1973 *Present:* **Pathirana, J., and Rajaratnam, J.**

HEWAWASAM GAMAGE (*alias* J. A. William), Appellant, *and* THE MINISTER OF AGRICULTURE AND LANDS (The Hon. H. S. R. B. Kobbekaduwa) and another, Respondents

S. C. 94/71 (Inty.)—D. C. Colombo, 2364/ZL

Land Acquisition Act (Cap. 460)—Section 2 and proviso (a) to s. 38—Minister's decision thereunder to acquire a land for a public purpose—Non-liability to be reviewed by the Courts—Order to take, on ground of urgency, immediate possession of a portion of a larger land—Uncertainty of a boundary at that stage—Validity of the order—Whether an interim injunction can be claimed under s. 86 of Courts Ordinance—Land Acquisition Act, as amended by Act No. 28 of 1964, ss. 2, 4, 4A (1), 5, 6, 17, 38, 41, 51.

On 31st August 1968 the Acquiring Officer issued notice under section 2 (1) of the Land Acquisition Act, that a portion of a larger land described in the notice was required for a public purpose. On 25th September 1970 the Minister, acting under proviso (*a*) to section 38, directed the Acquiring Officer to take immediate possession of the land as it had become urgently necessary to acquire the land for the purpose of a public market. The plaintiff-appellant instituted the present action on 31st October 1970 for a declaration that the purported acquisition of the land was *ultra vires* and null and void and for an interim injunction restraining the Minister from acquiring or taking any further steps in the acquisition proceedings. He submitted that the Minister was acting *mala fide* or in excess of his powers in that the proposed acquisition was motivated by political and personal animosity towards him on the part of a Member of Parliament. He further contended that the acquisition of the land under proviso (*a*) to section 38 of the Land Acquisition Act was made in contravention of the provisions of the Act as it did not set out the particular land to be acquired and/or as it purported to acquire an indeterminate corpus. Admittedly, although the portion of the land sought to be acquired had definite boundaries to the North, East and South, the Western boundary was not demarcated because it was vaguely referred to as a remaining portion of the same land.

Held, (i) that the validity of a decision of the Minister under section 2 (1) of the Land Acquisition Act and an order of the Minister under proviso (*a*) to section 38 of the Act cannot be questioned in a Court of law. The question whether a land should be acquired is one of policy to be determined only by the Minister.

(ii) that the Minister is entitled, on the ground of urgency, to make an order under proviso (*a*) to section 38 to take immediate possession of a portion of a larger land, even though, owing to the absence of a Plan, the boundaries of such portion are uncertain and indeterminate at that stage. In such a case the boundaries will be demarcated at a subsequent stage when a survey and plan are prepared in compliance with the requirements of section 41 (c) read with section 6.

Karunanayake v. de Silva (70 N. L. R. 398) not followed.

(iii) that the party affected by an order under proviso (*a*) to section 38 is not entitled to ask for an interim injunction in terms of section 86 of the Courts Ordinance to challenge the order of the Minister and restrain the Minister from acquiring the land before the stage when, under the Act, it becomes obligatory for a survey and a plan to be prepared. In the present case, the Acquiring Officer was not even attempting to take actual possession of the land with the western boundary undefined.

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, with *W. S. S. Jayewardene, L. C. Seneviratne* and *Mark Fernando,* for the plaintiff-appellant.

K. M. M. B. Kulatunga, State Counsel, with *K. W. D. Perera,* State Counsel, for the defendants-respondents.

Cur. adv. vult.

January 15, 1973. PATHIRANA, J.—

The plaintiff-appellant instituted this action on 30.10.70 against the 1st defendant-respondent, the Minister of Agriculture and Lands, and the 2nd defendant-respondent, the Acquiring Officer and District Land Officer, Colombo, for a declaration that the purported acquisition of the land called KEENAGAHALANDA, in extent 1A. 0R. 0.6P, described in the second schedule to the plaint is illegal, *ultra vires* and null and void and for an interim injunction restraining the defendants from acquiring or taking any further steps in the acquisition proceedings until the matter is finally decided. Pending the determination of this question the plaintiff-appellant had obtained an interim injunction from this Court in terms of Section 20 of the Courts Ordinance. The acquisition of the plaintiff's land was for the purpose of a public market.

The plaintiff in the affidavit has stated that the said acquisition had been instigated or induced by Mr. Wilfred Senanayake, Member of Parliament for Homagama, who is the Chairman of the Town Council, Homagama, within whose electorate the land sought to be acquired is situated. The proposal for the said acquisition was motivated by political and personal animosity towards him by Mr. Senanayake for working against him at the local and general elections and for not allowing two of his close relatives, namely, D. A. Senanayake and D. C. Senanayake to continue the occupation of the land sought to be acquired. The plaintiff had filed action No. DC 43850/M. to have these two persons ejected from the portion sought to be acquired, and on 31.3.69 a writ had issued against them for ejectment. He further stated that within a radius of 100 yards of the said land there were two allotments of bare land which could easily be acquired for this purpose. In his plaint, the plaintiff has further stated that the acquisition of the said land under proviso (*a*) of section 38 of the Land Acquisition Act was made in contravention of the provisions of the said Act as it does not set out the particular land to be acquired and/or as it purports to acquire an indeterminate corpus.

On 31.8.68 the Acquiring Officer, the 2nd respondent, had issued notice (P1) under section 2 (1) of the Land Acquisition Act that a block of land described in the said notice was required for a public purpose. The plaintiff had addressed a letter (A2) on 16.9.68 to the Government Agent with a copy to the Minister objecting to the said acquisition. He received a reply (P3) dated 7.9.70 that his objections will be considered at the inquiry that will be held under section 4 (4) of the Act. However, on 18.9.70 he received a letter from the Permanent Secretary, Ministry of Agriculture and Lands (P4), stating that by virtue of the powers under proviso (*a*) of section 38 of the Act the Minister has issued an order that it has become urgently necessary to acquire the land for the purpose of a public market for the Homagama Town Council. In that same letter the Permanent Secretary has stated that the land will be surveyed very shortly, and when the plans are made after the survey the Acquiring Officer will hold an inquiry to come to a decision concerning the compensation to be paid for the land under section 46, and that possession of the land will be taken over by giving timely notice by the Acquiring Officer in due course.

By Gazette notification of 25.9.70 (D1A) the 1st defendant-respondent acting under section 38, proviso (*a*), directed the Acquiring Officer to take possession of the land described in the second schedule to the plaint.

The defendants-respondents in their statement of objections took up the position that the District Court had no jurisdiction to review and/or adjudicate upon the validity of the said notice issued in terms of section 2 of the Land Acquisition Act and/or the said Order made under proviso (*a*) to section 38 of the said Act. They prayed that the plaintiff's application for an injunction be refused. It must, however, be noted that no affidavit was filed by the defendants-respondents controverting the allegations and matters set out in the plaint and the affidavit of the plaintiff.

The objection relied on by the Crown at the inquiry into the application for an interim injunction was that the Minister's decision under section 2 (1), and the Minister's order under proviso (*a*) to section 38 were not reviewable or justiciable by the Courts. Whether a particular land is suitable for a public purpose or not is entirely a matter for decision by the Minister. Whether the decision was made for political reasons, mala fide or for considerations other than that for a public purpose, once a decision was taken by the Minister, the Courts cannot substitute itself for the Minister. It was, therefore, not competent for the Courts to adjudicate on a decision taken by the Minister.

The Crown also took up the position that there was no uncertainty as to the corpus sought to be acquired and that the description given in the order under proviso (*a*) to section 38 was of a determinate corpus.

The learned District Judge by his order dated 22.1.71 refused the plaintiff's application for an interim injunction. He held that even if the acquisition had been motivated by political reasons or reasons extraneous to the Land Acquisition Act it cannot be questioned in a Court of Law. The question whether the land should or should not be acquired is one of policy to be determined by the Minister concerned and even if that question had been wrongly decided it was one that cannot be questioned in a Court of Law. He further held that there was no merit in the contention that the corpus sought to be acquired was an indeterminate portion of a large land and that the order under Section 38 described the land with regard to definite metes and bounds and gave its extent. He further held that on the material placed before the Court on a bona fide view the plaintiff was not entitled to the substantive relief he claimed and as such it was wrong to issue an injunction. This appeal arises from this order.

Mr. Jayewardene appearing for the plaintiff-appellant based his argument on two main points. Firstly, that the 1st defendant-respondent, the Minister, was seeking to exercise his statutory powers to acquire the land for reasons extraneous to the statute, namely, at the instigation of Mr. Wilfred Senanayake, the Member of Parliament for Homagama, and was therefore acting mala fide or in excess of his powers. Secondly, that the land sought to be acquired is an indeterminate portion of a larger land and for this purpose he relied on the judgment of T. S. Fernando J. in *Karunanayake v. de Silva*[1] (70 N. L. R. 398), which held that in proceedings under the Land Acquisition Act, the Notice under Section 4, the Declaration under Section 5 and the Order under Section 38 must each set out the particular land to be acquired. The acquisition cannot be of an indeterminate corpus, and that where there was uncertainty as to the precise location of the land, the plaintiff was entitled to an interim injunction restraining the acquisition.

At the argument before us, Mr. Kulatunga, State Counsel, took up the position that the District Court had no jurisdiction to adjudicate upon the validity of the acquisition order made by the Minister as the Minister was not acting judicially, but in an executive capacity, and that the question whether the land should or should not be acquired, being one of the policy to be determined by the Minister, was not, even if it was wrongly

[1] *(1968) 70 N. L. R. 398.*

decided, justiciable by the Courts. Secondly, he submitted that the District Court is a Court of original civil jurisdiction by virtue of Section 62 of the Courts Ordinance and it was therefore an inferior Court unlike the Supreme Court which under Section 7 is the only superior Court of Record. His position was that the Supreme Court being a superior Court of Record was the only Court which has the supervisory jurisdiction over the inferior Courts. This supervisory jurisdiction was exercised by means of the prerogative writs. The District Court being an inferior Court subject to the supervision of the Supreme Court having only the original civil jurisdiction did not have the power of reviewing the orders of administrative functionaries except where such power is conferred by the statute. In this case, there had been no such power, the District Court had no jurisdiction to review the order of the Minister. I must say that this was not the position taken up in the District Court where the only question that arose for decision was the jurisdiction of the District Court in the limited sense, namely, whether the order of the Minister made in the circumstances of the case was reviewable by the District Court, being a decision based on policy. State Counsel further took up the position that even if we hold that the acquisition proceedings were *ultra vires* and null and void, still in view of the provisions of the Interpretation (Amendment) Act, No. 18 of 1972, which came into operation on 11.5.72 after the order appealed from in this case was made on 22.1.71, the declaratory remedy and the relief by way of an interim injunction were not available to the appellant as the amending Act was retrospective in its operation and applied to pending actions. Mr. Jayewardene contended otherwise. These questions will only arise for decision if I hold that the acquisition proceedings are not in conformity with the Statute.

I shall deal with the first contention of Mr. Jayewardene that the 1st defendant in issuing notice under section 2 and the order under proviso (*a*) to section 38 was not acting in terms of the Statute but was exercising his powers mala fide for the furtherance directly or indirectly, of political motives and not for a public purpose as stated in the Act and that therefore the decision of the Minister was mala fide and/or in excess of his powers, and was, therefore, subject to review by this Court.

To support his contention that where a Statute authorises the acquisition of a land for a particular purpose it would not be permitted to exercise the powers for different purposes or motivated by ulterior or extraneous reasons which are manifestly different from the purpose for which the Statute was enacted, he relied on two cases. In the first case, *Municipal Council of*

Sydney v. Campbell and others[1] (1925) A.C. 338, the Council had statutory power to acquire compulsorily land required for the purpose of making or extending streets, also land required for "carrying out improvements in or remodelling any portion of the city". The land owner threatened with the compulsory purchase order succeeded in getting an injunction order to prohibit the Council since it appeared that the Municipal Council had in fact no plan for improvements or remodelling that portion of the city, but were merely threatening to acquire as much as possible of an area which was due for a rise in site value owing to the extension of a street. The Council was in fact making use of its powers to carry out schemes of improvements for what was really in fact a different purpose, namely, to enable the Council to get the benefit of an increment in the value of them arising from the extension which the new street would create. It was held that a body such as the Municipal Council of Sydney authorised to take land compulsorily for specified purposes will not be permitted to exercise its powers for different purposes and if it attempts to do so the Courts will interfere. Whether it does so or not is a question of fact.

The next case cited was *Webb and others v. Minister of Housing and Local Government and another*[2] (1965) 2 A. E. R. 193. In this case the Urban District Protection Act, under Section 6 (1) of the Coasts Protection Act, 1949, adopted the works scheme with a slight amendment involving the compulsory acquisition of a strip of land over five thousand feet in length and some ten acres in area, which involves also a construction of a paved way or promenade, some twelve feet wide, along the length of the strip. The Minister of Housing and Local Government confirmed the work scheme and the compulsory purchase order. The compulsory purchase order was for the purpose of coast protection work, under section 6. It was held that the purpose of the compulsory acquisition of the strip of land along the sea shore was not entirely for the coast protection but included purposes, namely, the paved way or promenade for which the Council could not lawfully acquire the land compulsorily under the Act of 1949, as the major part of the strip of land was not required for coast protection work.

It will be seen from these two cases that certain public bodies were given powers to acquire land for certain specific purposes, but the acquisition turned out in fact to be for other purposes not intended by the statute and motivated by some ulterior object. It is different from a case where a public functionary is given the powers to decide something and pursuant to those

[1] *(1925) A. C. 338.*

[2] *(1965) 2 A. E. R. 193.*

powers the public functionary makes a decision, in which case the Courts cannot impose its own idea of what ought to have been decided as the statute intended the powers of decision to lie elsewhere.

The difference is brought out by Wade on Administrative Law—at page 56. It reads as follows:—

"Two principles of statutory interpretation often come into conflict. First, it is to be presumed that powers, even though widely defined, have some ascertainable limits, and that Parliament is unlikely to intend the executive to be the Judge of the extent of its own powers. Therefore, if it can fairly be implied that the powers were given for some particular purpose, exercise for any other purpose, will be illegal. Secondly, however, the Court must not usurp the discretion given to some other body. If the statute says that the minister, or the local authority, may decide something, it is not for the Court to impose its own idea of what ought to have been decided, for the statute intended the power of decision to lie elsewhere. *The Court must not, in other words, concern itself with the politics of the case, or with the "mere merits". The Court's only concern is with the legality of what is done.* It is not every mistake or aberration which affects legality. It is of the essence of discretion that it involves the powers to make mistakes. The Court has therefore to draw the line between mistakes made *intra vires* and mistakes made *ultra vires.* Acting perversely is not necessarily acting *ultra vires;* but it is tempting to the Court to interfere with the unreasonable exercise of a power on the ground that there is some implied statutory restriction which gives the offending act an aspect of irregularity.

Even the widest powers can thus be made subject to a measure of control. The typical example is where the Act of Parliament gives power to an authority to act in certain circumstances "as it may think fit". It might be supposed that, provided the circumstances existed and no procedural mistake was made, such a power would be quite 'judge-proof'; for plainly the 'thinking fit' is intended to be done by the authority, and not by a Court of Law trying to control it. Here, one might suppose, was the domain of pure policy which no legal control could touch. But in fact the Courts have contrived to make a number of successful sorties into this territory, using as their passport some implied statutory restriction which they have been able to discover."

The distinction is also brought out by the judgment of Lord Esher, in *Queen v. The Commissioner for Special Purposes of Income Tax*[1] (1888) 21 Q. B. D. 313 at 319 :—

> " When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. *The legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more.* When the legislature is establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends."

The question before me is whether a Court can question the decision of the Minister under section 2 (1) of the Land Acquisition Act, that the land in question was needed for a public purpose.

I am of opinion that on the construction I place of section 2 (1) and proviso (*a*) to section 38, the Court cannot question the decision or the order of the Minister and substitute its judgment in place of that of the Minister and hold that the decision of the Minister was wrong, namely, that the land was needed for a public purpose. The decision whether the land should or should not be acquired is one of policy to be determined by the Minister concerned and therefore cannot be questioned by the Court of Law.

[1] *(1888) 21 Q. B. D. 313 at 319.*

My view in this connection is also supported by the principles laid down in the following Ceylon cases. In *Gunasekera v. The Minister of Lands and Agriculture and another*[1] (65 N. L. R. 119) H. N. G. Fernando J. held that in connection with a declaration made under section 5 (1) of the Land Acquisition Act, the question whether the land should or should not be acquired is one of policy to be determined by the Minister concerned and even if the question may have been wrongly decided, sub-section (2) of section 5 renders the position one which cannot be questioned in the Courts. Although this decision refers to an order under section 5 of the Land Acquisition Act, and it is further stated in section 5 (3) that the declaration shall be conclusive evidence that such land is needed for a public purpose, I am of opinion that the principle set out in this case is applicable to a decision made by the Minister under section 2 (1). When he decides that the land is needed for a public purpose, it is a decision entrusted to the Minister by the statute and the question whether the land should be acquired is one of policy to be determined by the Minister and therefore cannot be questioned by the Courts.

I will next refer to the judgment of T. S. Fernando J. in *P. Kannusamy v. The Minister of Defence and External Affairs*[2] (63 N. L. R. 380). The relevant portion of the statute that arose for consideration reads as follows :—

> "The Minister may refuse an application sent to him under section 3 if he is satisfied that it is not in the public interest to grant the application."

T. S. Fernando J. held,

> "Where the Act permits the Minister to disallow an application where the Minister is satisfied that it is not in the public interest to grant it, I cannot conceive that Parliament intended that this Court should review a disallowance of an application by examining whether it is actually not in the public interest to grant it. Parliament clearly intended that the Minister should be the sole judge of the requirements of the public interest, and in making a determination on the question it can hardly be doubted that the Minister may consider not merely the qualifications of the applicant but, among other things, questions of policy and expediency as well. The decision of the Minister is a thing for which she must be answerable in Parliament, but her action cannot be controlled

[1] *(1963) 65 N. L. R. 119.* [2] *(1961) 63 N. L. R. 380.*

by the Court. As to what considerations should weigh with the Minister, it is not open to the Court to substitute its own opinion in place of the Minister's opinion..... ".

Learned State Counsel also referred me to the case of *The Government Agent v. Perera*[1] (7 N. L. R. 313), the case under the Land Acquisition Ordinance No. 3 of 1876. It was held in this case that the decision of the Governor on the question whether the land is needed or not for a public purpose is final, and the District Court has no power to entertain objections to His Excellency's decision.

Reference was also made to the case of *Wijeyesekera v. Festing*[2] (Vol. 121, Law Times Reports, p. 1) in which it was held by the Privy Council following the case of *Government Agent v. Perera* that where acting under a report under section (4) of the Land Acquisition Ordinance (1876) the Governor in Council, under section (6) directs steps to be taken for the acquisition of a specific land, it was not open to the owner to aver that the land is not needed for public purposes as the order for the acquisition is final and conclusive and cannot be questioned in any Court. I, therefore, hold that the validity of the decision of the Minister under section 2 (1) and the order of the Minister under proviso (*a*) of section 38 of the Act cannot be questioned by the plaintiff in a Court of Law.

The next question is whether the land sought to be acquired and described in the order of the Minister under proviso (*a*) of section 38, which is a portion of a larger land, the boundaries of which portion are, according to Mr. Jayewardene, uncertain and indeterminate, and, as such, whether the order under proviso (*a*) to section 38 is not in conformity with the Act. If so, whether the plaintiff is entitled to an interim injunction restraining the acquisition of such an indeterminate corpus.

According to (P1), the notice under section (2), the land required for the public purpose is described as a block of land about one acre, with the following boundaries :—

North : By the land of R. A. D. Perera, R. I. A. Perera and Senanayake ;

East : By the land owned by U. P. Perera ;

South : By the high level road ; and

West : By the land owned by J. A. Williams.

[1] *(1903) 7 N. L. R. 313.*

[2] *(1919) 121 L. T. R. 1.*

The order of the Minister made under proviso (*a*) to section 38 (1DA) describes the land as follows :—

> The land called KEENAGAHALANDAWATTA, comprising of assessment numbers 55, 57, 61 & 63 of Avissawella Road, and a portion of assessment number 28 of Station Road, in extent 1A. 0R. 0.6P. in Ward 3, Bazaar area, within the Town Council limits of Homagama, Hewagam Korale West, Colombo District :
>
> *North* : Keenagahalande claimed by R. A. I. Perera, T. D. Pedrick and Wilfred Senanayake ;
>
> *East* : Keenagahalande claimed by U. P. Perera ;
>
> *South* : High Level Road ; and
>
> *West* : Keenagahawatte claimed by J. A. William.

It is admitted that this land is a portion of a larger land described in the first schedule to the plaint which is in extent 6A. 3R. 31P. The portion of the land sought to be acquired therefore has defined boundaries in the North, East and South. But, the western boundary is not demarcated because it is referred to as a remaining portion of the same land. I agree with the contention of Mr. Jayewardene that the western boundary is therefore undefined and uncertain because if the southern boundary is taken as the base, the line of demarcation of the western boundary can be perpendicular, at an acute angle, at an obtuse angle, perhaps a curve, or other forms of demarcation. The question I have to decide is, whether, in the circumstances, the order under section 38 which describes the western boundary in this uncertain manner is not in accordance with the Act, and therefore invalid and of no force or avail in law, and therefore the plaintiff is entitled to an interim injunction to restrain the acquisition on this ground. Difficulties of this nature do not arise when the entirety of the land is sought to be acquired. The problem in this form can only arise if a portion of a larger land is to be acquired.

The submission of Mr. Jayewardene in regard to this matter appeared to me at first sight to be unassailable. It was supported by the judgment of T. S. Fernando J. in *Karunanayake v. de Silva*. However, my analysis of the relevant provisions of the Land Acquisition Act compels me to take a different view in the circumstances of this case. To answer the question that has been raised in this connection it will be useful for me to decide the following matters :—

(*a*) whether under the scheme of the Land Acquisition Act at some stage before the acquisition proceedings are concluded a Plan is imperative and necessary ;

(*b*) whether at some intermediate stage of the acquisition proceedings under the Act it is inevitable that the demarcation of the boundaries may be uncertain and indeterminate ;

(c) whether the party affected by an order under proviso (*a*) to section 38, can ask for an interim injunction to challenge the order of the Minister and restrain the Minister and the Acquiring Officer from acquiring the land before the stage, when, under the Act it becomes obligatory for a survey and a plan to be prepared.

In the view I take a survey and a plan of the land sought to be acquired are essential and imperative before the acquisition proceedings are concluded.

Under section 2 (1), when the Minister decides that a land in any area is needed for a public purpose he may direct the acquiring officer to cause a Notice to be exhibited in that area. After the Notice is published, under Section 2 (2), in order to investigate the suitability of the land in that area for that public purpose all or any of the acts in Section 2 (3) may be done and for this purpose an authorised officer may enter any land in that area, and among other acts—

(*a*) survey and take levels of that land ;

(*b*) set out the boundaries of that land ; and

(*c*) mark such levels, boundaries, etc.

I agree that under this section a plan can be made and made available to the acquiring officer, and the corpus sought to be acquired be therefore determined.

Under Section 4 (1) where the Minister considers that a particular land is suitable for a public purpose, then he shall direct the acquiring officer to cause a Notice in accordance with subsection (3) to be given to the owner or owners of that land. The position therefore is that having investigated all the lands in the area in order to ascertain whether any land is suitable for a public purpose, when the Minister considers that a particular land in that area is suitable for that public purpose, he is empowered to give a direction under section 4 (1) of the Act. In my view the words " particular land " in section 4 (1) relate to one particular land as distinct from other lands in the area, and the words mean no more. It may even mean a portion or a part of a particular land as distinct from other lands in the area. It does not mean that when he decides that a particular land or a portion of a particular land is suitable for a public purpose he must describe the land with its metes and bounds, or in

relation to a plan. If a plan has been made under section 2 (3) or if a plan is available it will certainly be helpful. A direction under Section 4 (1) in my view can be made without reference to a plan and all that is necessary is to mention the particular land that the Minister considers suitable as distinct from other lands in the area. For example if under section 2 the Minister decides that a land in any area, say, along a particular road, bearing assessment Nos. 1 to 40 is needed for a public purpose, then after having made the investigation under section 2 (3), he may under section 4 (1) consider that a particular land is suitable for that public purpose, e.g., premises bearing assessment No. 2 or a portion of the said premises. It is therefore not necessary that under Section 4 (2) when he refers to a particular land he must necessarily refer to it in relation to a plan or other form of demarcation of boundaries.

If one further examines the provisions of section 4 (2) and section 4 (3) it becomes evident at this stage it is not necessary to refer to the land in relation to a plan or a definite corpus. Under section 4 (2) the Minister may issue a direction under section 4 (1) notwithstanding that no Notice has been exhibited as provided by section 2. Where he issues such a direction to an acquiring officer under section 4 (1), then the provisions of section 2 (3) shall apply in regard to the land to which the direction relates in like manner as those provisions would have applied if that acquiring officer had caused a Notice under section 2 to be exhibited in the area in which that land is situated. In other words, the provisions of section 2 (3) whereby the officer investigating into the suitability of the land for a public purpose by surveying, setting out the boundaries, marking levels and boundaries, need not be complied with. Under the Act when the Minister makes a direction under section 4 (1), he may give this direction without reference to a plan or a determinate corpus.

Section 4 (4) of the Act says that after considering the objections the Permanent Secretary shall make his recommendations on the objections to the Minister. Section 4 (5) states that after the Minister has considered the Permanent Secretary's recommendations on those objections he shall decide whether the land should or should not be acquired under this Act. Section 5 (1) states that where the Minister decides under section 4 (5) that a particular land should be acquired under the Act he shall make a written declaration that such land is needed for a public purpose under section 5 (3). The publication of the declaration under section (1) in the Gazette shall be conclusive evidence of the fact that such declaration was duly made.

So far as the problem in this case is concerned, section 6 is a very important section. Under this section where a declaration under section 5 has been published in the Gazette the acquiring officer of the District in which the land is situated may, if there is no plan of that land made by the Survey Department of the Government or no such plan which is suitable for use for the purposes of proceedings under this Act, cause a survey and a plan of that land to be made by a surveyor of that department, or by a licensed surveyor acting under the directions of the Surveyor-General. In my opinion section 6 of the Act makes it imperative and obligatory that the acquiring officer should, after the section 5 declaration, cause a survey and a plan of the land to be made, if a plan has not been made under section 2 (3) or if there is no other suitable plan available. In the context of section 6, I construe the word "may" as imperative or obligatory—vide *Julius v. Bishop of Oxford*[1] (1880) 5 A.C. 214. Maxwell on Interpretation of Statutes (11th Edition, p. 234) in construing the word "may" in certain circumstances to be imperative or obligatory states, "Where there is a power coupled with a duty of the person to whom it is given to exercise it, then it is imperative."

The next important section is section 38 (*a*) which states that at any time after the award is made under section 17, the Minister may by Order published in the Gazette direct the acquiring officer to take possession of the land.

It would thus appear that in a normal case where a section 5 declaration is made by the Minister and an award for compensation under section 17 has been made by the acquiring officer there has to be compliance with section 6 and therefore at the time the possession is taken of the land under section 38 a plan will always be available to define and demarcate the land which is to be acquired.

I shall next consider the case where the Minister acting under proviso (*a*) to section 38, in exceptional circumstances, makes an order to take immediate possession of a land on the ground of urgency. This order could be made at any time after Notice under Section 2 or at any time after Notice under Section 4 is exhibited for the first time on or near the land. Even in such a case by reason of Section 41 which is an amendment to the Act enacted by Act No. 39 of 1954, consequent I believe to the decision of Gratiaen J. in *Suffragam Rubber & Tea Company Limited v. Muhsin*[2] (55 N. L. R. 54) and by virtue of section 41 (*b*) if a declaration under section 5 has not been made prior to the making of such an order a declaration shall be made and

[1] *(1880) 5 A. C. 214.*

[2] *(1953) 55 N. L. R. 44.*

published in terms of that section. Section 41 (c) states that notwithstanding such an order takes effect as provided in section 40 all the provisions of this Act save as hereinbefore in this section provided shall apply in the aforesaid case in like manner as they apply in the case of a land or servitude which *is to be acquired.* In my view section 41 (c) makes it obligatory for a plan under section 6 to be made by the acquiring officer if a plan has not been made even in a case of an acquisition, as in the case before me, under the proviso (*a*) to section 38.

It will therefore be seen that in a normal case of an order under section 38 or where the order is made under the proviso to section 38 (*a*) there must be a survey and a plan in order to demarcate the land as a determinate corpus.

In the case before me I find that no plan has been made and what is sought to be acquired is an extent of 1A. 0R. 0.6P. of the land called KEENAGAHALANDA with its western boundary undefined and uncertain. On the facts of this case, especially in view of letter (P4) the acquiring officer was not attempting to take possession of the land with the western boundary undefined. At this stage I must refer to the contents of the letter sent by the Permanent Secretary to the plaintiff-appellant (P4) dated 18.9.1970. The Permanent Secretary was obviously acting under section 51 of the Act on the directions of the Minister. The relevant part of this letter states :—

> "The possession of the land will be taken over by giving timely notice to you by the Acquiring Officer of the Colombo District, or any other officer authorised by him in due course. The land will be surveyed very shortly and when the plans are made after surveying, the Government Agent or the Assistant Government Agent, the Acquiring Officer, will hold an inquiry to come to a decision concerning the compensation to be paid for the land under Section 46."

It is therefore very apparent that the Permanent Secretary was contemplating observing the provisions of section 41 (c) in order to make a plan under section 6 of the Act before taking possession of the land. This letter as I said is dated 18.9.1970. The plaintiff, in spite of this letter, made the application for an injunction to the District Court on 30.10.1970.

I am therefore of the view that although the Notice under section 2 or the Order made by the Minister under proviso (*a*) to Section 38 does not define the western boundary, the failure to do so does not make the Notice and the Order illegal or invalid.

Mr. Jayewardene strongly relied on the judgment of T. S. Fernando J., in *Karunanayake v. de Silva* [1]—70 N. L. R. 398—that where there is uncertainty as to the precise location of the land and that the Notice under section 4 and declaration under section 5 and the order under section 38 had not set out the particular land to be acquired in the sense that the corpus was indeterminate, then the plaintiff was entitled to the interim injunction restraining the acquisition.

In that case the land sought to be acquired was described as an extent of 1A. 1R. 16P. bounded as follows :—

> " North and East by the remaining portion of the same land ;
>
> South and West by Polwatte ganga and the remaining portion of the same land. "

It was admitted at the argument that whichever way one may try to ascertain where precisely within the larger land this portion of 1A. 1R. 16P. is to be found one would be met with uncertainty of its location. It was held that as the order under section 38 and indeed the other documents for this reason were not in conformity with the law they do not have that force and effect which the Land Acquisition Act contemplates. T. S. Fernando J., further makes this observation at page 399—

> " ..... the proviso to section 38 enables the Minister to take steps on occasions calling for urgent acquisitions provided a notice under section 2 or section 4 has been exhibited. While the notice under section 2 will ordinarily specify only an area and such a notice is sufficient authority for the authorized officer to enter any land situated within that area, nevertheless possession of any such land can be taken only after deciding or determining the particular land of which it is necessary to take possession. There would be no difficulty to demarcate with sufficient precision the land intended to be taken and, it must be noted, the authorized officer is employed by section 2 (3) to enter and survey the land."

I am in agreement with this observation, but I must add that there is also provision under Section 6 of the Act to cause a survey and a plan to be made either before the order under section 38A is made or after the order under the proviso to section 38 is made.

T. S. Fernando J., gives another reason why the land should be described as a determinate corpus at page 399 in the following words :—

> " ..... The circumstance that the law contemplates objections to the proposed acquisition involves necessarily that the precise location has to be known not only to the officers

[1] *(1968) 70 N. L. R. 398.*

of the government charged with the duty of acquiring the land but also to the owner or owners thereof. It is only after the objections have been disposed of as provided in section 4 that the decision to acquire can be taken by the Minister. The written declaration that follows such decision also must relate to that particular land. I am, therefore, of opinion that the notice under section 4, the declaration under section 5 and the Order under section 38 must each set out the particular land to be acquired."

Applying this principle to a case where a portion of a larger land is acquired, I do not think that the circumstances that the corpus sought to be acquired, is indeterminate will affect the consideration of objections to the proposed acquisition as it is still open to the owner to make representations that in the event of any acquisition such portion of the land he would prefer not to be brought within the corpus, be not acquired out of the larger land. One cannot therefore conclude that this is a circumstance that should decide the question whether there has been non-compliance with the provisions of the Act in that an indeterminate corpus was sought to be acquired.

The 3rd reason given is that in view of the provisions of section 4 (A) (1) of the Act which states that when notice has been issued or exhibited, in respect of any land under section 2 or section 4, no owner of that land shall till the period of 12 months after the publication of the issue or exhibit of such notice—

(*a*) sell or otherwise dispose of that land;

or

(*b*) do any act which directly or indirectly depreciate the value of that land after the publication of such issue or exhibit and which renders any sale or other disposal of the land in contravention of the provisions of the section as null and void and make any person who contravenes the provision of that section being guilty and punished with a fine not exceeding Rs. 1,000;

T. S. Fernando J., states—

"that if a person is punished for selling or otherwise disposing of certain land, surely he must be informed of the precise location and extent of such particular land. Any interpretation which will involve the result that a person will be prevented from dealing with all his lands in a particular area because he does not know what is the land in that area he cannot sell or dispose of without contravening the Act should be avoided."

One must not lose sight of the fact that the consequential disability and the penalty brought about by section 4 (*a*) (1) of the Act applies not only to a notice under section 4, but also to a notice under section 2 which affects all land in any area when the Minister decides that land in that area is needed for any public purpose. So that section 4 A (1) will prohibit all land owners in that area once the section 2 notice is published from doing the acts prohibited by section 4 A (1) (*a*) and (*b*) of the Act. Of course, the disabilities are in force only during the period of 12 months after the issue or exhibition of such notice. It is therefore inevitable that when proceedings are initiated under Section 2 of the Act, certain hardships and inconveniences will be inflicted on owners of land for a period of 12 months. If the legislature so enacts laws, however much hardship be caused, one cannot run away from giving effect to the statute and thereby reduce the legislation to a futility. Effect must be given to the manifest purpose of the Legislation for the purpose of bringing an effective result.

With all respects to the reasons given by T. S. Fernando J., having analysed the entire scheme of the Act, I find it difficult to agree with his conclusion that the notices, declaration and the Orders made under the provision of Section 38 of the Act, must always set out the particular land to be acquired in the sense that it must be a determinate corpus at the stage at which Order under the proviso (*a*) to Section 38 is published.

Mr. Jayewardene next submitted that it is not necessary for a Court in order to grant an interim injunction that a Judge should decide the substantive question in issue between the parties, but that the Judge should restrict himself to consider whether there was a serious matter for decision, and if so, prejudice will be caused to the plaintiff, if the defendants were not restrained by the injunction. In order that a interim injunction may issue, he submits, that it was not necessary that the Court should find a case which will entitle the plaintiff to relief at all events. It is quite sufficient if a Court finds a case which shows that there was a substantive case to be investigated and that the matters be preserved in status-quo until that question can be finally disposed of. In support of it he cited the case of *Mrs. Mallika Ratwatte v. The Minister of Lands*[1] (72 N. L. R. 60) which was an application for a temporary injunction under section 20 of the Courts Ordinance.

I agree with the observations of Samerawickrame J., that in the special circumstance of an application for an injunction under section 20 of the Courts Ordinance, when the

[1] *(1969) 72 N. L. R. 60.*

extraordinary jurisdiction of this Court is invoked the conditions for the granting of an interim injunction, according to the decisions of this Court are as follows :—

(a) Irremediable mischief would ensue from the act sought to be restrained ;

(b) an action would lie for an injunction in some Court of original jurisdiction ; and

(c) the plaintiff is prevented by some substantial cause from applying to that Court.

In such a case it is not necessary that the Court should find a case which will entitle the plaintiff to relief at all events.

My Lord, the Chief Justice, in the recent case of *Suntharalingam v. The Attorney-General* [1] 75 N. L. R. 318, has discussed Section 20 of the Courts Ordinance and has referred to this jurisdiction as—

> " a limited jurisdiction, protecting the applicant *ad interim*, until he can protect himself by obtaining an injunction in the District Court."

But, as in this case, when an application for an interim injunction is made in terms of Section 86 of the Courts Ordinance, different considerations apply and the principles governing the granting of an interim injunction are set out by H. N. G. Fernando J., in *Richard Perera v. Albert Perera* [2] (67 N. L. R. 445). I shall cite from the judgment of His Lordship at page 447, where he states—

> " While adhering to the view that the trial Judge should not decide the substantive question in considering an application for an injunction, I do not agree that some consideration of the substantive question at this early stage is necessarily irrelevant.
>
> Although paragraph (*a*) of Section 86 does not apply in the present circumstances, it is useful to examine it before considering paragraph (*b*). Under paragraph (*a*) the Court will consider the question of granting an injunction, where it appears from the plaint that 'the plaintiff demands and is entitled to a judgment against the defendant restraining the commission or continuance, etc. . . .'. A basic condition therefore is that it must appear from the plaint that the plaintiff is entitled to the judgment he seeks. Turning to paragraph (*b*) it must appear that the defendant is doing or committing ..... an act or nuisance in violation of the plaintiff's rights respecting the subject matter and tending to render the judgment ineffectual. It seems to me that in this context (as in the case of paragraph (*a*)) there

[1] *(1972) 75 N. L. R. 318.*

[2] *(1963) 67 N. L. R. 445.*

must be some apparent violation of rights to which the plaintiff appears to be entitled and not merely of rights which he claims."

At page 448 His Lordship states—

"If the material actually placed before the Court reveals that there is probably no right of the plaintiff which can be violated, it would be unreasonable to issue the injunction."

In view of my findings that: Firstly, the Minister's Order under Section 2 of the Act cannot be the subject matter of review by the Courts: Secondly, the fact that the notice under Section 2 and the Order under proviso (*a*) to Section 33, are in conformity with the provisions of the Land Acquisition Act, the plaintiff-appellant is not entitled to an interim injunction.

The other questions argued at the hearing, namely, whether the District Court has supervisory jurisdiction to review the orders of administrative bodies or authorities, or the question whether a declaratory remedy and relief by way of an interim injunction are available to the plaintiff-appellant in view of the provisions of the Interpretation (Amendment) Act, No. 18 of 1972, on the ground that this Act is retrospective in its operation and applies to pending actions, do not therefore arise for consideration.

I therefore dismiss the appeal.

The application in revision—No. 70 of 1971—which relates to the same subject matter is also dismissed.

On the question of costs, I find that the defendants-respondents have not controverted any of the allegations made by the plaintiff-appellant in his affidavit, the contents of which I have referred to earlier in this judgment. On the uncontroverted facts set out in the affidavit, it certainly appears that the plaintiff-appellant's grievances may be genuine, but I am afraid I cannot give him the relief he seeks as on the interpretation I have placed on the relevant provisions of the Land Acquisition Act, the plaintiff-appellant is not entitled to any relief under the Act. His remedy lies, if at all, in seeking administrative relief from the Minister who can still under Section 39 (1) of the Act revoke the vesting order. The only consolation I can offer the plaintiff-appellant in this predicament is in regard to the Order for costs which is "one panacea which heals every sore in litigation". The plaintiff-appellant, in the circumstances of this case, will not pay any costs to the defendants-respondents, both here and in the Court below.

RAJARATNAM, J.—I agree.

Appeal dismissed.