1974 *Present:* **Pathirana, J., Udalagama, J., Wijesundera, J., Perera, J., Ismail, J., Weeraratne, J., Vythialingam, J., Sharvananda, J., and Gunesekera, J.**

SIRISENA AND OTHERS

v.

HONOURABLE H. S. R. B. KOBBEKADUWA, MINISTER OF AGRICULTURE AND LANDS, Respondent

| | | | |
|---|---|---|---|
| *S.C. APN/GEN/6/74* | *H.C. Badulla* | – | *V/1/74* |
| *S.C. APN/GEN/7/74* | *D.C. Bandarawela* | – | *1/6* |
| *S.C. APN/GEN/8/74* | *H.C. Kandy* | – | *11/74* |
| *S.C. APN/GEN/9/74* | *D.C. Kandy* | – | *L/10568* |
| *S.C. APN/GEN/10/74* | *D.C. Kandy* | – | *L/10569* |
| *S.C. APN/GEN/11/74* | *D.C. Kandy* | – | *L/10570* |
| *S.C. APN/GEN/12/74* | *H.C. Kandy* | – | *15/74* |
| *S.C. APN/GEN/13/74* | *H.C. Ratnapura* | – | *6/74* |
| *S.C. APN/GEN/14/74* | *H.C. Kandy* | – | *1/28/74* |
| *S.C. APN/GEN/15/74* | *H.C. Kandy* | – | *1/25/74* |
| *S.C. APN/GEN/16/74* | *H.C. Kandy* | – | *L/10586* |
| *S.C. APN/GEN/18/74* | *H.C. Kandy* | – | *1/37/74* |
| *S.C. APN/GEN/19/74* | *H.C. Kandy* | – | *1/38/74* |
| *S.C. APN/GEN/20/74* | *H.C. Kandy* | – | *1/39/74* |
| *S.C. APN/GEN/24/74* | *D.C. Gampola* | – | *X/1152* |

*Administration of Justice Law No. 44 of 1973 section 14 (3) and section 354 (1) – Land Acquisition Ordinance (Chapter 460) — Interpretation Ordinance (Chapter 2) section 24 introduced by Interpretation (Amendment) Act No. 18 of 1972 – Applicability.*

Interim injunctions were issued, some by High Courts to be in operation for specific periods pending institution of actions in the District Courts, and some by District Courts pending final determination of actions, in each case against the Minister of Agriculture and Lands, restraining him from taking any further steps towards the acquisition of lands belonging to the petitioners. In terms of section 354 (1) of the Administration of Justice Law. No. 44 of 1973, three judges of the Supreme Court having perused the records in order to satisfy themselves as to the legality and propriety of the orders made, were of the opinion that the said interim injunctions on the face of the records appeared to be illegal in view of the provisions of section 24 of the Interpretation Ordinance introduced by Interpretation (Amendment) Act. No. 18 of 1972. The petitioners/plaintiffs in the cases were noticed to appear and show cause why the said interim injunctions should not be set aside in the exercise of the revisionary powers of the Supreme Court. In terms of sections 14 (3) of the Administration of Justice Law No. 44 of 1973 a bench of 9 judges was constituted by the Chief Justice to hear the matter in dispute as it was of general and public importance. Since there was a common legal question, by consent of parties all cases were consolidated.

**Held:** by the majority, Perera J., Vythialingam J., Ismail J., Weeraratne J., and Sharvananda J., (Pathirana J., Udalagama J., Gunesekera J., and Wijesundera J., dissenting) that the prohibition contained in section 24 of the Interpretation Ordinance introduced by the Interpretation (Amendment) Act No. 18 of 1972 does not apply to a case where an interim injunction was sought against a Minister in respect of any act done by him without jurisdiction, *ultra vires* or in bad faith.

**Counsel:** *H. W. Jayewardene* with *Mark Fernando, J. C. Ratwatte* and *Hiran Jayawardene* for the Petitioners in S.C. APN/GEN/6/74 TO 11/74; 13/74, 14/74 & 24/74.

*M. Tiruchelvam* with *Dr. N. Tiruchelvam, A. J. I. Tillakawardene* and *R. R. Thiyagarajah* for the 1st Petitioner in S.C. APN/GEN/12/74 & 16/74.AZ ZZA

*V. S. A. Pullenayagam* with *A. P. Niles, Miss P. C. Rajanayagam* and *T. Rajendran* for the 2nd Petitioner in S.C. APN/GEN/12/74 & 16/74.

*L. W. Athulathmudali* with *Daya Pelpola* and *A. J. I. Tillakawardene* for the Petitioner in S.C. APN/GEN/18/74.

*Nimal Senanayake* with *Rohan Perera* for the Petitioner in S.C. APN/GEN/15/74.

*H. W. Jayewardene* with *L. W. Athulathmudali* and *A. J. I. Tillakawardene* for the Petitioners in S.C. APN/GEN/19/74 & 20/74.

*Siva Pasupati, Acting Solicitor-General with K. M. M. B. Kulatunga, Senior State Counsel, G. P. S. de Silva, Senior State Counsel,* and *D. C. Jayasuriya, State Counsel,* for the Attorney-General.

**Argued on:** 8th, 9th, 10th, 11th, 12th, 16th, 17th, 18th, and 19th July, 1974.

**Decided on :** 3rd September, 1974.

3rd September 1974. PATHIRANA, J.—

My brother Wijesundera, J., and I directed the Registrar, Supreme Court, to call for the records of the cases which are the subject-matter of these applications. Thereafter, my brothers Udalagama, J., and Wijesundera, J., and I, in terms of section 354 (1) of the Administration of Justice Law, No. 44 of 1973, having perused the records of these cases in order to satisfy ourselves as to the legality and propriety of the orders made therein, we were of the opinion that the said orders on the face of the records appeared to be illegal in view of the provisions of section 24 of the Interpretation Ordinance as amended by the Interpretation (Amendment) Act No. 18 of 1972. These were orders granting in each case interim injunctions against the Minister of Agriculture and Lands restraining him and/or his agents from taking any further steps towards the acquisition of the lands belonging to the respondents to these applications.

Injunctions in some of these cases were obtained in the High Court to be in operation for a specified period (which has since expired) pending the institution of actions in the District Court, while in the other cases interim injunctions were issued by the District Courts pending the final determination of the actions.

We issued notices on the petitioners/plaintiffs-respondents to appear and show cause as to why the said orders should not be set aside in the exercise of the revisionary powers of this Court. We also noticed the Attorney-General. We took this step of noticing the parties *ex mero moto* as it was our view that section 24 of the Interpretation (Amendment) Act No. 18 of 1972 was open to the construction that the Courts have no power to grant an injunction against the Minister in respect of his orders made in connection with the acquisition of the lands in question.

I might mention at this stage that these orders were made by us in Chambers.

At the sittings held on 14th June, 1974, before my brothers Udalagama, J., Wijesundera, J., and myself, Counsel appearing for the plaintiffs-respondents in some of these cases brought to our notice that applications had been made that morning before the Acting Chief Justice under section 14(3) of the Administration of Justice Law No. 44 of 1973 to have these matters listed before a Bench of five Judges on the ground that questions involved in these cases were matters of general or public importance. Pending the decision of the Acting Chief Justice under section 14(3) (c) of the Administration of Justice Law, we adjourned sittings. On the 18th of June, 1974, Alles, A.C.J., after hearing counsel who supported the application and the Acting Solicitor-General, directed under section 14(3) of the Administration of Justice Law that these applications which were pending before us be listed for hearing on the 8th of July, 1974, before a Bench of nine Judges as the matters in dispute in the said cases were of general or public importance. The present Bench of nine Judges was accordingly constituted by the Chief Justice on the 5th of July, 1974, to hear these applications.

As there were common legal questions involved in all these applications, by consent of Counsel appearing for the respondents and the Acting Solicitor-General, who appeared for the Minister of Agriculture and Lands, all these applications were consolidated as it was understood that a decision on the common legal questions would dispose of all applications.

At the argument before us the points for decision may be briefly summarised as follows :–

(1) Whether section 24 of the Interpretation (Amendment) Act would apply to a case where an interim injunction was sought against the Minister in respect of any act done by him without jurisdiction, *ultra vires* or in bad faith, and whether such act is outside the scope of section 24 of the said Act.

(2) Whether the order of the Supreme Court under section 354(1) of the Administration of Justice Law calling for the records of these cases with a view to examining them and satisfying itself as to the legality or propriety of the orders made therein were done in the exercise of any jurisdiction lawfully vested in the Supreme Court and, therefore, whether the present Court hearing these applications was properly constituted.

The three main grounds on which the respondents by their Counsel sought to attack the orders of the Minister made under the Land Acquisition Act were one or other of the following :–

(a) The orders were made *mala fide* and therefore were *ultra vires* and a nullity. That the proposed acquisition had been initiated and proceeded with by the Minister who had been influenced by malicious and false representations, which were politically motivated by personal and political animosity of individuals towards the persons whose lands were acquired.

(b) That orders which were made by the Minister to acquire certain lands were of an indefinite corpus, and that the descriptions adopted therein fail to give effect to the requirements of the Act, and, therefore, they are not in conformity with the law.

(c) That the Minister in the notice issued, had failed to specify the public purpose for which the lands were acquired.

These grounds, according to Counsel for respondents, come within the scope of the principles, according to which the Courts are prepared to apply the *ultra vires* doctrine and review the exercise of administrative, judicial, or legislative acts of the executive.

These principles are broadly summarised by Lord Reid in *Anisminic Ltd., v. Foreign Compensation Commission*[1]:

> "It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "Jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

Counsel for the respondents forcefully submitted that section 24(1) of the Interpretation (Amendment) Act No. 18 of 1972 excluded any act done or intended or about to be done by a Minister in the pretended exercise of his powers or any act done *mala fide* or without jurisdiction. Such acts were a nullity and were therefore outside the scope of section 24(1). In regard to such acts the power of the Court was therefore always available to grant an injunction against the Minister.

Much emphasis was made on the use in section 24(1) of the words:

> " in the exercise of any power or authority
> vested in law by such person or authority ",

and an argument was built upon it that these words only refer to real or genuine or lawful or *bona fide* exercise of power, and not pretended, purported or *mala fide* exercise of power.

[1] (1969) 2 N.L.R. 163 at 170 and 208 (1969) 1 ALL E.R. 208 at 243-244.

Reliance was placed on the cases of *Karunanayake v. C. P. de Silva, Minister of Lands*,[2] and *Ratwatte v. Minister of Lands*[3] — where temporary injunctions were granted by the Supreme Court against the Minister of Lands restraining him from taking further steps in the acquisition of certain lands under the Land Acquisition Act. It was, therefore, contended that section 24(1), by reason of the particular phraseology employed by the Legislautre was designed deliberately to preserve the right to obtain injunctions against the State and State Officers for any act done in the pretended or *mala fide* or illegal exercise of any power or authority. To buttress their argument Counsel referred to the use of the words: "In the exercise or apparent exercise" in section 22 of the Act, and the deliberate omission of the words "apparent" or "purported" in section 24(1), although in the original Bill the words used were:

> "Any act done or purported to be done or intended or about to be done by any such person or authority in the exercise or purported exercise of any power or authority vested by the law in any such person or authority".

To give effect to the interpretation that was sought to be placed on the so-called limitation clause in section 24(1) by learned Counsel for the respondents, it would become necessary to read into that section words like, "in good faith" or "in the lawful exercise".

In approaching the task of interpreting section 24(1) what one must look for is not what the intention of Parliament ought to be, but what it is.

Learned Counsel for the respondents also made the submission that even if the Legislature intended to deprive the Courts of the power to grant an injunction against a Minister and any other person or authority referred to in section 24(1), the language of the Statute falls short of what the Legislature may have intended to achieve. For this purpose a comparison was made of the language used in section 21 of the Crown Proceedings Act 1947 and the words in section 24 of our Act, and it was submitted that a qualification or limitation was introduced into section 24(1) by the deliberate use of the following words which were not used in the Crown Proceedings Act:–

> "In respect of any act done or intended or about to be done by any such person or authority in the exercise of any power or authority vested by law in any such person or authority".

[2](1968) 70 N.L.R. 398. [3](1970) 72 N.L.R. 60.

In order to appreciate the argument of Counsel on both sides it would be useful to reproduce the provisions of section 21 of the Crown Proceedings Act and section 24 of the Interpretation (Amendment) Act around which much argument was addressed to us to stress the point that there was a fundamental and obvious difference in the two statutory provisions. Learned Solicitor-General maintained that our section 24 was in line with section 21 of the Crown Proceedings Act 1947 although different language has been employed in two statutes.

Section 21(1) of the Crown Proceedings Act 1947 reads as follows:–

"21(1) — In any civil proceedings against the Crown the Court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that:–

(a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the Crown for the recovery of land or other property the Court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof. The Court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown".

An officer of the Crown is defined as including a Minister.

Section 24 of the Interpretation (Amendment) Act reads as follows:—

24(1) — Nothing in any enactment, whether passed or made before or after the commencement of this Ordinance, shall be construed to confer on any Court, in any action or other civil proceedings, the power to grant an injunction or make an order for specific performance against the Crown, a Minister, a Parliamentary Secretary, the Judicial Service Commission, the Public Service Commission, or any member or officer of such Commission, in respect of any act done or intended or about to be done by any such person or authority in the exercise of any power or authority vested by law in any such person or authority;

Provided, however, that the preceding provisions of this subsection shall not be deemed to affect the power of such Court to make, in lieu thereof, an order declaratory of rights of parties.

(2) – No Court shall in any civil proceedings grant any injunction or make an order against an officer of the Crown if the granting of the injunction or the making of the order would be to give relief against the Crown which could not have been obtained in proceedings against the Crown.

The learned Solicitor-General submitted that it would be necessary to examine the past history and the circumstances surrounding the enactment of the Interpretation (Amendment) Act No. 18 of 1972 as this will facilitate the task of interpretation. It was necessary to find the *raison d'être* for this enactment by Parliament in order to find out the intention of Parliament and to arrive at the real meaning of the statute. To arrive at the real meaning, it was always necessary to get at the exact conception, aim, scope and object of the whole of the Act. For this purpose, he suggested that we should accept the test laid down in the *Heydon's case*[4], namely,

(a) What was the law before the Act was passed;

(b) What was the mischief or defect for which the law has provided;

(c) What remedy Parliament has provided;

(d) The reason for the remedy.

The learned Solicitor-General submitted that this was an appropriate case where in order to find out the intention of Parliament it would be desirable that we should read the speech of the Minister who introduced the legislation in Parliament. No doubt, at one time the Courts frowned upon, and did not approve of reference to parliamentary history in order to interpret legislation. The main reason given by the English Courts for such disapproval was that the language can be regarded only as the language of the three Estates of the Realm, namely, the Sovereign, the Lords and the Commons, and the meaning attached to it by its framers or by individual members of one of those Estates cannot control the construction of it. This criticism may not apply to the Act we are considering as at the time the Act was passed the legislature was unicameral.

However, in more recent times, even in England, there has been a progressive recognition of the rule that Parliamentary history is not inadmissible in certain circumstances in the interpretation of statutes.

[4]Heydon's Case (1584) 3 Co. Rep. 7a; Maxwell on Interpretation of Stautes 12th Edition 40, 96.

In the case of *Beswick v. Beswick*,[5] Lord Reid made these observations:

> " In construing any Act of Parliament we are seeking the intention of Parliament and it is quite true that we must deduce that intention from the words of the Act. If the words of the Act are only capable of one meaning, we must give them that meaning no matter how they got there. But if they are capable of having more than one meaning we are, in my view, well entitled to see how they got there. For purely practical reasons we do not permit debates in either House to be cited; it would add greatly to the time and expense involved in preparing cases involving the construction of a statute if counsel were expected to read all the debates in Hansard, and it would often be impracticable for counsel to get access to at least the older reports of debates in Select Committees of the House of Commons; moreover, in a very large proportion of cases such a search, even if practicable, would throw no light on the question before the Court".

The reason given for discouraging the use of debates in order to find out the intention of Parliament was the delay, the expense and the impracticability involved in preparing cases involving the construction of statutes if Counsel were expected to read all the debates in the Hansard.

In *Regina v. Warner*[6], the question arose whether in regard to possession of drugs without being duly authorised contrary to section 11(1) of the Drugs (Prevention or Misuse) Act, 1964, the section imposed an absolute prohibition to possess or whether it was dependent on proof of *mens rea*. The Act did not make any specific reference to *mens rea* as an ingredient of the offence. Lord Reid at page 1316 said:—

> "The rule is firmly established that we may not look at the Hansard and in general I agree with it for the reasons I gave last year in *Beswick v. Beswick* (1968) A.C. 58".

He, however, went on to say :—

> "This is not a suitable case in which to reopen the matter but I am bound to say that this case seems to show that there is room for an exception where examining the proceedings in Parliament would almost certainly settle the matter immediately one way or the other. Members of both

[5] (1967) 3W.L.R. 932 at 937 (1968) Ac 58. [6] (1968) 2W.L.R. 1306.

Houses are particularly interested in the liberty of the subject and if it were intended by those promoting a Bill to extend the old but limited class of cases in which absence of *mens rea* is no defence, I would certainly expect Parliament to be so informed. Then, if Parliament acquiesced, those who dislike this kind of legislation would know whom to blame. But if the words of the Act are not crystal clear and Parliament has not been told of this intention, I would hold without hesitation that it would be wrong to impute to Parliament an intention to depart from its known desire to prevent innocent persons from being convicted".

The rule against the use of Parliamentary history of a statute is almost impossible to reconcile with the mischief rule in Heydon's case for it excludes the main source of the reference for the evil the legislature intended to remedy. The learned Solicitor-General submitted that if the contention of the learned Counsel for the respondent is accepted, then section 24 of the Interpretation (Amendment) Act merely laid down the existing law and was a re-statement thereof. He submitted that when Parliament legislates, it does so with a purpose, and some meaning must be given to the purpose for which the legislation was directed.

As much emphasis was laid down by learned Counsel for the respondent that there was a certain fundamental difference in our section 24(1) and section 21 of the Crown Proceedings Act, 1947 and also that the word "purported" which was in the original Bill was deleted from section 24(1) and also in view of the contention of the learned Solicitor-General that this legislation sought to provide a remedy to cure a mischief, I would think that this is an appropriate case where we should read the speech of the Minister at the time he introduced the Bill in the House of Representatives on the Second Reading. I would confine myself only to the reading of the speech of the Minister, and not to speeches of the other members of the House. I took the precaution while doing so, to seek assistance from the Minister's speech only in regard to such matters as are relevant to finding out what was the law before the amendment was introduced; what was the mischief sought to be remedied, and what was the remedy advanced? In interpreting the Act, however, I propose to only consider the language of the Act and the words therein.

It would be relevant, in order to appreciate the argument of the Solicitor-General, to refer to cases where injunctions have been issued by our Courts in respect of acts done by Public Officers and Ministers.

The Solicitor-General submitted that in this country injunctions were never available against the Crown. He relied on the passage in *Buddhadasa v. Nadaraja*[7] where Sansoni, J., had made the observation :—

> "Counsel treated as axiomatic the proposition that no injunction lies against the Crown."

A Public Servant, however, could be restrained in his individual capacity for any wrongful act done or intended to be done by him. The position was the same in England. In *Raleigh v. Goschen*[8], the plaintiffs commenced an action against the Lords Commissioners of the Admiralty for an alleged trespass said to have been committed on their lands for which they claimed damages and they asked for an injunction to restrain further trespass on the land which they say was threatened. It was held that although the plaintiffs can sue any of the defendants individually for the trespass committed or threatened by them, they could not sue them as an official body and that as the action was a claim against the defendants in their official capacity, it was misconceived and would not lie.

In the case of *Buddhadasa v. Nadaraja* (supra), an application was made for an injunction to restrain the respondent in the supposed performance of his functions as Deputy Fiscal from wrongful seizing and selling the immovable property of the petitioner in alleged pursuance of the provisions of section 79(2)(a) of the Income Tax Ordinance. It was held that the servant of the Crown purporting to act in his official capacity on behalf of the Crown can be restrained from so acting by an injunction issued against him as an individual. In this case the defendant was sued as N. Nadaraja of Colombo holding office as Deputy Fiscal, Western Province.

In *Ladamuttu Pillai v. The Attorney-General*[9] Basnayake, C.J., held that neither our Civil Procedure Code nor any other enactment imposed a prohibition such as is contained in section 21(2) of the Crown Proceedings Act. Our Courts are free to entertain any action against the Crown or its officers and there are no fetters imposed by statute on suing the Crown or its officers in actions to which the Crown or a Public Officer is a party and our Courts are free to make any order they may make between subject and subject. Similarly, in the grant of injunctions, our Courts are free to act under section 86 of the Courts Ordinance, whether the defendant be the Crown or a servant of the Crown or a subject, and there is no fetter on our freedom of

[7] (1955) 56 N.L.R. 537 at 544.
[8] (1898) 1 Ch 73.
[9] (1957) 59 N.L.R. 313.

action as in England. This case went up to the Privy Council — *Land Commissioner v. Ladamuttu Pillai*[10]. Their Lordships reserved their opinion upon the question as to whether in the circumstances, such as those in the present case, any injunction against the Attorney-General could or ought to be granted.

In *Karunanayake v. de Silva* (Minister of Lands) — (supra) in proceedings under the Land Acquisition Act, the notice under section 4, the declaration under section 5 and the order under section 38 of the Minister, did not set out definite boundaries on the south and west of the land sought to be acquired. It was held, therefore, that there could not be an acquisition of an indeterminate corpus. The notice, order and the declaration of the Minister were therefore defective in regard to the description of the land so as to render them of no force or effect in law as they failed to refer to a particular land, and, therefore, were not in conformity with the law. An interim injunction was accordingly issued by the Supreme Court on the Minister.

In *Ratwatte v. Minister of Lands* — (supra) it was held that the petitioners were entitled to the issue of a temporary injunction restraining the Minister in respect of the acquisition of the land in question. Samarawickrema J., said that upon the matters placed before Court, the question arose whether, in giving directions for the acquisition, the Minister wittingly or unwittingly gave effect to a design or plan by a political opponent of the petitioners which was calculated to protect the interests of himself and his relatives and cause loss and detriment to the petitioners and, if the Minister did so but acted unwittingly, whether the petitioners were entitled to relief. He further observed that it was necessary that Courts, while discouraging frivolous and groundless objections to acquisitions, should be vigilant, if it is open to them to do so, to scrutinise acquisition proceedings where it is alleged that they are done *mala fide* and with an ulterior motive. A temporary injunction was granted to restrain the Minister in respect of the acquisition of the lands. In fact, Samarawickrema, J., went on to hold that, in order that an injunction may issue, it was not necessary that the Courts would find a case which would entitle the plaintiff to relief at all events; it is quite sufficient if the Court finds a case which shows that there is a substantial question to be investigated and that matters ought to be preserved in *status quo* until that question can finally be disposed of.

These decisions virtually, according to the Solicitor-General, opened the flood gates for a spate of applications for injunctions on the Minister in order to restrain him from taking further steps in acquiring the lands which the

[10](Privy Council) (1960) 62 N.L.R. 169.

Minister sought to acquire. In fact, while introducing the Bill in Parliament, the Minister remarked. "On this ground of *mala fide* there are today pending some sixty land acquisition cases against the Minister of Lands."

It is against this background that the Solicitor-General submitted that this Court must consider why the Legislature thought of enacting section 24 in the form in which it occurs, the mischief it seeks to cure and the remedy it proposes to advance.

It would be relevant at the outset to understand the circumstances under which the Interpretation (Amendment) Act No. 18 of 1972 was enacted, and its scope. The Legislature would have been more than aware that resort to ready-made formulae of "Judge-made" law through the machinery of the Courts had been used either to delay or halt the administrative process of the State in a country like ours which, in the words of the Minister, " is in crying need of development".

The Amendment seeks to strike a fair balance between the demands and pressures of a planned economy in a developing country like ours, and individual rights and liberties on the other hand. This is a perennial question that has always agitated legislators viz. how far individual liberties can be accommodated amidst the ever-expanding activities of the State in ensuring to the people the larger freedoms like freedom from want, freedom from hunger and freedom of the opportunities of life. This is a problem which affects all countries of all political complexions. In fact this problem was posed by the late Earl Warren, the former Chief Justice of the United States of America, when he protested that " Our Judges are not monks or scientists, but participants in the living stream of our national life, steering the law between the dangers of rigidity on the one hand and of the formlessness on the other . . . Our system faces no theoretical dilemma but a single continuous problem of how to apply to ever-changing conditions, the never changing principles of freedom."

The Minister of Justice, the Hon'ble Felix Dias Bandaranaike, in introducing the Bill spoke on the same lines — *vide* official report (Hansard dated 20th April, 1972, Col: 634):—

"As a Minister of the Government, what I am proposing is to deal with situations existing today to try to find out a formula which, on the one

side, keeps the law consonant with the needs of society to protect its interests and to safeguard development in a country which is in crying need of development and, on the other hand, ensures that individual rights and liberties of citizens of this country are not sacrificed in that process."

At this stage, it will not be out of place to deal with the submission made by Mr. Athulathmudali. He submitted that in the interpretation of legislation under the Republican Constitution, the Courts must pay heed to the objectives of a socialist democracy one of which is in Article 16(2) of the Constitution, i.e. raising the moral and cultural standards of the people. These are principles which should guide the making of laws and the governance of Sri Lanka. It was submitted that when a Court does interpret a statute, it may interpret it on the basis that the Legislature does not, on the excuse of executive expedition, condone *mala fide* acts and does not legislate to cover up or protect *mala fide* executive conduct. I fail to see the relevance of this argument to the problem in hand. But, there is in our Constitution another basic cardinal principle which may necessitate re-thinking by the Courts in future interpreting statutes which affect individual rights and freedoms. Hitherto, the principle was accepted that statutes which interfere with the liberty of the subject and property rights should be interpreted strictly and always in favour of the subject. Under the Republican Constitution, Article 18(1) sets out the fundamental rights and freedoms. In this exhaustive list, one does not find a recognition of the fundamental rights to property. Article 18(2), however, states as follows:—

"(2) The exercise and operation of the fundamental rights and freedoms provided in this Chapter shall be subject to such restrictions as the law prescribes in the interests of the national unity and integrity, national security, national economy, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others or giving effect to the principles of the State Policy set out in section 16.

(3) All existing laws shall operate notwithstanding any inconsistency with the provisions of subsection (1) of this section."

The problem that is ever recurring in both the legislative and administrative segments of any Government is as to how and in what circumstances it is possible to accommodate individual rights and freedoms

against the impact of legislation to promote the larger freedoms which the community is entitled to. This is, to some extent, resolved in our Republican Constitution in Article 18(2) which states categorically that the exercise and operation of the fundamental rights and freedoms shall be subject to such restrictions as are set out in the subsection.

Under our Constitution, the ultimate control of legislative powers is in a political body, the elected Legislature. The Judiciary performs an auxiliary function of interpreting statutes and reviewing administrative action. In this context, it is best always to leave policy to the elected organs of State and interpret such policy as far as the Judiciary is concerned intelligently, especially having in the background Article 18(2) of the Constitution.

Time and again, Parliament had legislated to make orders, determinations, directions or findings of some person or authority, "final and conclusive". But, the Courts have held that these words do not have the effect of excluding judicial review. 'Final' meant, according to judicial decisions in relation to a particular administrative decision, merely that the particular remedy cannot be taken any further; which did not deprive that disappointed litigant such other remedies as he may have or excluding him from recourse to the Courts. In recent times, most sweeping exclusion clauses like "shall not be questioned in any proceedings or in any Court," were introduced into legislative language in regard to administrative decisions. In *Anisminic Ltd., v. The Foreign Compensation Commission* — (supra) where although the relevant statute stated that the determinations "cannot be questioned in any proceedings whatsoever," the House of Lords imposed an implied statutory restriction in the language of its enactment by stating that the determination means a real determination and does not include any apparent or purported determination which, in the eyes of the law, has no existence because it is a nullity.

Although some of these powers were intended to be "Judge-proof" and were within the domain of pure policy which no legal control could touch, the Courts have, in the words of Professor Wade, "contrived to make a number of successive sorties into this territory, using as their passport some statutory restriction which they have been able to discover."

The tendency of the Courts by the process of judicial interpretation to defeat the intention of the legislature has been the subject of criticism. Professor Friedmann in his book "The State and the Rule of Law in a Mixed Economy" quotes the following passage at page 80:—

> "It is quite clear that the Courts have created a situation in which it is possible to extend the scope of judicial review indefinitely and in a

> manner which, of its nature, defies definition. In many, if not most, of the cases where exercises of discretionary powers have been reviewed, the Court has, by a process of statutory "interpretation", converted apparently absolute discretions into discretions which are hedged about by limitations which would have startled the parliamentary draftsman. The nature of the process by which this result is achieved is most often obscured by the terminology employed, the references to good faith, proper purposes, extraneous considerations, reasonableness and so on – but in each case the Court has in fact given a restricted interpretation to a power which is, on the face of the statute, more or less unlimited."

He attributes this tendency to the influence of the Common Law Courts and also of Judges who are generally without administrative training and experience. He also states that they are also predominantly steeped in the individualistic tradition of the Common Law, "wanting in that they appear to disregard the social element in a problem". The countries with a full-fledged system of administrative justice are headed by a tribunal of status equal with that of the highest Civil Court, and staffed by highly trained lawyers with a lifelong experience in administration.

At this stage it would be useful to refer to two English decisions which were in the forefront of the argument of Counsel appearing on both sides.

In *Smith v. East Elloe Rural District Council*[11] the preclusion clause was in respect of an order made under the Acquisition of Lands (Authorisation Procedure) Act 1946. The Order may have been questioned in the High Court within a period of six weeks from the notification of the Minister's confirmation on the ground of substantial prejudice by procedural error, or *ultra vires*, but apart from this remedy after the expiration of that period such order "shall not either before or after it has been confirmed, made or given be questioned in any legal proceedings whatsoever."

The House of Lords in a majority judgment held that the Order could not be questioned in a Court of law on any ground whatsoever. Viscount Simonds took the view that the judgment of the Statute covered every possible ground of challenge, including good faith.

[11] (1956) 2 W.L.R. 888. (1956) 1 All E.R. 855.

In fact, in this case the Court directly dealt with the question of *mala fides*. Much reliance was placed by the Solicitor-General on this case.

In the other case — *Anisminic Ltd v. Foreign Compensation Commission* — (supra) the preclusion clause stated: "the determination by the Commission of any application made to them under this Act shall not be called and questioned in any Court of Law." The House of Lords by a majority took the view that these words will not preclude a determination which has been arrived at on a consideration of facts which the Commission had no right to take into consideration. This was not a case, as the judges admitted, dealing with *mala fides* in the sense understood in the East Elloe case.

In the Anisminic case references were made to the East Elloe case and no doubt opinions were expressed that the latter case was not a satisfactory decision and that it would need consideration in an appropriate case.

Counsel appearing for the respondents cited a number of cases from Australia, South Africa, England, India, and also from our Courts based on the principles set out in the Anisminic case, to the effect that an exclusion clause in respect of an executive act or decision did not preclude the Courts from going into the question whether the act or decision was made in good faith, or within jurisdiction.

I might at this stage mention that both the East Elloe and Anisminic decisions are more relevant in regard to section 22 of the Interpretation (Amendment) Act. This section deals specifically with any enactment containing the expression "shall not be called in question in any Court" or any other expression of similar import whether or not accompanied by the words "whether by way of writ or otherwise in relation to any order, decision, determination, direction, or finding made or issued in the exercise or the apparent exercise of the power conferred on such person, authority, or tribunal." This section goes on to say that no Court shall in any proceedings and upon any ground whatsoever, have jurisdiction to pronounce upon the validity or legality of such order, etc. In the proviso to this section there are three exceptions in regard to the writs of this Court.

The Minister in his speech in Parliament gave an example as to why he thought this amending legislation was necessary. Official Report of the Hansard of 20th April , 1972, 650:

"On the ground of *mala fides* there are today pending some sixty land acquisition cases against the Minister of Lands, every one of which is an allegation that somebody made a speech, and so on. I think in Balangoda there were two rival applications: the U.N.P. wanted to build a road through Ratwatte land, and the S.L.F.P. wanted to drive a road through some of Aboosally's boutiques;

Mr. Dudley Senanayake: Both are *mala fide.*

The Hon. Felix R. D. Bandaranaike: The net result was that both applications had been dealt with and held up: hoping for a change of Government these cases are kept going for three, four or five years at a time. It does not matter to me, but please understand this, that if this argument is upheld, then Balangoda will never have a road. This country will remain for ever a country of footpaths and hovels. No development will be possible. The Government will not be able to acquire land. Local Government will come to a grinding halt. Local bodies have been depositing moneys day after day asking for the acquisition of land. It will not be possible for us to have roads, housing schemes, burial-grounds and so on, and the city will continue to be a city of slums.

Our Hon. Minister of Housing and Construction has just returned from Singapore, and I think he will agree that if in Singapore they interpreted *mala fide* in the way in which people seem to have interpreted *mala fide* in Ceylon, Singapore will not be what it is today."

The Minister also referred in his speech to the East Elloe and the Anisminic case.

I shall now proceed to examine the crucial question raised in these applications whether any act done *mala fide*, or outside jurisdiction is excluded from the scope of section 24(1), and therefore whether in order to permit this interpretation words like "in good faith" or words of like effect should be read into section 24(1).

I will assume for purposes of argument, but **certainly without** deciding it, that the following three grounds relied on by Counsel for the respondents, if established, render the order of the Minister a nullity.

(a) *Mala fide* in the sense that the order was maliciously or politically motivated at the instance of those who were totally antagonistic to the respondents in these applications;

(b) That an order seeking to acquire an indeterminate corpus was a nullity;

(c) That an order that did not specify the public purpose for which the acquisition was intended was a nullity.

Section 24(1) does not relate to or deal with the interpretation of words, like, "shall not be called and questioned in any Court" or "final" or "final and conclusive" or "conclusive evidence" or "conclusive proof".

In my view section 23 and 24 have a common purpose; while section 23, according to the marginal note, deals with construction of enactments giving power to Courts to declare rights or status. Section 24, according to the marginal note, deals with construction of enactments giving power to Courts to grant injunctions, or make orders for specific performances. Section 23 says that subject to the provisions of section 24 an original Court shall not be construed to have the power to entertain or enter decree or make any order in any action for a declaration of the right or status upon any ground whatsoever in respect of an order, determination, etc., which any person, authority, or tribunal is empowered to make or issue under any written law. It, however, preserves the remedy by way of damages.

Section 24(1) states that no enactment shall be construed to confer in any Court in any action or other civil proceedings the power to grant an injunction or to make an order for specific performance against the Crown, a Minister, or any other person or authority mentioned therein in respect of certain acts. The proviso, however, does not affect the power of such Court to make, in lieu thereof, an order declaratory of the rights of parties, and is therefore an exception to section 23.

The only question I have to decide is whether the concluding lines of section 24, which I have quoted earlier, contain a qualification or limitation, namely, whether the remedy by way of injunction or specific performance is available against acts illegal, *mala fide*, or outside jurisdiction.

Learned Counsel for the respondents conceded that if section 24 stopped at the word "Commission" then it would cover any act whether made in good faith or otherwise.

In the task of interpreting this so-called "limitation clause" in section 24(1) I find guidance in the observation made by Lord Simonds in the

*East Elloe* case (supra) — at page 893 Viscount Simonds:

"My Lord, I think that anyone bred in the tradition of the law is likely to regard with little sympathy legislative provisions for ousting the jurisdiction of the Court, whether in order that the subject may be deprived altogether of remedy or in order that his grievance may be remitted to some other tribunal. But it is our plain duty to give the words of an Act their proper meaning and, for my part, I find it quite impossible to qualify the words of the paragraph in the manner suggested. It may be that the legislature had not in mind the possibility of an order being made by a local authority in bad faith or even the possibility of an order made in good faith being mistakenly, capriciously or wantonly challenged. This is a matter of speculation. What is abundantly clear is that words are used which are wide enough to cover any kind of challenge which any aggrieved person may think fit to make. I cannot think of any wider words. Any addition would be mere tautology. But, it is said, let those general words be given their full scope and effect, yet they are not applicable to an order made in good faith. But, My Lords, no one can suppose that an order bears upon its face the evidence of bad faith.

Lord Simonds further said:

"The only way of giving effect to Counsel's third proposition would be to insert after the word "whatsoever" in para 16 some such words "unless that it is alleged that the order or certificate was made in bad faith." But I can find no justification in inserting these words. To do so would be legislation and not interpretation."

At page 900 Lord Morton of Henryton observed thus:

"Effect can only be given to Counsel's third proposition if some words are read into paragraph 16. Counsel suggested that the words "made in good faith" should be read in after "order" and also after "certificate". I cannot accept this suggestion. It would be impossible to predicate of any order or certificate that it was made in good faith until the Court had inquired into the matter, and that is just what paragraph 16 prohibits."

Lord Radcliffe at page 911 states as follows:

"At one time the argument was shaped into the form of saying that an order made in bad faith was in law a nullity and that, consequently, all

references to compulsory purchase orders in paragraphs 15 and 16 must be treated as references to such orders only as had been made in good faith. But this argument is in reality a play on the meanings of the word 'nullity'. An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders. And that brings us back to the question that determines this case. Has Parliament allowed the necessary proceedings to be taken?"

Counsel for the respondents on the other hand submitted certain decisions under section 88 of the Police Ordinance and under section 461 of the Civil Procedure Code, and submitted that the language used in these Statutes was in *pari materia* with the language used in section 24 and that it must be assumed that the Legislature when it enacted section 24(1) must be presumed to have intended the same interpretation as the Courts have placed in respect of these two sections.

Section 88 of the Police Ordinance states that all actions and prosecutions against any person which may be lawfully brought for anything **done or intended to be done under** the provisions of this Ordinance or under the general police powers hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise, and also that one month's notice in writing should be given to the defendant before the commencement of the action.

In *Perera v. Hansard* [12] it was held that the defendant did not act *bona fide* in obtaining the warrant and that he was fully aware of the illegal act by which it had been issued. It was, therefore, not anything done or intended to be done under the provisions of this Ordinance, or under the general police powers and therefore the defendant was not entitled to notice. Similar views were expressed in *Punchi Banda v. Ibrahim et al* [13] which laid down that section 88 only protected acts which a police officer did in the reasonable and *bona fide* belief that he is acting within the scope of his authority. Other cases were also cited in support of this principle.

Section 461 of the Civil Procedure Code deals with the requirement of one month's notice before an action is instituted against the Attorney-General as

[12] 8 SCC 1. [13] (1927) 29 N.L.R. 139.

the representative of the Crown, or against a public officer "in respect of an act purporting to be done by him in his official capacity."

On this matter there are conflicting decisions. In *Appusingho Appu v. Don Aron* [14] it was held that a public officer who does an illegal act *mala fide* in the pretended "exercise" of statutory powers cannot be said to be "purporting" to act under the statute which confers those rights, and therefore was not entitled to the notice of action provided for by that section.

In *De Silva v. Ilangakoon*[15] it was held that the allegation of malice in the plaint did not exempt the plaintiff from his duty to act in conformity with section 461 of the Civil Procedure Code.

Reliance was also placed on the Canadian case of *Roncarelli v. Duplessis.*[16] The question arose whether the defendant was entitled to notice under Article 88 of the Code of Civil Procedure which was almost on similar terms with our section 461 of the Civil Procedure Code. The question was whether the act was done "in the exercise of his functions" within the meaning of Article 88. The majority of the Judges in this case held that these words did not contemplate an unlimited arbitrary power exercisable for any purpose, whatsoever, capricious or irrelevant regardless of the nature of the purpose of the statute.

There were two dissenting judgments in this case. Taschereau J., at page 124 however, held that it was a fallacious principle to hold that an error, committed by a public officer, in doing an act connected with the object of his functions, strips that act of its official character and that its authority must then be considered as having acted outside the scope of his duties. Fauteux J., at page 125 held that a public officer was not considered as having ceased to act within the exercise of his functions by the sole fact that the act committed by him might constitute an abuse of power or excess of jurisdiction, or even a violation of the law. The jurisprudence of the provisions which has been settled for many years, is to the effect that the incidence of good or bad faith has no bearing on the right to the notice . . . He did not commit it on the occasion of his functions, but committed it because of his functions."

[14] (1906) 9 N.L.R. 138.
[15] (1956) 57 N.L.R. 457.
[16] (1959) Canadian Law Reports 121.

These decisions which have been cited show that even in respect of language which Counsel claimed is in *pari materia* with the language in section 24 there have been both restrictive and non-restrictive interpretations placed on the material words. In the context of section 24 and the circumstances under which it was enacted, especially having regard to the mischief which it sought to remedy, in my view, the restrictive interpretation sought by Counsel for the respondents cannot be given to section 24. The very problem that Parliament was called upon to deal with arose out of a restrictive interpretation being placed by Courts in respect of such words. In this connection I would approve the principle cited by Craies on Statute Law, 7th Edition, page 125:—

> "The dominant purpose in construing a statute is to ascertain the intent of the legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts and from foreign (meaning extraneous) circumstances so far as they can justly be considered to throw light upon the subject."

Moreover the words "any act" in section 24 are words of very wide amplitude intended to cover acts done both within and outside jurisdiction, *bona fide* or *mala fide*. The legislature would have failed to achieve its objects of suppressing the mischief and advancing the remedy if a restrictive interpretation is given to the words "in the exercise of any power or authority."

I find support also for this view in the words of Viscount Simond L.C., in the case of *Nokes v. Doncaster Amalgamated Collieries Ltd.*[17]

> "Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, than we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

[17](1940) A.C. 1014 at 1022.
(1940) 3 All. E.R. 549.

The following passage from Maxwell, Interpretation of Statutes (9th Edition, 1946) pages 288-9 also lays down an important principle in this connection:

> "The effect of the rule of strict construction might be summed up in the remark that, where an equivocal word or ambiguous sentence leaves reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischief aimed at are, if the language permits, to be held to fall within its remedial influence".

The citations therefore also meet the point raised and put forward by Counsel for the respondents that even if Parliament intended to achieve a certain object the language of the enactment failed to achieve this object.

The learned Solicitor-General in support of his contention submitted that there is another way of finding out the intention of Parliament in order to determine the ambit of section 24(1). His position was that the purpose of section 24(2) was to prohibit an injunction against a State Officer for any act done in the course of his official duty where the grant of the injunction would in effect be a grant of an injunction against the State. This was the same position in England. Section 24, in fact, is intended to meet this situation. In fact section 24(2) is similar to section 21(1) of the Crown Proceedings Act, 1947, and is intended to meet the same purpose that section 21(1) was intended for. De Smith in Judicial Review of Administrative Action makes the following comment:

> "The 1947 Act left unaffected the law on proceedings against an officer of the Crown in his private capacity; it reaffirmed the rule that no injunction will lie against the Crown, and it provided that no injunction shall be granted against an officer of the Crown if the effect of granting it will be to grant relief against the Crown which could not have been obtained against the Crown directly. The effect of the latter provision appears to be to preclude the award of an injunction against any Government department or other body that is a Crown servant, or against a Minister or any other officer of the Crown for any act done in his official capacity".

The mischief sought to be remedied by section 24(2) by prohibiting the Court to grant an injunction against a State official for an act done in his official capacity, the object of which is to prohibit an injunction against the State, will continue if the interpretation contended for by Counsel for the respondents is accepted in regard to section 24(1), namely, that an injunction could be granted against the State in respect of an act done *mala fide* or outside jurisdiction.

I agree with the Solicitor-General that section 24(2) must not be interpreted in a way so as to come into conflict with section 24(1). Looked at from this point of view, section 24(1) is wide enough therefore to bring within the ambit any act whether *intra vires* or *ultra vires* or in good faith or in bad faith.

I am not, therefore, prepared to accept the submission of Mr. Jayewardene that the restriction placed in Subsection (2) of section 24 is subject to the limitations contained in the so-called "limitation clause" in subsection (1).

Counsel for the respondents particularly, Mr. Tiruchelvam, pressed hard the contention that the prohibition of the grant of an injunction contemplated in section 24(1) was not an interim or interlocutory injunction but a permanent injunction. He summed up his argument in this way: He invited us to look at the proviso to section 24(1) which reserved the powers of Court to make in lieu of granting an injunction an order declaring the rights of parties. A declaratory order must in its nature be a final order after the hearing when the Court is in a position to determine and declare the rights of parties; so that, when the proviso to section 24(1) states that this subsection shall not be deemed to effect the power of such Court to make in lieu thereof an order declaratory of rights of parties, the contention is put forward that as an order declaring the rights of parties must be made as a final order at the conclusion of the hearing, the words, "in lieu thereof" would, in the context, refer to a permanent injunction and not an interim injunction because it is a permanent injunction which is ordered at this stage. I am not prepared to agree with Counsel in giving this narrow interpretation to the word "injunction". In the circumstances under which this legislation was enacted and the mischief it was sought to remedy the word "injunction" in section 24(1) refers to both interim and permanent injunctions. If it was the intention of the legislature to restrict its meaning, it could have done so in simple words.

In rejecting the contention of Counsel on this point, I find some assistance in section 21 of the Crown Proceedings Act and the two decisions of the English Courts on that section. Section 21(1) (a) prohibits the grant of an injunction against the Crown, but in lieu thereof the Court may make an order declaratory of the rights of parties. This is on the same lines as the proviso to our section 24(1).

In the *International General Electric Company of New York, Ltd. and Another v. The Commissioner of Customs and Excise* [18], the plaintiffs started an action *inter alia* for the declaration that the defendants were not entitled to detain their goods and moved *ex-parte* for an interim declaration, Upjohn, L.C., observed :

> "It will be observed that the form of the motion is unusual. It does not ask for an interlocutory injunction, and if that is good and sound reason, that as the Commissioners of Customs and Excise are a Department of the Crown no injunction could be obtained against them. That is because of Section 21 of the Crown Proceedings Act of 1947".

It was held that in proceedings against the Crown it was not possible to obtain an order which corresponded to an interim injunction or an interim declaration which did not determine the rights of parties but was only intended to preserve the *status quo.*

Upjohn, L.J., after following the decision in *Underhill v. Ministry of Food* [19],

> "Speaking for my part I simply do not understand how there can be such an animal, as I ventured to call it in argument, as an interim declaratory order which does not finally declare the rights of the parties. It seems to me quite clear that, in proceedings against the Crown, it is impossible to get anything which corresponds to an interim injunction. When you come on the question of a final injunction, no doubt a declaratory order may be made in lieu thereof, for that finally, determines the rights of parties".

In *Underhill v. The Minister of Food* — (supra) Justice Romer observed:

> "Mr. Buckley, on behalf of the Minister of Food, says that this Court has no jurisdiction to make a kind of interim declaration in substitution for the interlocutory injunction which, quite clearly, it has no power to grant . . . Accordingly, he says that, just as I cannot grant an interlocutory injunction against the defendants in this case even if in all respects a *prima facie* case has been made out, I cannot as an alternative make an interim declaration either. In my judgment, that submission is right. I do not think that this Court has, or has intended to have, jurisdiction under section 21 of the Act to make something in the nature of an interim

[18](1962) 1 Ch. 784. (1962) 2 All E.R. 398 at 399.
[19] (1950) 1 TLR Vol. 66, 730 at 733. (1950) 1 ALL E.R. 593.

declaration of rights which would have no legal effect and which, as I say, might be the very opposite of the final declaration of the right which would be made at the trial after hearing of evidence and after going at length into all matters in issue".

It is, therefore, very clear that in the Crown Proceedings Act of 1947 the word "injunction" also means an interim injunction and these decisions have definitely laid down that under section 21 of the Crown Proceedings Act an interim injunction cannot be granted.

Our proviso to section 24(1) is on the same terms as its counterpart in section 21 of the Crown Proceedings Act which reads:

".... but may in lieu thereof make an order declaratory of the rights of the parties".

I, therefore, hold that section 24(1) prohibits the Court from granting an interim injunction as well against the person or Authority specified in the section.

The statutory exclusion of judicial review is looked down upon by jurisdictions which follow the principles of the common law like in England and this country for the reason that there is a cardinal rule that access to the Courts in circumstances where such access will otherwise lie for the determination of his rights should not be denied to the citizen save by clear words of the statute. It is for this reason that Courts have exercised their supervisory jurisdiction to question the validity of executive acts and decisions in cases involving ouster clauses. But the question is whether the supervisory jurisdiction of the Courts is completely excluded by the legislation prohibiting one of the many remedies or reliefs which the Court can grant to an aggrieved party to question the validity of executive actions. In the case before us the remedy prohibited is by way of injunction.

To answer this question it is necessary to know the content and scope of the remedy by way of injunction. An injunction is an order of Court and it is discretionary relief addressed to a party in proceedings before it, and requiring that party to refrain from doing or to do a particular thing. In administrative law it is frequently sought and granted on the ground that what the agency proposes to do will be or would be *ultra vires*.

An interim injunction is a provisional remedy granted before the hearing on the merits and its sole object is to preserve the subject in controversy in

its then existing condition, that is, in *status quo*, and without determining **any question of right**. An interim injunction decides no fact, fixes no right, and, is not at all necessary to the final determination of the case. Samarawickreme, J., in *Ratwatte v. Minister of Lands* (supra) observed that in order that an interim injunction may issue it is not necessary that the Court should find a case which would entitle the plaintiff to relief at all events. It is quite sufficient if the Court finds a case which shows that there is a substantial question to be investigated, and that matters ought to be preserved in *status quo* until that question can be finally disposed of.

The resulting position is that although at the time an interim injunction issues from a Court there is no adjudication of the rights of parties. It may as well be that at the end of the hearing the Court will come to a finding against the party in whose favour the interim injunction had been granted. Section 24(1) by depriving the Court of the power to grant an interim injunction therefore does not deprive the Court of the power to adjudicate on the rights of an aggrieved party against an administrative order.

A perpetual injunction is one granted by a judgment which finally disposes of the injunction suit which forms part of the judgment upon hearing of the merits and it can be properly ordered only upon the final judgment. The aggrieved party before he obtains a permanent injunction has the satisfaction of having an adjudication of his rights, and in the case of a challenge of executive action, a declaration that such action is *ultra vires* or outside jurisdiction.

Section 24(1) therefore, while giving the aggrieved party the right to obtain an order declaring his rights merely tells him that he is not entitled to the other remedy of a permanent injunction.

Despite the fact that the remedy by way of an injunction is not available to an aggrieved party under section 24(1), access to the Courts is not denied to him as under the Interpretation (Amendment) Act the Court can give an order declaring the rights of the parties against the person or authority mentioned in section 24(1) which includes the Minister and the aggrieved party can ask for an order for damages.

For those reasons I am of the view that section 24(1) does not contain a preclusive clause in the sense in which it is understood in the Anisminic case, and in the cases cited based on the principles laid down in that case. Section 24(1) merely deprives a party of the remedy which he would be otherwise entitled to ask. It merely deals with the construction of an enactment depriving the power of the Court to grant an injunction.

Mr. Jayewardene's comment that it is not a significant answer, nor comfort or solace to the subject to be told that he can still obtain a declaration for what it is worth and should be content with it while his property is demolished or he is ejected from his home and his hearth, is equally applicable in regard to those persons affected by the Crown Proceedings Act 1947 in England as they are in the same plight. The remedy for this is not through the Courts but elsewhere.

The English Courts which have interpreted sweeping ouster clauses as in the Anisminic case as not standing in their way to question the legality of a determination by a person or authority, have refused to enter the arena to question the legislative privilege which a Minister in England enjoys of not being subject to the issue of an injunction against him in view of section 21(1) of the Crown Proceedings Act. In fact, the English decisions which I have cited have reiterated the position that injunctions are not available even if a *prima facie* case is established.

One can now understand the reason why in England after the Crown Proceedings Act, 1947 when certain remedies which were hitherto not available to the subject against the Crown in Courts were made available for the first time against the Crown, injunctions were treated as an exception.

I shall now deal with the submission of Counsel on which much reliance was placed, namely, that while in the Bill, section 24 dealt with "any act done or purported to be done" and "in the exercise or purported exercise of any power or authority," the word "purported" was omitted in the Act. The contention was that this was deliberately done to keep acts done *mala fide*, outside jurisdiction or in the pretended exercise of power, outside the scope of section 24. In support of his argument certain decision under section 88 of the Police Ordinance and section 461 of the Civil Procedure Code were cited. The language used, it is submitted, is in *pari materia* with the language in section 24. It will be more appropriate to deal with the cases in section 461 of the Civil Procedure Code as the words in this section are :

> "In respect of an act purporting to be done by him in his official capacity".

In some of the cases cited by Counsel it has been held that where the act had been done by a public officer *mala fide* or from an ulterior motive, then a notice under section 461 need not be given to the defendant. If these decisions are correct, then it would appear that acts done *mala fide* or in the pretended exercise of power did not come within the scope of "an act purporting to be done". In *de Silva v. Ilangakoon* — (supra), Basnayake, C.J.,

however, took the contrary view and held that even when there is an allegation of malice in the plaint, a notice must be given in conformity with section 461. The Chief Justice goes on to say that the word "purported" means ordinarily "profess" or "claim" or "mean" or "imply". He has also cited a passage from the judgment of Lord Simonds in *Gill and Another v. King*[20] - in interpreting the words "an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in section 197(1) of the Indian Criminal Procedure Code.

> "Their Lordships while admitting the cogency of the argument that in the circumstances prevailing in India a large measure of protection from harassing proceedings may be necessary for public officials cannot accede to the view that the relevant words have the scope that has in some cases been given to them. A public servant can only be said to act or to purport to act in the discharge of the official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office".

It will thus appear that the words "purport" would have been in the context in which section 24 was enacted a surplusage, especially in view of the use of the words "any act" in section 24. Both an act and an act purporting to be done are done by a public officer by virtue of his office or within the scope of his official duty. The two examples given by Lord Simmonds refer to acts which are neither acts nor acts purporting to be done within the scope of a person's official duty.

When a public officer does an official act, he claims, professes, means and implies that he does it by virtue of his office. This also accounts for the deletion of the words "purporting" in section 22 and the insertion instead of the word "apparent".

Mr. Tiruchelvam submitted that section 24(1) contemplated only cases where the power to grant injunctions is contained in an enactment, and therefore this section could not affect injunctions which the Courts had inherent power to grant. The enactments usually invoked by the Courts which give them the power to grant injunctions may be set down as follows:

[20] (1948) 1 A.I.R. Privy Council 128.

Under the repealed Courts Ordinance, the Supreme Court had this power under section 20, and the District Courts and the Courts of Requests under sections 86 and 87. Section 217(f) of the Civil Procedure Code is also referred to as the source of this power.

Under the Administration of Justice Law, the High Court is given the jurisdiction formerly vested in the Supreme Court by section 21. The District Court and the Magistrate's Court are given the power to grant injunctions under section 42.

As far back as 1895 it was held in the case of *Mahamadu v. Ibrahim*[21] — that this Court had no inherent power to issue injunctions and its jurisdiction is restricted to cases referred to in section 20 of the Courts Ordinance.

When the jurisdiction of Courts in regard to its powers on any matter is referable to a statute, there is no inherent jurisdiction in the Courts to exercise its powers in regard to those same matters.

I therefore, reject this argument and hold that section 24(1) cannot be construed as excluding the inherent powers of the Court to grant injunctions when such powers do not exist.

I shall now deal with the question of jurisdiction raised by Counsel challenging the constitution of the present Bench of nine Judges of this Court to hear and determine these applications.

Mr. Jayewardene who spearheaded this challenge maintained that the three Judges of this Court had no jurisdiction to call for and examine the records in these cases, to issue notices in the manner they were done. All consequential proceedings up to the constitution of the present Bench were therefore irregular and illegal. He prefaced his argument by saying that the applications did not come up before this Court either by way of appeal or in revision at the instance of any of the aggrieved parties who have not on their part moved this Court. Implicit in this contention is the suggestion that the Minister in question was not interested in the outcome of this hearing. It is needless to say that the Solicitor-General of the State appeared before us on behalf of the Minister and put the case of the State as effectively as it should be to the effect that the orders of the subordinate Courts in granting injunctions against the Minister were illegal orders.

I might skip over some of the preliminary points raised by Mr. Jayewardene as being of pure academic interest, for example, about the indivisibility of the Supreme Court under the Administration of Justice Law.

[21] (1895) 2 N.L.R. 36.

Even the main matter which I propose to deal is only of academic interest as we could have dismissed his contentions *in limine* on two grounds.

Firstly, the Chief Justice acting in terms of section 14(3) of the Administration of Justice Law had directed the constitution and nominated the composition of this Bench. The application for the constitution of this Bench was made by Mr. Jayewardene and Mr. Tiruchelvam before the Chief Justice under section 14(3) on the ground that the matters involved in these applications are of general or public interest. This Court therefore derives its jurisdiction to hear and determine the applications on the direction of the Chief Justice and this direction is beyond challenge and review.

Secondly, it was within the competence of this Bench once it sat, to decide that this was a fit case where the revisionary powers of this Court should be exercised once the matters in controversy were brought to its notice.

After a few initial skirmishes, Mr. Jayewardene conceded that when the two Judges called for the records from the Courts below they were acting in a purely ministerial capacity and as such he was not questioning its legality. In fact section 40 states that the jurisdiction of this Court by law shall include all ministerial powers and duties incidental to such jurisdiction, and section 354(1) which gives this Court powers of revision states that it may adopt such procedure as it may consider fit.

Section 14 states that the jurisdiction of the Supreme Court may be exercised in different matters at the same time by several judges of the Court sitting separately, provided that its jurisdiction in respect to the judgment and orders of the Magistrate's Court shall be exercised by at least two Judges and its jurisdiction in respect of judgments and orders of District Courts and High Courts shall be exercised at least by three Judges. No complaint can be made on this ground too as the orders and notices to show cause in terms of section 354(1) were issued by three Judges of this Court.

What was considered improper and done without jurisdiction is that the order under section 354(1) noticing the parties to show cause was done in the exercise of the judicial power of the State and therefore should have been done at sittings in public of the Court and not in chambers although they were done *ex mero motu* under section 13. Our attention was drawn to section 7 which states that the sittings of every Court shall be held in public and all persons are entitled to attend such sittings subject to certain exceptions.

In my view, the sittings of the Court in public means the sittings to exercise the judicial power of the State to decide controversies between subjects or between the State and subjects when it assembles after giving an

opportunity to the party proposed to be affected by any order that the Court may make. Orders made in this case do not come within this category.

I do not see the necessity for Judges of this Court acting *ex mero motu* when issuing notices in any matter of a revisionary nature that it is mandatory that they should do so at public sittings of the Court. Firstly, no prejudice is caused to any of the parties as an order prejudicial to one or other of the parties will be made only after the parties have been noticed and an opportunity given to show cause. Secondly, it is not always necessary that the parties should be heard before the Judges decide *ex mero motu* to issue notice. Thirdly, when issuing notice the Judges do not come to a determination regarding the rights of parties.

The contention raised on the ground of jurisdiction is without merit and therefore fails.

Mr. Jayewardene submitted that in the event of this Court holding that the subordinate Courts did not have the power to issue injunctions against the Minister by reason of section 24(1), this Court should not reverse or vary such orders unless such orders have prejudiced the substantial rights of either party or occasioned a failure of justice. I cannot agree with this submission. Interim injunctions have been ordered on the Minister despite the fact that the Courts had no power to do so. By no stretch of reasoning can it be said that the substantial rights of the State have not been prejudiced in the cases we are dealing with. As a result of illegal orders being made by the Courts in the face of the statute, the machinery of the Government and its administrative processes under the Land Acquisition Act have come to a dead halt. Besides, these cases are apt to be cited as precedents against other orders of the Minister unless the orders are varied or set aside.

I should think that a duty lies on this Court when such orders come up before this Court, if on a review it is found that such orders are illegal, to set them aside. In doing so it makes no difference that some of the orders are not 'live orders' in the sense that the injunctions have expired and that therefore there is nothing for the Court to set aside. I cannot subscribe to this proposition either. There is on the face of the record an illegal order. It matters not that the effect and the force of the order have expired. It is the duty of this Court to tell the subordinate Court and all parties affected by it that it is an illegal order and the only way effective it can achieve it is to *pro forma* set it aside.

This is the conclusion that I have unhesitatingly come to on the construction of section 24(1) of the Interpretation (Amendment) Act No. 18 of 1972 as to the intention of Parliament in enacting the section and the

meaning thereof. In order, however, to dispel any doubt in the matter, I have looked into the translation of the Bill in the official language, that is, the Sinhala version. Words of the widest amplitude have been used in the Act in English. Section 24(1) refers to *any* action or other Civil Proceedings . . . in respect of *any* act done . . . by *any* such person or authority . . . in the exercise of *any* power . . . vested in *any* such person or authority. As I have remarked earlier, there is no necessity or room anywhere in this section for any form of restrictive interpretation.

I am not unmindful of the fact that in looking into the Sinhala version of the Bill which was before Parliament that this particular amending legislation was enacted before the Republican Constitution was inaugurated on the 22nd of May, 1972. The date of assent of the Interpretation (Amendment) Act is the 11th of May, 1972. Article 9 of the Constitution of Sri Lanka states that all laws shall be enacted or made in Sinhala and there shall be a Tamil translation of every law so enacted or made. Under the present Constitution, therefore, all Bills are presented to the Legislature in Sinhala and enacted in Sinhala. But prior to the enactment of the present Constitution a Sinhala translation of the Bill was made available to the Members of the House of Representatives. This is quite understandable as the composition of the legislature has in recent years been predominantly Sinhala speaking. The official language of the country is Sinhala. Business of the House is conducted in Sinhala, but any member may address the House in English or Tamil. Of the 157 members in the House, only 31 are non-Sinhala speaking, but I presume even they understand Sinhala. The more articulate of the Sinhala speaking members who constitute the decisive voting majority and who represent rural opinion and aspirations follow the proceedings in the legislature in Sinhala, participate in debates in Sinhala, and when they vote for a Bill, I presume, they have before them the Sinhala version of the Bill.

I shall now quote the relevant portion of section 24(1) of the Interpretation (Amendment) Bill in Sinhala, insofar as the so-called 'limitation clause' is referred to therein.

". . . . නිතියෙන් ඒ තැනැත්තා හෝ බලධරයා වෙත පැවරී ඇති යම් බලයක් හෝ අධිකාරයක් ක්‍රියාත්මක කිරීමේ දී හෝ කරන ලදැයි සැලකෙන ක්‍රියාත්මක කිරීමක දී කරනු ලැබූ හෝ කරනු ලැබ ලෙස සැලකෙන හෝ කිරීමට අදහස් කරනු ලැබූ හෝ කිරීමට යුදානම් යම් ක්‍රියාවක් සම්බන්ධයෙන් ඒ තැනැත්තාට හෝ බලධරයාට"

As I have pointed out earlier although in the Bill section 24(1) dealt with "any act done or purported to be done" and "in the exercise or purported

exercise of any power or authority," it is my view, that the word "purported" was a surplusage and its omission in the Act did not make any significant difference. In my view, the Sinhala version of the relevant controversial lines of the Bill which was before Parliament is not open to any restrictive interpretation as suggested by Counsel for the respondents. It follows that one cannot even read into it words like "in good faith". The language in the Sinhala version of the Bill, in my view, is clear, precise and unequivocal as to the intention of Parliament to deprive the Courts of the power to grant an injunction against the Minister under any circumstances whatsoever.

I, therefore, hold that all orders of the District Courts and the High Courts issuing interim injunctions against the Minister of Agriculture and Lands in respect of the applications under review are illegal and have been made without jurisdiction. Therefore, exercising the revisionary powers of this Court, I quash all such orders irrespective of the fact that they are in force or have expired.

In the circumstances of the case and as the matters in issue were raised *ex mero motu* by this Court, I make no order as to costs.

We are deeply obliged and much thankful to Counsel appearing on both sides for the very valuable, and painstaking assistance they have given us both by exhaustive oral and written submissions.

Before I conclude I wish to make these observations: In the contemporary society in which we live there are social changes and upheavals which are taking place every moment to solve the problems of the people. It is necessary that in order to effect, consolidate and guarantee these changes that those who wield the executive power of the State must be armed with adequate and far-reaching powers, unobstructed as far as possible and unless it is absolutely necessary, by extraneous interference. These powers are given to public functionaries in trust by the Legislature representing the power of the people. Implicit in repositing these extensive powers by the legislature is the duty expected from those who exercise powers that they will do so with circumspection and above all with a sense of justice. There may be moments when they will derive infinite delectation in exercising these powers but at the same time they must also remember in doing so that "it is excellent to have a giant's strength; but it is tyrannous to use it like a giant".