CIVIL MISCELLANEOUS

Before R. S. Narula, J.

SHIV CHARAN DASS AND OTHERS,—*Petitioners.*

versus

THE AMRITSAR IMPROVEMENT TRUST, AND ANOTHER,—*Respondents.*

Civil Writ No. 1184 of 1962.

March 13, 1967.

Punjab Town Improvement Act (IV of 1922)—S. 56—Application for exemption from acquisition admitted by Improvement Trust—Whether has to be accepted—Merits of the application—Whether can be considered—Acquisition proceedings in respect of evacuee and non-evacuee properties—Whether can be legally started—Determination of quantum of compensation—Whether necessary before dispossession of the owner.

Held, that the decision of an application for exemption from acquisition under section 56 of The Punjab Town Improvement Act has to be arrived at by the Improvement Trust on merits on the main consideration referred to in sub-section (1) of that section. The first criterion for deciding such an application is whether the disputed property has, subsequent to the issue of the notification under section 5 of The Punjab Development of Damaged Areas Act, 1951, been discovered to be unnecessary for the execution of the scheme in question. In the absence of any proof of *mala fides,* the Trust is the sole judge of the necessity or otherwise of acquiring any particular property for the execution of a valid scheme. A property can be exempted from acquisition only if the Trust discovers the acquisition of such property to be unnecessary and the Trust has to finally decide this issue after considering the application of the owner, mortgagee or lessee of the property in question. It is, therefore, wrong to say that once such an application is admitted, the Trust has no option but to exempt the property from acquisition. The use of word 'may' in sub-section (4) of section 56 vests a discretion in the Trust which cannot be controlled by the High Court in writ proceedings.

Held, that if a notification for acquisition is issued in respect of a whole village and it is discovered that part of the village already belongs to the Government, the property of private individual covered by the notification can certainly be acquired and the fact that there is no necessity of acquiring a part of the land covered by the notification or that part of it cannot for any valid reason be acquired at all cannot stand in the way of the appropriate authority to acquire that

part of the property for the acquisition of which there is no legal impediment. Hence proceedings for acquisition of evacuee properties can be legally started even though acquired evacuee properties were included in the notification for acquisition.

Held, that so long as the question of determination of quantum of compensation for the property said to be acquired is not finally decided by the authority under The Punjab Town Improvement Act, 1922, it would not be fair to dispossess the owner or to acquire the property so as to destroy the very object for which the value has to be fixed by the Collector or the Tribunal as the case may be.

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued directing that the proceedings for acquisition of the properties belonging to petitioner No. 1 and occupied by petitioners 2 to 4; as mentioned in para 1 of the writ petition, under Punjab Act X of 1951 and the Land Acquisition Act be quashed and pending the decision of this petition, the execution of the notices, dated 16th July, 1962 and dispossession of the petitioners from the property in question be stayed.

H. S. GUJRAL, ADVOCATE, for the Petitioners.

T. S. MUNJRAL, ADVOCATE, for the Respondents.

ORDER

NARULA, J.—This judgment will dispose of two connected petitions, namely, *Shivcharan Dass* v. *The Amritsar Improvement Trust* (Civil Writ No. 1184 of 1962) and *Smt. Malan* v. *The Amritsar Improvement Trust* (*Civil Writ No.* 1185 of 1962). Common questions of law have been raised in both these writ petitions. It is conceded by the learned counsel for both sides that the decision of one case will seal the fate of the other. I am, therefore, giving the facts of Civil Writ No. 1184 of 1962 alone.

Shiv Charan Dass, petitioner No. 1, claims to be the owner of half share in property No. 2466-86/11 in Katra Moti Ram, Amritsar. Petitioners Nos. 2 to 4 are said to be the tenants of petitioner No. 1 in different portions of that property.

By notification dated February 1, 1958, under sub-section (3) of section 5 of the Punjab Development of Damaged Areas Act, 1951 (hereinafter called the 1951 Act), the State Government published

a scheme framed under section 4 of that Act. The scheme comprised properties belonging to private individuals including the above-mentioned building as well as acquired evacuee properties. On April 14, 1958, the Amritsar Improvement Trust (hereinafter referred to as the Trust) applied to the Collector for the acquisition of the non-evacuee part of the damaged area comprised in the aforesaid scheme. The request, according to the averment in the written statement, is said to have been accepted by the Collector on April 16, 1958. In letter dated June 30, 1959, the Chairman of the Trust wrote to the Land Acquisition Collector, Amritsar, that an application for the exemption from compulsory acquisition in respect of various properties including property No. 2466-86/11 in Katra Moti Ram, Amritsar, had been admitted under section 56 of the Punjab Town Improvement Act No. 4 of 1922 (hereinafter referred to as the 1922 Act), and, therefore, asked the Collector to stay further acquisition proceedings in respect of those properties for a period of three months. A copy of that letter has been placed on the record of this case by the petitioners with their counsel's letter dated the 18th November, 1964, in pursuance of an oral direction said to have been given by Mahajan, J.

An application under section 56 of the 1922 Act was given by the petitioner for exempting the property in question from compulsory acquisition. No date of the application has been specified in the writ petition. The learned counsel for the respondents has, however, showed me the original application of petitioner No. 1 dated the 28th August, 1961, wherein reference is made to earlier petitions dated the 2nd March and the 25th May, 1959, addressed to the Chairman of the Trust and wherein prayer is again made for exempting the properties in question from compulsory acquisition. Notes made on the said application disclose that by resolution No. 61, dated April 25, 1959, the Trust had in fact decided to exempt a part of the property in question from acquisition and that, therefore, the original application of the petitioners made in 1959 was deemed to have been admitted under section 56 of the 1922 Act. It is also stated in the office note on the application that it was in pursuance of the said resolution that intimation of admission of the petition and direction to stay the proceedings for three months had been sent to the Land Acquisition Collector on June 30, 1959, but that by resolution No. 1035 dated May 30, 1961, the Trust had decided to acquire the property in question. Consequently, letter dated October 30, 1961, was sent by the Trust to the petitioners informing them that it was regretted that the property in question could not be exempted from acquisition. It was with reference to this communication

dated October 30, 1961, that the petitioners submitted their application dated November 23, 1961 (Annexure F), wherein exemption from acquisition was again prayed for. On the last-mentioned application a note was made to the effect that the Trust had already decided to acquire the property in question by resolution date the 30th May, 1961, and that though the matter was re-considered by the Trust at its meeting held on October 10, 1961, the application for exemption had been rejected by resolution No. 1221 of that date. Copy of the original application dated 23rd February, 1959/2nd March, 1959, signed by petitioner No. 1, has been shown to me by the learned counsel for the respondents. In that application it had been clearly stated that the petitioners were ready to abide by any condition laid down by the Trust for exempting the building in question and were also prepared to pay the necessary fee. Grounds on which exemption was claimed were also specified in the application.

On January 31, the Collector made an award fixing a sum of Rs. 26,435 as compensation for the entire property bearing Municipal No. 2466-86/11 having an area of 922 sq.yards. A copy of an extract from the award has been produced by the petitioners as Annexure 'A' to the petition. It has been stated in the said extract that no evidence in support of the title, area, or market value had been produced by the claimants. After adjudicating upon the question of quantum of compensation, the Collector has stated that "the payment of compensation be withheld to the claimants till they prove their title". On July 16, 1962, separate notices were issued to the petitioners (Annexures B to E) by the Land Acquisition Collector requiring the petitioners to vacate the respective premises in their possession and to remove all their movables therefrom within 15 days of the receipt of the respective notice and informing the petitioners that in case of their failure to do the needful, actual possession of the respective premises in their occupation would be taken on August 7, 1962. After the decision of the Trust to acquire the property and before issuing the notices for delivery of possession, time appears to have been taken as the Trust had requested the Collector to postpone the delivery of possession of the acquired properties of private individuals till the possession of evacuee property could be obtained which had to be done by private negotiation with the Central Government.

It was in the above situation that this writ petition was filed on August 3, 1962, for setting aside proceedings for the acquisition of the property in question and the notices dated July 16, 1962. In his written statement dated nil, the Chairman of the Trust has pleaded

inter alia that petitioner No. 1 has not so far given proof of his ownership of the disputed property, that the petitioner has given an erroneous description of the area of the property, that the scheme in question was notified on February 1, 1958, that the property in dispute is covered by the schedule of the scheme, that the Trust had no doubt earmarked a part of the property in question for exemption from acquisition but that later it was found that the property could not be exempted and it was necessary to acquire the same for proper execution of the scheme. It has been added that the disputed property being within the bounds of the scheme and the property not having been exempted, there was no legal necessity for making any new scheme or of obtaining sanction of the State Government. It has been emphasised that the disputed property had in fact never been exempted from acquisition.

Mr. H. S. Gujral, learned counsel for the petitioners, has firstly contended that once a petition under section 56 of the 1922 Act had been admitted, the Trust had no option but to exempt the property from acquisition by having recourse to the prescribed proceedings and that if in any circumstances the Trust wanted again to acquire the property after having once admitted the application for its exemption from acquisition, the Trust could do so only by having resort to the provisions of section 57 of the 1922 Act. In order to appreciate this submission, it is necessary to take notice of some of the relevant provisions. Section 3 of 1951 Act authorises the Trust to frame a scheme or schemes for the development of a damaged area, providing for certain specified matters. Sub-section (1) of section 4 of that Act requires publication of a scheme framed under section 3. In the public notice referred to in section 4, objections to the scheme have to be invited. After considering the objections, if any, which may be received by the Trust during the period prescribed under section 4, the Trust may approve the scheme with or without any modification. The approved scheme has then to be submitted to the State Government with a prescribed statement. The State Government has to notify the scheme under sub-section (3) of section 5 of the 1951 Act. It is only on such publication that the scheme is deemed to have been sanctioned. The publication of the scheme under sub-section (3) of section 5 is made by sub-section (4) of that section to be conclusive evidence of the scheme having been duly framed and sanctioned. Sub-section (5) of section 5 of the 1951 Act makes the provisions of the 1922 Act applicable to all schemes framed and sanctioned under the 1951 Act in so far as those provisions do not come into conflict

with and are not inconsistent with the provisions of the 1951 Act. The relevant part of section 56 of the 1922 Act is in the following terms:—

"56(1) Wherever in any locality comprised in any scheme under this Act the State Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme, the owner of such land, or any person having an interest therein, may make an application to the trust requesting that the acquisition of such land be abandoned in consideration of the payment by him of a sum to be fixed by the trust in that behalf.

(2) The trust shall admit every such application if it—

(a) reaches it before the time fixed by the Collector, under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by any person, who either owns the lands, is mortgagee thereof, or holds a lease thereof with an unexpired period of seven years.

(3) The trust may admit any such application presented by any other person having an interest in the land.

(4) On the admission by the trust of any such application, it shall forthwith inform the Collector, and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned."

The argument of Mr. Gujral is that the Trust having admitted the application of the petitioners for exemption of their property from acquisition, it is deemed to have decided that the requirements of clauses (a) and (b) of sub-section (2) of section 56 of the 1922 Act had been complied with and in that situation sub-section (4) of that section enjoined on the Trust the following duties:—

(a) To forthwith inform the Collector to stay acquisition proceedings for three months; and

(b) To proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

According to the learned counsel for the petitioners section 56(4) of the Act does not leave any discretion in the hands of the Trust to exempt the property in question from acquisition or not once the application for that purpose has been admitted. According to Mr. Gujral the only proceedings which the Trust can take in hand after the admission of such an application should relate to the fixing of the sum in consideration of which the acquisition has to be abandoned. I regret I am unable to agree with this contention. If the argument of Mr. Gujral was correct, the Trust could reject an application for exemption only on two grounds, namely, (1) that the application had not been made within the time allowed by law, and (2) that the application in question had not been made by the owner, mortgagee or lessee of the property. In fact, the decision of the application for exemption from acquisition had to be arrived at by the Trust on merits on the main consideration referred to in sub-section (1) of section 56, that is, the first criterion for deciding such an application is whether the disputed property has subsequent to the issue of the notification under section 5 of the 1951 Act been discovered to be unnecessary for the execution of the scheme in question. In the absence of any proof of *mala fides*, the Trust is the sole Judge of necessity or otherwise of acquiring any particular property for the execution of a valid scheme. It is not disputed that the Trust has rejected the application of the petitioners and has found in terms that it is necessary to acquire the disputed property. The Trust not having ultimately held that the acquisition is unnecessary the requirements of sub-section (1) of section 56 have not been fulfilled and the petitioners cannot, therefore, claim that the property must be exempted from acquisition merely because their application for that purpose was admitted at one stage. It has not been shown that the Trust ever decided finally that the acquisition of the property in question was unnecessary. A tentative list of such property does appear to have been prepared but the question has finally to be decided by the Trust after considering the objections to the proposed acquisition. If the contention of the learned counsel for the petitioners to the effect that the application under section 56 has to be made only if and after the Trust finally decides that the acquisition of certain property is unnecessary, were to be correct, there would be no meaning in making a provision for making an application for exemption. There is otherwise nothing in the Act to bar the Trust releasing any property from proposed

acquisition. In my opinion, property can be exempted from acquisition under section 56 of the Act if the Trust discovers the acquisition of such property to be unnecessary and the Trust has to finally decide this issue after considering the application of the owner, mortgagee or lessee of the property in question. The use of the word 'may' in sub-section 4 of Section 56 vests a discretion in the Trust, which cannot be controlled by this Court in writ proceedings.

The second contention advanced on behalf of the petitioners is that the Trust did not in the instant case apply to the Collector for the acquisition of the property in question within the period of three months prescribed under sub-section (1) of section 6 of the 1951 Act. The said provision reads as follows:—

> "6(1) The Trust shall, within three months from the date of publication of the scheme under sub-section (3) of section 5, apply to the Collector for the acquisition of any damaged area comprised in the scheme and, if considered necessary for the immediate delivery of the possession of the whole or any part of such area to the Trust."

Learned counsel for the petitioners frankly admitted that the actual date of publication of the notification, dated February 1, 1958, and the actual date on which the Trust applied under section 56(1) of the Act to the Collector are not available on the record of this case. In the absence of those two dates it is not possible to pronounce upon the merits of the controversy in this respect. Paragraph 4 of the writ petition and the corresponding paragraph in the written statement of the respondents may be quoted at this stage:—

> "*Paragraph 4 of the writ petition.*
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> "That the chairman of the Amritsar Improvement Trust, Amritsar,—*vide* his letter No. AIT/D/13/148, dated 14th April, 1958, requested the Land Acquisition Collector, Amritsar Improvement Trust, for the acquisition of the area contained in the above-noted scheme. The Land Acquisition Collector,—*vide* his order, dated 16th April, 1958 accepted the request of the Trust under section 6(1) of the Act so far as it related to the non-evacuee properties.

Paragraph 4 of the written statement of the respondents

That paragraph No. 4 of the writ petition is admitted to be correct".

In the face of the admission contained in paragraph 4 of the writ petition to the effect that the Trust applied to the Collector on April 14, 1958, which date is clearly within three months of the date of the notification, that is, irrespective of any possible subsequent day on which it may have been published, there is no merit in this contention. Mr. Gujral argued that the property of the petitioners was not included in the application made to the Collector on the 14th April, 1958. There is nothing on the record of the case before me to justify this assertion.

The third argument of the learned counsel is to the effect that acquisition proceedings cannot be taken in respect of non-evacuee property comprised in a scheme in which the acquired evacuee property is also included. The argument proceeds thus. The evacuee property acquired under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954 vests absolutely in and belongs to the Central Government. The State Government cannot acquire property of the Central Government. There could, therefore, be no question of acquiring evacuee property falling within the scope of the scheme in question being acquired under the 1951 Act by the State of Punjab or by the Trust. This being so, it is argued, the acquisition proceedings could not be taken in hand even in respect of the property of private persons. No authority has been cited in support of this proposition. It appears to me that if a notification under section 4 of the Land Acquisition Act, 1894, is issued in respect of a whole village and it is discovered that part of the village already belongs to the Government, the property of private individuals covered by the notification can certainly be acquired and the fact that there is no necessity of acquiring a part of the land covered by the notification or that part of it cannot for any valid reason be acquired at all cannot stand in the way of the appropriate authority to acquire that part of the property for the acquisition of which there is no legal impediment. That being so, no force is found in this contention of Mr. Gujral.

The fourth submission made on behalf of the petitioners is that without payment of compensation under the Land Acquisition Act,

the respondents are not entitled to evict the petitioners from the respective premises in their occupation. In reply to this allegation it has been specifically averred by the respondents that the compensation payable in respect of the property in question has already been determined and only its payment has been withheld by the Collector as petitioner No. 1 has not been able to prove his title. Mr. Gujral lays emphasis on that part of the reply in the written statement wherein it is stated that the award of the Land Acquisition Collector, dated January 31, 1962 has subsequently formed the subject-matter of a reference, which is pending before the Tribunal at Amritsar. The learned counsel argues that so long as reference before the Tribunal has not been answered, the question of determination of compensation payable to the petitioners is *sub judice* and it would be impossible for the Tribunal to apply its own mind and to finally decide on the question of quantum if in the meantime the property is allowed to be demolished. Mr. Gujral has placed reliance in this connection on a Division Bench judgment of this Court in *Parmeshri Dass Bhanna Mal and others* v. *Amritsar Improvement Trust and another* (1). The vires of sections 1, 11 and 12 of the 1951 Act were questioned in that case. While upholding the said provisions, this Court observed that under section 11 of the said Act compensation has to be computed by the Collector before the demolition of the buildings takes place and before the scheme is put into effect. In the instant case compensation has no doubt been computed by the Collector before the impugned notices of dispossession were issued to the petitioners. The requirements of the statute as interpreted by the Division Bench in *Parmeshri Dass Bhanna Mal and others case* (*supra*) have therefore been fully satisfied. The petitioners have not been able to state that they have made any reference which is said to be pending with the Tribunal. Nor have the petitioners even disclosed that they have initiated any proceedings to establish the title of petitioner No. 1 to the disputed property. It does appear to me that so long as the question of determination of quantum of compensation for the property said to be acquired is not finally decided by the authority under the 1922 Act, it would not be fair to dispossess the owner or to acquire the property so as to destroy the very object of which the value has to be fixed by the Collector or the Tribunal, as the case may be. In this particular case, however, the compensation having been duly computed and no averment having been made in the writ petition about any reference having been made by the petitioners in

(1) A.I.R. 1954 Punjab 110.

respect of the disputed property, no relief can be granted to the petitioners on that ground.

The last contention advanced on behalf of the petitioners and strenuously stressed by their counsel is to the effect that the property in question does not fall within any damaged area as defined in clause (d) of section 2 of the 1951 Act. The said definition is in the following terms:—

> "2(d). "Damaged Area" means any area which the State Government may, by notification, declare to be a damaged area and shall include the areas already notified under the East Punjab Damaged Areas Act, 1949."

The argument is that on February 1, 1958, when the scheme was notified, no notification had been issued by the State Government declaring the area in question to be damaged area. The factual aspect relevant for deciding this point is substantially detailed in paragraph 9(i) and (ii) of the written statement. The said averments are quoted below verbatim:—

> "9(i) That sub-para (i) of para No. 9 of the writ petition is denied. The properties in question are damaged areas under the Punjab Act X of 1951. The property in question is within the bounds of the Development Scheme known as 'Katra Moti Ram area' situated within the walled city of Amritsar, which scheme was sanctioned by the Punjab Government,—*vide* its notification No. 12321-LB-5-7/8696, dated 1st February, 1958. The entire area within the walled city of Amritsar has been declared as damaged area under the Punjab Damaged Areas Act, 1947 by the Governor of the East Punjab,—*vide* Punjab Government notification No. 3412-B&C 48/19962, dated 10th April, 1948. The replying respondent has been framing the schemes including the said scheme under the approved assumption that the notification dated 10th April, 1948 is in force under Act X of 1951 and the Punjab Government has been sanctioning the scheme of the replying respondent framed for the area within the walled city of Amritsar.
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> (iii) That sub-para (ii) of para No. 9 of the writ petition is denied. On the date of acquisition of the said properties

the notification No. 3412-B&C-48/19962, dated 10th April, 1948 declaring the entire area of walled city of Amritsar as damaged area was in force. It was taken so under the assumption that notification dated 10th April, 1948 would apply to Act X of 1951 as the definition of the Damaged Area under both the Acts was similar. All acts of the replying respondent in the matter of scheme in which the property in dispute are involved are validated by the recent notification No. 5175-2CIII-62/26904, dated 26th June, 1962 under the Punjab Act X of 1951 also which would have retrospective effect under the stated contexts. The said Development schemes known as Katra Moti Ram area scheme within the area of the walled city of Amritsar was thus valid under Act X of 1951."

In view of the law laid down by their Lordships of the Supreme Court in *Trust Mai Lachhmi Sialkoti Bradri* v. *Chairman, Amritsar Improvement Trust and others* (2), the petitioners would have straightaway succeeded on this ground if nothing more had happened in the meantime. The Supreme Court had held in the aforesaid case that a scheme framed under section 3 of the 1951 Act in respect of area, which was not declared to be "damaged area" under the 1951 Act or the earlier 1949 Act is without jurisdiction, and that the fact that the area was declared to be damaged area under the temporary 1947 Act was of no avail. Nor does the subsequent notification dated June 26, 1962, referred to in paragraph 9(ii) of the written statement by itself solve the problem. An invalid scheme could not possibly be validated by a mere notification. Unfortunately for the petitioners, however, the Punjab Legislature has passed during the pendency of this writ petition, the Punjab Development of Damaged Areas (Validation) Act No. 8 of 1963. The object with which the Act has been passed is given in the official statement of objects and reasons published in the Punjab Gazette (Extraordinary), dated February 28, 1963, in the following words:—

"The Punjab Development of Damaged Areas (Validation) Bill, 1963, seeks to validate schemes framed under the Punjab Development of Damaged Areas Act, 1951, in the area within the walled city of Amritsar and all proceedings, orders, and actions, in connection therewith for the period from 11th May, 1951, up to the 26th June, 1962, in the light

(2) A.I.R. 1963 S.C. 976.

of the judgment of the Supreme Court in Civil Appeal No. 331 of 1959". Section 2 of the amending Act provides as below:—

"*Validation of certain schemes etc. under Punjab Act* 10 *of* 1951. Notwithstanding any judgment, decree or order of any court or of any other tribunal or authority, for the period commencing on the 11th May, 1951, and ending on the 25th day of June, 1962, the entire area within the walled city of Amritsar shall be deemed to be a 'damaged area' for the purpose of the Punjab Development of Damaged Areas Act, 1951, and any scheme framed and sanctioned or deemed to have been framed or sanctioned, or acquisition of land made, or award of compensation given, under that Act and any proceeding held, order made or action taken in respect of or in pursuance of such scheme shall be, and shall be deemed always to have been, as valid as if the entire area within the walled city of Amritsar was a damaged area at all material times when such scheme was framed and sanctioned or deemed to have been framed or sanctioned or such acquisition of land was made or such award of compensation was given or such proceeding was held or such order was made or such action was taken, and no such scheme, acquisition, award, proceeding, order or action shall be questioned on the ground that the entire area within the walled city of Amritsar was not declared to be a damaged area under the Act".

The amending Act superseded the earlier Punjab Ordinance No. 5 of 1963, the relevant provisions of which were to the same effect. The effect of the amending Act has been considered by a Division Bench of this Court in *Sohan Lal and others* v. *The State of Punjab and others* (3). It has been held in that case that this validating legislation cannot be held to be void simply because it retrospectively makes the scheme valid which had been held to be invalid by the Supreme Court and that the amending Act merely removes a technical defect which had been found to invalidate all the previous schemes. Mr. Gujral has then contended that in view of the following observations made by the Supreme Court in *Sadasib Prakash Brahmchari,*

(3) I.L.R. (1964) 2 Punj. 501.

Trustee of Mahiparakash Muth etc. v. *The State of Orissa etc.* (4), it is beyond the competence of the Punjab Legislature to overrule the invalidity found by the Supreme Court in the scheme in question:—

> "The next point that has been urged, depends on the fact that in four of the petitions before us relating to the Maths of Mahiparakash, Uttaraparswa, Dakshinaparswa and Radhakanta, schemes were in fact framed in the year 1953 under the provisions of Orissa Act 4 of 1939 as amended in 1953.
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> It may be recalled that these provisions were held invalid by the decision of this Court in March, 1954, above referred to. It must, therefore, be taken that these schemes were void as the law then stood. It is with reference to that situation that the Orissa Legislature by an amendment in 1954 of the 1952 Act introduced section 79-A into this Act which runs as follows:—
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> "Notwithstanding anything contained in any of the other provisions of this Act or in any judgment, decree or order of any Court all schemes purporting to have been settled in pursuance of sections 38 and 39, Orissa Hindu Religious Endowments Act, 1939, after the commencement of the Orissa Hindu Religious Endowments (Amendment) Ordinance, 1953, and before the commencement of this Act shall be deemed to have been settled under the provisions of this Act and any person aggrieved by any such scheme may within sixty days from the date of commencement of this Act prefer an appeal to the High Court and such appeal shall be dealt with and disposed of in the same manner as appeals provided for under sub-section (2) of section 44. This purports to revive the schemes which were pronounced to be invalid by the judgment of this Court and attempts to remove the defect noticed in the judgment of this Court by providing for a regular appeal to the High Court against that very scheme within 60 days from the date of the commencement of the Act.
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> It may be noticed that the schemes so revived are only those which were settled after the commencement of Orissa

(4) A.I.R. 1956 S.C. 432.

Hindu Religious Endowments (Amendment) Ordinance, 1953, and before the commencement of the 1952 Act, i.e., between 16th May, 1953 to 31st December, 1954 (hereinafter referred to as the specified period). This was exactly the period within which the amendment of 1939 Act made in 1953 was in force, abolishing the right of suit and making the scheme as determined by the Commissioner final and conclusive.

Section 79-A in terms purports to revive the invalid scheme notwithstanding any judgment, decree or order of any Court which means that though a Court may have pronounced the scheme as void still that is deemed to be alive. It has been suggested that this is directly flouting the decision of this Court and that the legislature has no power to declare as valid and constitutional what was decided by this Court as invalid and unconstitutional.

But it is to be observed that the legislature does not purport to do anything of the kind. What it does is not to deem the schemes previously settled as having been validly settled on those very dates, under the then existing law. This of course is beyond legislative competence since the legislature has not the power to override unconstitutionality as such. But what the legislature has purported to do is to take up those very schemes and deem them to have been settled 'under the provisions of the present Act' and thereby to lay them open to any attack available under the present law."

The law laid down by the Supreme Court in *Sadasib Prakash Brahmchari, Trustee of Mahiparakash Muth etc.'s case* (supra) does not appear to be directly relevant for deciding the point raised before me. *In Trust Mai Lachhmi Sialkoti Bradri* v. *Chairman, Amritsar Improvement Trust and others* (supra), the Supreme Court did not strike down any part of the legislative enactment nor was any provision of law held to be unconstitutional or invalid. It were only certain schemes which had been struck down to be invalid because of the absence of a pre-existing notification declaring the area to which the schemes related as 'damaged area'. By the amending Act of 1963 the Legislature has expressly done away with the necessity

of the notification to that effect in respect of schemes, awards etc. made during the period 11th May, 1951 to 26th June, 1962. By the legislative enactment of 1963 the entire area within the walled city of Amritsar has to be deemed to be damaged area. Moreover, notwithstanding pre-existing infirmity in the said scheme and the notification, the Legislature has now provided in section 2 of the 1963 Act that the schemes framed and sanctioned or deemed to have been framed or sanctioned shall be deemed always to have been valid. In this view of the matter the attack on the validity of the schemes based on the want of the requisite notification under section 2(d) of the 1951 Act can no more be sustained. Mr. Gujral then struck at a further ingenious argument. He states that the effect of the validating Act on the cases of the petitioners is that they have been deprived of their right to raise statutory objections against the scheme inasmuch as the scheme when originally published was invalid and no objections can now be allowed to be filed after the scheme has for the first time become valid on March 29, 1963, after the passing of the amending Act. This point has neither been taken nor could possibly have been taken in the writ petition as the amending Act came into force during the pendency of the case. Nor is it shown that the petitioners filed any objections against the scheme after the passing of the validating Act and that the authorities had declined to take the objections into consideration. Even otherwise I am inclined to think that a deeming provision has to be taken to its logical extent and the effect of the deeming provision contained in section 2 of 1963 Act is that the property in question is deemed to have been situated in a validly declared damaged area on the 1st February, 1958. That being so, this contention of the learned counsel for the petitioners also fails.

No other point has been argued before me in this case. Both these writ petitions, therefore, fail and are dismissed. In view, however, of the fact that the strongest point in these writ petitions has been rendered infructuous on account of a subsequent legislation, the parties are left to bear their own costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

KAWAL NAIN SINGH,—*Petitioner.*

versus

THE PANJAB UNIVERSITY,—*Respondent.*

Civil Writ No. 2467 of 1966.

March 14, 1967.

Panjab University Calendar (1966) *Vol. I—Regulations concerning use of unfair means in examinations—Regulation* 21—*Difference of opinion amongst*