

quently, this must be the intention of the proviso. The change in the election programme did not necessarily mean that everything already done before that was invalidated.

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Pandit, J.

The result is that this appeal is accepted, the judgment of the learned Single Judge is set aside and the election held on the 3rd of September, 1961, is hereby quashed. In the circumstances of this case however, we will make no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

*Before Daya Krishan Mahajan and Shamsher Bahadur, JJ.*

MURARI LAL GUPTA,—*Petitioner.*

*Versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1813 of 1962.

*Land Acquisition Act (I of 1894)—Ss. 5A and 17—Acquisition of land on ground of urgency—Notification issued—Whether should state the urgency—S. 17(2) (c)—Whether to be read ejusdem generis with clauses (a) and (b).*

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*Held*, that in certain emergent situations the Government is empowered to take possession of the land on the ground of its urgent requirement. But the dispensation of the operation of section 5-A of the Land Acquisition Act being a serious matter, the notification on the face of it must show that the Government really has directed its mind whether acquisition has to be made under sub-section (1) or sub-section (2) of section 17 of the Act. While, it is true that the notification issued under section 17(4) cannot always contain the materials demonstrating the urgency, it has all the same to be established by other materials which can be produced before the Court such as may be contained in the proceedings resulting in the publication of the notification under section 17(4). The public

purpose does not become of urgent importance merely by the Government calling it so. The acquisition under section 17 have to be made under the stress of an emergency or an urgent situation. It must appear that in exceptional cases where proceedings under section 5-A are dispensed with, the matter is of such importance that it does not brook of any delay and unless the construction is made without loss of time public interest will suffer.

*Held*, that clause (c) of sub-section (2) of section 17 of the Land Acquisition Act, introduced by the Punjab Amendment Act II of 1954, no doubt, enlarges the scope of acquisition but it has to be read *ejusdem generis* with clauses (a) and (b) where specific purposes for which acquisition can be made under section 17 of the Act are definitely set out. Acquisition of land not in line with the purposes specified in clauses (a) and (b) of sub-section (2) of section 17 cannot be defended on the specious ground that the Government considers the purpose to be of urgent importance.

*Case referred by Hon'ble Mr. Justice D. K. Mahajan, on 22nd October, 1965, to a larger Bench for decision of the important question of law involved in the case and the case was finally decided by a Division Bench, consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice Shamsher Bahadur on 26th March, 1964.*

*Petition under Article 226 of the Constitution of India, praying that a writ in the nature of Certiorari or any other appropriate Writ, Order or direction be issued quashing the impugned notifications.*

ANAND SWARUP AND R. S. MITAL, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL AND P. R. JAIN, ADVOCATE, for the Respondents.

### ORDER.

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Bahadur, J.

SHAMSHER BAHADUR, J.—What has been challenged in this petition under Article 226 of the Constitution of India is the right of the respondent State of Punjab to acquire land under the summary procedure of section 17 of the Land Acquisition Act (hereinafter called the Act) by

merely saying that it is required on ground of urgency?

The petitioner is Murari Lal Gupta whose land in village Bohar measuring 1.08 acres was notified under section 4 of the Act on 9th of August, 1962,—*vide* Annexure A to be required for the public purpose of construction of "Text Books Sales Depot" at Rohtak. In paragraph 4 of this notification it was stated that action for acquisition would be taken under section 17 of the Act on ground of urgency and the provisions of section 5-A shall not apply in regard to this acquisition. It was followed by another notification of the same date (Annexure B) under section 6 of the Land Acquisition Act wherewith the Land Acquisition Collector was directed to take immediate orders for the acquisition of the said land. In order to appreciate the objections of the petitioner, it is necessary to set out very briefly the provisions of the Land Acquisition Act. Part II of the Act relates to acquisition and preliminary investigation and section 4 empowers the appropriate Government to notify its intention to acquire property for a public purpose. Section 5-A deals with objections under which any person who is interested in the land which has been notified under section 4 may within thirty days after its issue object to the acquisition of land and this objection has to be heard by the Collector after an opportunity has been given to him. After considering the report of the Collector under section 5-A the Government notifies under section 6 its declaration that a particular land is needed for a public purpose. In this notification the situation of the land, the purpose for which it is needed, its approximate area, and where a plan has been made of the land the place where such plan can

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be inspected, shall be stated. Such a declaration under sub-section (3) of section 6 is conclusive evidence that the land is needed for a public purpose. It is only after a declaration is made under section 6 that a Collector can be authorised by the appropriate Government to take an order for the actual acquisition of the land. Subsequently, the Collector has to notify the interested persons to submit claims for compensation under sub-section (1) of section 9 and it is only after the Collector has made an award under section 11 that he may take possession of the land free from all encumbrances under section 16 of the Act. This is the normal procedure of acquisition.

Section 17 deals with special powers in cases of urgency. Under sub-section (1), the Collector even where no award has been made may, on the expiration of fifteen days from the publication of the notice under sub-section (1) of section 9 take possession of any waste or arable land needed for public purposes or for a company. Sub-section (2) of the Act which has been replaced by the amendment made by Punjab Act 2 of 1954 is to this effect:—

“In the following cases, that is to say,—

- (a) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat, station or of providing convenient connection with or access to any such station;

(b) Whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the purpose of any library or educational institution or for the construction, extension or improvement of any building or other structure in any village for the common use of the inhabitants of such village, or any godown for any society registered under the Co-operative Societies Act, 1912 (Act II of 1912) or any dwelling-house for the poor, or the construction of labour colonies or houses for any other class of people under a Government-sponsored Housing Scheme, or any irrigation tank, irrigation or drainage channel, or any well, or any public road;

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(c) Whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance, the Collector, may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances;"

Sub-section (3) of section 17 requires the Collector at the time of taking possession to offer to the persons interested compensation for the standing crops or for any damage sustained by them. In sub-section (4) it is mentioned that wherever the

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appropriate Government considers that the provisions of sub-section (1) or sub-section (2) are applicable, it may direct that the provisions of section 5-A shall not apply, and if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under sub-section (1) of section 4.

It would thus be seen that in certain emergent situations the Government is empowered to take possession of land on the ground of its urgent requirement. If the land is waste or arable, it may be acquired under sub-section (1). When the land does not fall under any of these categories it can still be acquired under clauses (a) and (b) of sub-section (2) for certain specified purposes. It is obvious that in the situations mentioned in sub-section (2) the acquisition for the Railway Administration does not brook of any delay and can be made without the usual formalities prescribed in section 5-A of the Act. Clause (b) of sub-section (2) sets out further special purposes for which acquisition under section 17 may be resorted to. The notifications which have been made in the instant case do not indicate any ground of urgency envisaged in clauses (a) and (b). All that is stated in the notifications is that the land is required for the construction of a text books sales depot at Rohtak. This purpose admittedly does not fall within the ambit of clauses (a) and (b) of sub-section (2).

In the written statement filed on behalf of the State it is mentioned in paragraph 4 that the land which has been acquired is *banjar qadim* though it is situated within the municipal limits of Rohtak Town. In paragraph 5 it is stated that no building exists on the land which is the

subject-matter of the notification. In paragraph 8 it is asserted that the land has been acquired for a public purpose. No definite position has been taken by the State Government as to whether the acquisition has been made under sub-section (1) or sub-section (2) of section 17, and if it is under sub-section (2) whether it falls within clause (a), (b) or (c). From the assertion made that the land is *banjar qadim* it may perhaps be gathered that the acquisition is of waste land and sub-section (1) is applicable. Mr. Lachhman Dass Kaushal for the State, however, has taken up the position that the acquisition is attracted by clause (c) of sub-section (2) of section 17 under which the Collector may take possession of the land whenever it is "required for a public purpose which in the opinion of the appropriate Government is of urgent importance". The learned Deputy Advocate-General has taken this stand presumably in view of the observations which were made by a Division Bench of S. T. Desai and V. S. Desai, JJ., in *Shri Navnitlal Ranchhodlal v. State of Bombay* (1). It was held by the Bombay High Court that the Government has to form an opinion as a condition precedent to issuing a notification under sub-section (4) of section 17 for dropping the enquiry under section 5-A both as to urgency as well as to the nature and condition of the land. Both these matters are left to the opinion of the Government and the correctness of the opinion formed cannot raise a justiciable issue. The Government has to form the necessary opinion with regard to this objective fact on consideration of reasons which are relevant to its determination, and where the notification does not indicate that the necessary opinion was formed by

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the Government, the direction issued in the notification for dropping the enquiry under section 5-A is not in accordance with law. It was said in this ruling that the expression "waste land" would apply to lands which are desolate, deserted, uninhabited and uncultivated as a result of natural barrenness or rendered unfit for cultivation by reason of natural ravages, etc. Manifestly, there is no such indication of the opinion of the Government in the notifications which are sought to be impugned, and these can be defended only on the ground that the Government considers the public purpose to be of urgent importance.

Does the public purpose become of urgent importance by the Government calling it so? The object of acquisition in the instant case is the construction of the shop for storing text books—a purpose which cannot be in parity with the objects specified under clauses (a) and (b) of sub-section (2) of section 17 on the principle of *ejusdem generis*. The matter of acquisition may be of importance, but there is nothing to indicate that it is of "urgent" importance to justify the exclusion of the procedure prescribed under section 5-A of the Land Acquisition Act. The purpose might well be served by requisitioning some property till the acquisition is made under the normal procedure prescribed in the Act. Mr. Anand Swarup for the petitioner further relies on a decision of S. Velu Pillai J., in *Madhavi Amma v. Revenue Divisional Officer, Kozhikode and others* (2), where it was held that it is imperative that Government must hold a definite opinion within the meaning of section 17(4) as to whether it is the provisions of sub-section (1) or of sub-section (2) which are applicable to a given

(2) A.I.R. 1961 Kerala 116.



case. It is important to remember that the dispensation of the operation of section 5-A is a serious matter and according to the view taken by S. Velu Pillai, J., the notification on the face of it must show that the Government really has directed its mind whether acquisition has to be made under sub-section (1) or sub-section (2) of section 17. Far from so showing, the Government in its written statement is itself not clear whether the land has been regarded as waste or arable under sub-section (1) or it has been acquired for any of the specified purposes mentioned in sub-section (2). Clause (c) of sub-section (2) introduced by the Punjab Amending Act no doubt enlarges the scope of acquisition but it has to be read *ejusdem generis* with clauses (a) and (b) where specific purposes for which acquisition can be made under section 17 are definitely set out. Clearly, the construction of a depot for sale of text books is not in line with the purposes specified in clauses (a) and (b) of sub-section (2) of section 17 and it cannot be defended on the specious ground that the Government considers the purpose to be of urgent importance.

Mr. Kaushal for the State has invited our attention to a Bench decision of the Mysore High Court in *Kashappa Shivappa v. Chief Secretary to the Government of Mysore and others* (3), where it was held that when a notification is issued under section 17 it must be presumed that the Government has formed an opinion about the urgency but it is to be noted that Somnath Iyer, J., stressed at page 322, that a direction dispensing with adherence to the provisions of section 5-A can be issued only in exceptional cases in which the matter is so urgent that the time that is likely to be spent over the hearing directed by section 5-A

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would produce such great harm or public mischief that a direction dispensing with that hearing is imperative. The Bench observed that there may be a case in which the High Court might find it possible to say that that opinion was an impossible opinion either by reason of the fact that it rests upon no ground at all or rests on grounds which are demonstrated to be thoroughly irrelevant. We have not had the benefit of looking into any expression of opinion on this matter by the State Government which has contended itself by a mere assertion that the construction of text books sales depot is a matter of such public importance that the provisions of section 5-A should be dispensed with. Plainly, this is a proposition which cannot *ex facie* be accepted and in order to uphold the validity of the notifications we have to ask ourselves the question whether the purpose can in fact fall under the wide amplitude permissible under clause (c) of sub-section (2) of section 17. So far as the existence of public purpose is concerned, the declaration made under section 6 is conclusive. The same, however, cannot be said about the urgent importance which alone can justify the acquisition of land under section 17. While it is true that the notification issued under section 17(4) cannot always contain the materials demonstrating the urgency it has all the same to be established by other materials which can be produced before the Court such as may be contained in the proceedings resulting in the publication of the notification under section 17(4), as suggested by another Division Bench of Somnath Iyer and Iqbal Husain JJ., in *Thirumalaiah v. State of Mysore and another* (4). It must appear that in the exceptional cases where proceedings under section 5-A are dispensed with, the matter is of such importance that it does not

(4) A.I.R. 1963 Mysore 255.

brook of any delay and unless the construction is made without loss of time public interest will suffer. Such a situation has neither been set up in the notification nor in the pleadings nor even in the arguments addressed by the learned Deputy Advocate-General. The acquisition under section 17 have to be made under the stress of an emergency or an urgent situation, of which there is no semblance of a suggestion in the case in point. Such being the position, this petition must succeed and the impugned notifications set aside. The petitioner will get his costs of these proceedings.

D. K. MAHAJAN, J.—I agree.  
K.S.K.

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#### REVISIONAL CIVIL

*Before D. Falshaw, C.J.*

MUNI LAL PESHAWARIA AND OTHERS,—*Petitioners.*

*Versus*

BALWANT RAI KUMAR AND OTHERS,—*Respondents.*

**Civil Revision No. 215 of 1961.**

*Code of Civil Procedure (Act V of 1908)—S. 9—Suit by shareholders for rendition of accounts and distribution of assets amongst the members against voluntary liquidator—Whether maintainable—Companies Act (I of 1956)—S. 543—Effect of.*

*Held,* that in the case of a winding up of a company, proceedings by shareholders against the liquidators in respect of the conduct of winding up are intended to be dealt with by the Court under the Companies Act, i.e., the High Court, particularly in cases where allegations of misfeasance and non-feasance are being made against the liquidators. Section 235 of the Indian Companies Act, 1913 (S. 543 of the Companies Act, 1956) confers on the Court the power to assess and award damages against delinquent company officers or liquidators, and one of the prayers in the present suit is that the contesting defendants should be debited with damages for acts of misfeasance and non-feasance. This is a very special provision which can only be exercised by the Court under the Companies Act and not by an

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