose. For, if the Government had in fact taken a decision of that kind then the exercise of the power to make an acquisition would be open to challenge as being colourable.

Then it is contended that the contribution by the State towards the cost of acquisition must be substantial and not merely nominal or token as in this case. The argument is that though the law permits acquisition for a public purpose to be made by the State by contributing only a part of the cost of acquisition that part cannot be a particle and in this connection reliance was placed on the decision in *Chatterton* v. *Cave* (1) which was followed in *Ponnaia* v. *Secretary of State* (2). In the latter case the High Court of Madras observed that "the Legislature, when they provided that a part of the compensation should be paid from public revenues, did not mean that this condition would be satisfied by payment of a particle, e.g. one anna in Rs. 5, 985". In that case land was being acquired

(1) ([878) 3 App. Cas. 483, 491, 492. (2) A. I. R. 1926 Mad. 1099.

for making a road between two villages in Ramnad District. A sum of Rs. 5, 985 was required for the acquisition. Out of this amount only one anna was agreed to be contributed by the Government and it was contended on its behalf that this contribution satisfied the requirements of s. 6 of the Act. It was also contended that the declaration made under sub-s. (1) of s. 6 could not be challenged in view of the provisions of sub-s. (3) of s. 6 and reliance was placed on the decision in *Wijeyesekara* v. *Festing* (1). According to the High Court the fact that the Government's share in the cost of acquisition being 1/90,000 part of the amount, there was no real and *bona fide* compliance with the terms of the section and that this was an indication of the illusory character of the object for which the provisions of the Act were being made use of. The High Court then referred to the decision in *Chatterton's case* (2) and pointed out that the House of Lords were averse to putting an interpretation on the words "or part thereof" occurring in the Dramatic Copyright Act, (3 & 4 William IV, c. 15) as would make a part to mean a particle. The High Court also referred to the decision in *Maharaja Luchmeswar Singh's case* (3) and held that the acquisition was a colourable exercise of the power conferred by the Act.

This decision was not followed by the same High Court in *Senja Naicken* v. *Secretary of State* (4) where it was held that the State's contribution of one anna out of Rs. 926-8-6 for acquiring land for a road, Rs. 926-7-6 having been contributed by the ryots, was sufficient compliance with s. 6 (1) of the Act. Both these decisions came up for consideration in *Vadlapatla Suryanarayanas case* (5) and there *Ponnaia's case* (6) was over-ruled and the view taken in *Senja Naickens case* (4) was approved.

(1) (1926) I.L.R. 50 Mad. 308.
(2) (1878) 3 App. Cas. 483, 491, 492
(3) (1890) L.R. 17 I.A. 90.
(4) (1926) I L.R. 50 Mad. 308.
(5) I.L.R. [1946] Mad. 153.
(6) A. I. R. 1926 Mad. 1099.

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Chatterton's case (1) was a case of infringement of copyright where two plays had been adapted from a common source by the parties to the litigation. In that case it was accepted before the Court that the Dramatic Copyright Act protected "parts" of dramatic work and prohibited their use by persons other than the proprietor of the Copyright. It was pointed out that in the case of ordinary copyright of published work the protection was restricted only to the whole of the work and did not extend to portions of those work. The Dramatic Copyright Act also contained a provision directing that infringement of the copyright would entitle the proprietor to damages of not less than 40 shillings. It was suggested that these differences indicated an intention to prevent the invasion of the dramatic copyright independently of the quantity or materiality of the portion of dialogue or dramatic incident proved to have been copied by another. Dealing with this argument Lord Hatherley observed:

> "Now it appears to me, my Lords, that this argument goes much too far. As was said by the counsel for the respondent, the appellant would wish to read the word 'part' in the Dramatic Copyright Act as 'particle', so that the crowing of the cock in 'Hamlet', or the introduction of a line in the dialogue, might be held to be an invasion of the copyright entitling plaintiff to 40s. damages and consequently, as the law stood I believe at the time of the passing of the statute of 3 & 4 Will. 4, to the costs of his action." (pp. 491-2)

Then after pointing out that while in the case of an ordinary copyright of published works a fair use made by others would not amount to a wrong

(1) 1878) 3 App. Cas. 483, 491, 492.

justifying an action at law, the position of dramatic performance is not the same he observed :

> "They are not intended to be repeated by others or to be used in such a way as a book may be used, but still the principle *de minimis non curat lex* applies to a supposed wrong in taking a part of dramatic works, as well as in reproducting a part of a book". (p. 492)

Finally he observed that the parts which were so taken were neither substantial nor material parts and as it was impossible to say that damage had accrued to the plaintiff from such taking, his action must fail.

Lord O'Hagan observed :

> "'Part', as was observed, is not necessarily the same as 'particle', and there may be a taking so minute in its extent and so trifling in its nature as not to incur the statutory liability."

It is clear, therefore, that the analogy of *Chatterton's case* (1) cannot possibly apply to a case under the Act. As was pointed out in *Senja Naicken's case* (2) :

> "Admittedly both of the litigants had derived their compositions from a common source and it stands to reason that before you can compel a man to pay damages for stealing the product of your brain, time and labour, you must be able to point out that any resemblance between his production and yours is not merely accidental but is a designed theft of the product of your brain. Otherwise.....one might go to the absurdity of objecting to a man using the same words

(1) (1878) 3 App Cas. 483, 491, 492. (2) (1926) I.L.R. 50 Mad. 308.

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though in a different collocation as you have done."

With these observations we agree.

Now, as regards *Maharaja Luchmeswar Singh's case* (1). The facts were these. The plaintiff's land was under the management of the Court of Wards during his minority. A notification under s. 6(1) of the Land Acquisition Act, 1870 was made with respect to certain land belonging to the plaintiff for being acquired by the Government at the expense of the Darbhanga Municipality for a public purpose, that is, construction of a public ghat or landing place in the town of Darbhanga. But instead of complying with the provisions of the Land Acquisition Act and enquiring into the value of the land, the Collector who was the Chairman of the Municipality and also a representative of the Court of Wards took possession of the land and handed it over to the municipality. The compensation paid to the plaintiff was Re. 1/-, an amount agreed to by the Manager. The plaintiff, after attaining majority, instituted a suit for possession of land and for mesne profits. His suit was dismissed by the courts below and he preferred an appeal before the Judical Committee of the Privy Council. Allowing the appeal, their Lordships observed :

> "The offer and acceptance of the rupee was a colourable attempt to obtain a title under the Land Acquisition Act without paying for the land....."

How this case could at all have any bearing upon the point which arose for consideration in *Ponnaia's case* (2) we fail to see. This case is also relied on before us on behalf of the petitioners and we have refered to it earlier in this Judgment. It has nothing whatsoever to do with the question of contribution by the State towards the cost of acquisition.

(1) (1890) L.R. 17 I.A. 90. (2) A.I.R. 1926 Mad. 1099.

We would like to add that the view taken in *Senja Naicken's case* (1) has been followed by the various High Courts in India. On the basis of the correctness of that view the State Governments have been acquiring private properties all over the country by contributing only token amounts towards the cost of acquisition. Titles to many such properties would be unsettled if we were now to take the view that 'partly at public expense' means substantially at public expense. Therefore, on the principle of *stare decisis* the view taken in *Senja Naicken's case* (1) should not be disturbed. We would, however, guard ourselves against being understood to say that a token contribution by the State towards the cost of acquisition will be sufficient compliance with the law in each and every case. Whether such contribution meets the requirements of the law would depend upon the facts of every case. Indeed the fact that the State's contribution is nominal may well indicate, in particular circumstances that the action of the State was a colourable exercise of power. In our opinion 'part' does not necessarily mean a substantial part and that it will be open to the Court in every case which comes up before it to examine whether the contribution made by the State satisfies the requirement of the law. In this case we are satisfied that it satisfies the requirement of law. What is next to be considered is whether the acquisition was only for a company because the compensation was to come almost entirely out of its coffers and, therefore, it was in reality for a private purpose as opposed to public purpose. In other words, the question is whether there was on the part of the Government a colourable exercise of power. Elaborating the point it is said that the establishment of a factory for manufacturing refrigeration equipment is nothing but an ordinary commercial venture and can by no stretch of imagination fall within the well-accepted

(1) (1926) I.L.R. 50 Mad. 308.

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meaning of the expression 'public purpose', that even if it were to fall within that expression the factory is to be established not by the Government, nor by Government participation but solely by the respondent No. 6, a public limited concern and that, therefore, the concern could acquire land for such a purpose only after complying with the provisions of Part VII and that the use of the provisions of s.6(1) is merely a colourable device to enable the respondent No. 6 to do something, which, under terms of s. 6(1), could not be done.

"Public purpose" as explained by this Court in *Babu Barkaya Thakur's case* (1) means a purpose which is beneficial to the community. But whether a particular purpose is beneficial or is likely to be benificial to the community or not is a matter primarily for the satisfaction of the State Government. In the notification under s. 6(1) it has been stated that the land is being acquired for a public purpose, namely, for setting up a factory for manufacturing various ranges of refrigeration compressors and ancillary equipment. It was vehemently argued before us that manufacture of refrigeration equipment cannot be regarded as beneficial to the community in the real sense of the word and that such equipment will at the most enable articles of luxury to be produced. But the State Government has taken the view that the manufacture of these articles is for the benefit of the community. No materials have been placed before us from which we could infer that the view of the Government is perverse or that its action based on it constitutes a fraud on its power to acquire land or is a colourable exercise by it of such power.

Further, the notification itself sets out the purpose, for which the land is being acquired. That purpose, if we may recall, is to set up a factory for the manufacture of refrigeration compressors and

(1) (1961) 1 S.C.R. 128.

ancillary equipment. The importance of the undertaking to a State such as the Punjab which has a surplus of fruit, dairy products etc., the general effect of the establishment of this factory on foreign exchange resources, spread of education, relieving the pressure on unemployment etc., have been set out in the affidavit of the respondent and their substance appears in the ealier part of this judgment. These affidavits have not been controverted and we have, therefore, no hesitation in acting upon them.

On the face of it, therefore, bringing into existence a factory of this kind would be a purpose beneficial to the public even though that is a private venture. As has already been pointed out, facilities for providing refrigeration are regarded in modern times as public utilities. All the greater reason, therefore, that a factory which manufactures essential equipment for establishing public utilities must be regarded as an undertaking carrying out a public purpose. It is well-established in the United States of America that the power of eminent domain can be exercised for establishing public utilities. Such a power could, therefore, be exercised for establishing a factory for manufacturing equipment upon which a public utility depends. It is, therefore, clear that quite apart from the provisions of sub-s. (3) of s. 6 the notification of the State Government under s. 6 cannot be successfully challenged on the ground that the object of the acquisition is not carry out a public purpose. We cannot, therefore, accept the petitioner's contention that the action of the Government in making the notification under sub-s. (1) of s. 6 was a colourable exercise of the power conferred by the Act.

The next argument to be considered is whether there has been a discrimination against the petitioners. They claim that as they intend to establish a factory for manufacturing paper which

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is also an article useful to the community they are as good an industrial concern as the respondent No. 6 and the State Government in taking away land from them and giving it to respondent No. 6 is practising discrimination against them.

In the first place it is denied on behalf of the respondents that the petitioners are going to establish a paper factory. It is not disputed that no new factory can be established without obtaining a licence from the appropriate authority under the Industries Development and Regulation Act, 1951, and that the petitioners do not hold any licence of this kind. According to the petitioners, however, they had entered into an agreement with the firm of Messrs. R. S. Madhoram & Sons for establishing such a factory and that in collaboration with them they propose to establish a factory on the lands which are now being acquired. It is true that a licence for erecting a paper factory was granted to Messrs. R. S. Madhoram and Sons but the location of that factory is to be in Uttar Pradesh and not in the State of Punjab. Without, therefore, obtaining the approval of the appropriate authority the location of the factory could not be shifted to the land in question which, as already stated, is situate in the State of Punjab. Moreover this licence has since been cancelled on the ground that Messrs. R. S. Madhoram and Sons have taken no steps so far for establishing a paper factory. It is necessary to mention that the petitioners allege that this cancellation was procured by the respondents with the object of impeding the present petitioners. With that, however, we need not concern ourselves because that licence as it stood on the date of the petitions did not entitle Messrs. R. S. Madhoram and Sons to establish a factory in the State of Punjab.

Apart from that it is always open to the State to fix priorities amongst public utilities of different kinds, bearing in mind the needs of the State the existing facilities and other relevant factors. In the State like the Punjab where there is a large surplus of fruit and dairy products there is need for preserving it. There are already in existence a number of cold storages in that State. The Government would, therefore, be acting reasonably in giving priority to a factory for manufacturing refrigeration equipment which would be available for replacement in these storages and which would also be available for equipping new cold storages.

Apart from this it is for the State Government to say which particular industry may be regarded as beneficial to the public and to decide that its establishment would serve a public purpose. No question of discrimination would, therefore, arise merely by reason of the fact that Government has declared that the establishment of a particular industry is a public purpose. The challenge to the notification based on Art. 14 of the Constitution must, therefore, fail.

It is the last and final contention of the petitioners in these petitions that the notifications under ss. 4 and 6 cannot be made simultaneously and that since both the notifications were published in the Gazette of the same date, that is, August 25, 1961, the provisions of law have not been complied with. The argument is that the Act takes away from a person his inherent right to hold and enjoy that property and, therefore, the exercise of the statutory power by the State to take away such property for a public purpose by paying compensation must be subject to the meticulous observance of every provision of law entitling it to make the acquisition. It is pointed out that under sub-s. (1) of s. 4 the Government has first to notify that

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a particular land "is likely to be needed for a public purpose". Thereafter under s. 5A a person interested in the land has a right to object to the acquisition and the whole question has to be finally considered and decided by the Government after hearing such person. It is only thereafter that in a normal case the Government is entitled to make a notification under sub-s. (1) of s. 6 declaring that it is satisfied "after considering the report, if any, made under s. 5A, sub-s. (2)" that the land is required for a public purpose. This is the sequence in which the notifications have to be made. The reason why the sequence has to be followed is to make it clear that the Government has applied its mind to all the relevant facts and then come to a decision or arrived at its satisfaction even in a case where the provisions of s. 5A need not be complied with. Undoubtedly the law requires that notification under sub-s. (1) of s. 6 must be made only after the Government is satisfied that a particular land is required for a public purpose. Undoubtedly also where the Government has not directed under sub-s. (4) of s. 17 that the provisions of s. 5A need not be complied with the two notifications, that is, under sub-s. (1) of s. 4 and sub-s. (1) of s. 6 cannot be made simultaneously. But it seems to us that where there is an emergency by reason of which the State Government directs under sub-s. (4) of s. 17 of the Act that the provisions of s. 5A need not be complied with, the whole matter, that is, the actual requirement of the land for a public purpose must necessarily have been considered at the earliest stage itself that is when it was decided that compliance with the provisions of s. 5A be dispensed with. It is, therefore, difficult to see why the two notifications cannot, in such a case, be made simultaneously. A notification under sub-s. (1) one of s. 4 is a condition precedent to the making of notification under sub-s. (1) of s. 6. If the Government, therefore, takes a decision to

make such a notification and, there after, takes two further decisions, that is, to dispense with compliance with the provisions of s. 5A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provision of the law even though the two notifications are published on the same day. In the case before us the preliminary declaration under s. 4(1) was made on August 18, 1961, and a declaration as to the satisfaction of the Government on August 19, 1961, though both of them were published in the Gazette of August 25, 1961. The preliminary declaration as well as the subsequent declaration are both required by law to be published in the official gazette. But the law does not make the prior publication of notification under sub-s. (1) of s. 4 a condition precedent to the publication of a notification under sub-s. (1) of s. 6. Where acquisition is being made after following the normal procedure the notification under the latter section will necessarily have to be published subsequent to the notification under the former section because in such a case the observance of procedure under s. 5A is interposed between the two notifications. But where s. 5A is not in the way there is no irregularity in publishing those notifications on the same day. The serial numbers of the notifications are No. 5803/41 B(1)/61/18755 dated August 18, 1961, and 5809-4 IB(1)/61/18760 dated August 19, 1961, and it would appear from them that the preliminary notification did in fact precede the final declaration.

These were the only objections raised before us and as everyone of them has failed the petitions must be dismissed. We accordingly dismiss them with costs. As however, all petitions were heard together there will be only one hearing fee.

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SUBBA RAO, J.—I have perused the judgment prepared by my learned brother, Mudholkar, J. With great respect, I cannot agree.

The fact are fully stated by my learned brother and they need not be restated except to the extent relevant to the question I propose to consider.

About six acres of land purchased by the petitioners in Writ Petition No. 246 of 1961 for a sum of Rs. 4,60,000 in February, 1961, is situate in village Meola Maharajpur, Tehsil Balabhgarh, District Gargaon. On August 25, 1961, the Governor of Punjab published a notification dated August 18, 1961, in the Official Gazette under s.4 of the Land Acquisition Act, 1894, hereinafter called the Act, to the effect that the said land was likely to be needed by the Government at public expense for a purpose, namely, for setting up a factory for manufacturing various ranges of refrigeration compressors and ancillary equipment. Under s.17 of the Act the appropriate Government directed that the provisions of s.5A will not apply to the said acquisition. On the same day, another notification under s.6 of the Act dated August 19, 1961, was published to the effect that the Governor of Punjab was satisfied that the land specified therein was required by the Government at public expense for the said purpose. On September 29, 1961, the Government of Punjab sanctioned an expense of Rs. 100 for the purpose of acquisition of the said land. The validity of the said notification is questioned on various grounds. But as I am in favour of petitioners on the question of interpretation of the proviso to s.6 of the Act, I do not propose to express my opinion on any other question raised in the case. The material part of s.6(1) of the Act reads:

> "Subject to the provisions of Part VII of this Act, when the appropriate Government is

satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of Secretary to such Government or of some officer duly authorized to certify its order :

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

Under that section, the Government may declare that a particular land is needed for a public purpose or for a company ; and the proviso imposes a condition on the issuance of such a declaration. The condition is that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by the company or, wholly, or partly out of the public revenues. A reasonable construction of this provision uninfluenced by decisions would be that in the case of an acquisition for a company, the entire compensation will be paid by the company, and in the case of an acquisition for a public purpose the Government will pay the whole or a substantial part of the compensation out of public revenues. The underlying object of the section is apparent: it is to provide for a safeguard against abuse of power. A substantial contribution from public coffers is ordinarily a guarantee that the acquisition is for a public purpose. But it is argued that the terms of the section are satisfied if the appropriate Government contributes a nominal sum, say a pie, even though the total compensation payble may run into lakhs. This interpretation would lead to extraordinary results. The Government may acquire the land of A for B for a declared public purpose, contributing a pie towards the

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estimated compensation of say, Rs. 1,00,000. If that was the intention of the Legislature, it would not have imposed a condition of payment of part of the compensation, for that provision would not serve the purpose for which it must have been intended. Therefore, a reasonable meaning should be given to the expression "wholly or partly". The proviso says that the compensation shall be paid by the company or, wholly or partly, out of public revenues. A contrast between these two modes of payment suggests the idea that in one case the compensation must come out of the company's coffers and in the other case the whole or some reasonable part of it should come from public revenues. This idea excludes the assumption that practically no compensation need come out of public revenues. The juxtaposition of the words "wholly or partly" and the disjunctive between them emphasize the same idea. It will be incongruous to say that public revenue shall contribute rupees one lakh or one pie. The payment of a part of a compensation must have some rational relation to the compensation payable in respect of the acquisition for a public purpose. So construed "part" can only mean a substantial part of the estimated compensation. There cannot be an exhaustive definition of the words "substantial part of the compensation". What is substantial part of a compensation depends upon the facts of each case, the estimate of the compensation and other relevant circumstances. While a court will not go meticulously into the question to strike a balance between a part and a whole, it will certainly be in a position to ascertain broadly whether in a particular case the amount contributed by the Government towards compensation is so illusory that it cannot conceivably be substantial part of the consideration. There is some conflict of view

on this question. The House of Lords in *Chatterton* v. *Cave* (1) defined the word "part" in the context of the provisions of the Dramatic Copyright Act. The words in the statute were "production or any part thereof". The plaintiffs therein were the proprietors of a drama called, "The Wandering Jew" and it was alleged that the defendant produced a drama on the same subject. It was found that the drama of the defendant was not, except in respect of two scenes or points, a copy from, or a colourable imitation of, the drama of the plaintiffs. In that context the House of Lords construed the relevant words "production or any part thereof." Lord O'Hagan observed :

> " 'Part', as was observed, is not necessarily the same as "particle", and there may be a taking so minute in its extent and so trifling in its nature as not to incur the statutable liability."

This decision may not be directly in point, but the construction placed upon the expression "part" is of general application. In the context of that statute, the court found that the Legislature clearly intended by the words "any part" a real substantial part. A division Bench of the Madras High Court, consisting of Spencer and Ramesam, JJ., directly considered this point in *Ponnaia* v. *Secretary of State* (2). There, a total sum of Rs. 5,985 required for the acquisition of the property of the appellant therein and the Government contributed from Provincial revenues an amount of one anna towards that compensation. The learned Judges held that it was an indication of the illusory character of the object for which the provisions of the Act had been made use of. Adverting to the argument that any small contribution by the Government

(1) (1878) 3 App. Cas. 483, 498. (2) A.I.R. 1926 Mad. 1099.

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would satisfy the requirement of s.6 of the Act, Ramesam, J., observed at p. 1100 :

> "We think that the Legislature, when they passed the Land Acquisition Act, did not intend that owners should be deprived of their ownership by a mere device of private persons employing the Act for private ends or for the gratification of private spite or malice."

These are weighty observations of a judge of great experience, who was also the Government Pleader before he became a judge of the Madras High Court. The observations also indicate the statutory object in insisting on a substantial contribution from public revenues, for a strict insistence thereon would prevent to a large extent the abuse of power under the Act. But unfortunately the correctness of this decision was not accepted by another division Bench of the same High Court, consisting of Odgers and Madhavan Nair, JJ., in *Senja Naicken* v. *Secretary of State for India* (1). I have carefully gone through the judgment in that case, and, with great respect to the learned Judges, I cannot see any acceptable reasons for departing from the earlier view of the same court. Odgers, J., concentrated his criticism of the earlier judgment more on the reliance by the earlier Bench on the decision of the House of Lords than on the intrinsic merits of the decision itself. It is true that the learned Judges in the earlier decision relied upon the observations of the House of Lords, but that was only in support of their conclusion why the expression "part" should not be understood as a particle. But the main reason they gave was that, having regard to the object of that proviso, the Legislature in using the word "part" could have only meant a substantial part or otherwise the object would be

(1) (1926) I.L.R. 50 Mad. 306.

defeated and the abuse of power which it intended to prevent could easily be perpetrated under the colour of the Act. The second reason given by Odgers, J. was stated by the learned Judge thus at p.314 :

> "I invited the learned Advocate for the appellant to say where a "particle" would end and "part" begin of this sum of Rs. 600. It is true an anna is a very small part of Rs. 600. But nevertheless it is a part."

This adherence to the strict letter in complete disregard of the spirit of the section certainly defeats the purpose of the legislation. The word "partly" in the proviso should be construed in the setting in which it is used and not in vacuum, as the learned Judge sought to do. The third reason the learned Judge gives for his conclusion was stated at p. 315 thus :

> "Suppose on appeal the compensation had been enhanced. There is no doubt the Government would have to defray the extra sum out of the public revenues and having once undertaken the acquisition they could not call on the constituents again."

This comment again, in my view, is beside the point. It is not the duty of the Government to meticulously fix a figure ; it may agree to bear a definite proportion of the compensation that may ultimately be awarded to a claimant and in that even subsequent variations by hierarchy of tribunals would not cause any difficulty, for the proportion would attach itself to the varying figures. That apart, it need not be a particular fraction of the compensation ultimately awarded. If the Government agrees to contribute a substantial part of the

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estimated compensation that would meet the requirements of the section. The other learned Judge, Madhavan Nair, J., in substance agreed with the judgment of Odgers, J., and did not disclose any additional reasons for differing from the decision of the earlier Bench. In my view, the decision in *Senja Naicken* v. *Secretary of State* (1) is not correct. These two were considered by a Full Bench of the Madras High Court in *Suryanarayana* v. *Province of Madras*(2). There Sir Lionel Leach, C.J., delivering the judgment of the Full Bench, noticed the judgment of the division Bench in *Ponnaia* v. *Secretary of State* (3) and the criticism offered on the judgment by the later division Bench in *Senja Naicken* v. *Secretary of State* (1) and observed :

> "We are in entire agreement with this criticism."

Then the learned Chief Justice proceeded to observe :

> "In interpreting the proviso we can only have regard to the words used and, in our judgment, it is sufficient compliance with the proviso if any part of compensation is paid out of public funds. One anna is a part of the compensation. It is true it is a small part, but it is nevertheless a part."

This literal interpretation of the word "part" *de hors* the setting in which that word appears in the section, in my view, makes the condition imposed on the exercise of the jurisdiction by the Government meaningless and also attributes to the Legislature an intention to impose a purposeless and ineffective

(1) (1926) I.L.R. 50 Mad. 308. (2) I.L.R. (1946) Mad. 153, 158.
(3) A.I.R. 1926. Mad. 1099.

formality. For the reasons already given, I cannot accept the correctness of this judgment. I, therefore, hold that unless the Government agrees to contribute a substantial part of the compensation, depending upon the circumstances of each case, the condition imposed by the proviso on the exercise by the appropriate Government of its jurisdiction is not complied with. In the instant case it is impossible to say that a sum of Rs. 100 out of an estimated compensation which may go even beyond Rs.4,00,000 is in any sense of the term a substantial part of the said compensation. The Government has clearly broken the condition and, therefore, it has no jurisdiction to issue the declaration under s. 6 of the Act.

In this view it is not necessary to express my opinion on the other questions raised in this case.

In the result the said notification is quashed and respondents 1 to 5 are hereby prohibited from giving effect to the said notification and taking any proceedings thereunder.

It is common case that the order in Writ Petition No. 246 of 1961 would govern Writ Petitions Nos. 247 and 248 of 1961 also. A similar order will issue in these two petitions also. The respondents will pay the costs of the petitioners in all the petitions.

BY COURT : In view of the majority opinion the Court dismissed the Writ Petitions with costs. There will be one set of hearing fee.

Petitions dismissed.