ISMAIL, J.

At the hearing of these several appeals the Solicitor-General appearing for the Attorney-General and Attorneys for several respondents agreed to consolidate the arguments in all these appeals as common legal questions arose for consideration in all these matters listed for argument. It was agreed that decisions on these questions that were common in these appeals would dispose of all these applications. The matters that arise for consideration in these appeals can broadly be categorized under two sub-heads:–

(1) Was the order of the Supreme Court calling for the records in the above cases with a view to examining these records on the question of legality or propriety of the orders made therein done in the exercise of any jurisdiction lawfully vested in the Supreme Court and whether this Court had been properly constituted for the hearing of these applications?

(2) In interpreting section 24 of the Interpretation (Amendment) Act whether an Injunction would lie against the Minister in respect of any act done by him either *mala fide*, *ultra vires* or without jurisdiction and whether such act falls outside the scope of section 24 of this Act?

I will now proceed with the first question, namely, whether the powers of revision, vested in the Supreme Court under section 354 of the Administration of Justice Law, had been properly exercised in this case. Proceedings in this case were originally initiated by my brothers Pathirana, J. and Wijesundera, J., directing the Registrar of the Supreme Court to call for the records of eleven (11) of the cases which were the subject-matter of these applications. The records had thereafter been submitted to my brothers and thereafter they along with my brother Udalagama, J. had examined the records to satisfy themselves with regard to the legality and propriety of the orders made in those respective cases. They had apparently formed the view *ex facie* from the records that orders appeared to be illegal in view of provision under section 24 of the Interpretation Ordinance (Amendment) Act No. 18 of 1972. In all these cases apparently interim injunctions had been granted against the Minister of Agriculture and Lands restraining him and his officers from taking any further steps in the acquisition of these lands belonging to the respondents in those applications. In some of the cases interim injunctions had been issued by the District Court pending a final determination of the judgment. In the other cases injunctions had been issued by the High Courts to be in operation for a specific period to enable the respondents to file action in the appropriate District Courts.

Notices had thereupon been issued on the respondents in these cases to appear and show cause why the orders granting Interim Injunctions in

those cases should not be set aside in the exercise of the revisionary powers of this Court. The Attorney-General had also been noticed. In making these orders my brothers had apparently formed the view that section 24 of the Act, No. 18 of 1972 precluded the Courts from granting an injunction against the Minister in these cases. It is also to be noted that these orders had been made in chambers.

Subsequently on the return to notices the matter came up for hearing at the sitting held on 14 June 1974 before my three brothers and the parties had been represented by counsel in that sitting. While matters were pending it had been brought to the notice of Court that applications had been made under section 14 subsection 3 of the Administration of Justice Law and on that very morning before the Acting Chief Justice to have these matters listed for argument before a bench of five Judges as questions involved in these cases were matters of general or public importance. Sittings of the Court had thereupon been adjourned pending the decision by the Acting Chief Justice on these applications to have these matters listed before a fuller bench. Subsequently after hearing arguments adduced by counsel appearing for both parties the Acting Chief Justice had made order that these applications which were pending before three Judges on 14.6.1974 be listed before a bench of nine Judges in view of the importance of legal questions that arose in these cases which were of general or public importance. The present bench was duly constituted on the 5th of July 1974 to hear these applications. It was at this hearing that by consent of counsel appearing for respondents and for the Attorney-General that arguments in these appeals have been consolidated in view of the fact that there were common legal questions which arose for determination in all these applications.

Counsel appearing for respondents took up the position that the original order calling the records in these cases made by two Judges in chambers was not a step warranted by the provisions of the Administration of Justice Law. Counsel also proceeded to argue that the order made by three of my brothers in chambers issuing notices to show cause why the interim injunctions granted in these applications should not be set aside and for appearances of parties on a specified date was not one warranted by the provisions of the Administration of the Justice Law. Counsel for respondents contended that both these orders should be made at a sitting of the Supreme Court. He drew our attention to section 7 of the Administration of Justice Law. This section states that the sittings of every Court shall be held in public and all persons shall be entitled freely to attend such sittings. In certain instances the section gives the right to a Judge in his discretion to exclude persons where proceedings relate to family relations, sexual offences and in the interest of order and security within the Court premises. Counsel also to supplement this argument referred to section 14; the proviso to this section states that the appellate jurisdiction in respect of judgments and orders of the Magistrate's Courts

shall be exercised by at least two judges and its jurisdiction in respect of judgments and orders of the District Courts and High Courts shall be exercised by at least three Judges. Counsel proceeded to argue that in these instances three Judges should have, at a sitting of the Court as contemplated in section 7, made the order calling for records in these respective applications and also made order under section 354 of this Act.

In view of the arguments adduced by counsel for respondents it is necessary to consider what is meant by a 'sitting of a Court.' A sitting of a Court necessarily means where a Court assembles to hear the case; that is where the Court adjudicates on the rights of parties. Clearly the acts done before a Court sittings commence such as issue of notices and calling for records would be ministerial acts. When a Court issues such notices or orders the Court is at that stage not adjudicating the rights of parties.

Reference to section 11 of the Act indicates that "The Supreme Court shall be the only Superior Court and shall have, subject to the provisions of this Law, jurisdiction for the correction of all errors in fact or in law committed by any subordinate Court and sole and exclusive cognizance by way of appeal, revision and *restitution in integrum* of all actions, proceedings and matters of which such subordinate Court may have taken cognizance, and such other jurisdiction as may be vested in the Supreme Court by law."

It will be seen that the Supreme Court by section 11 of this Law in addition to having sole and exclusive jurisdiction in appeals, revisions and the *restitution in integrum* is also vested with the jurisdiction for the correction of all errors in fact or in law committed by any subordinate Court. Now section 14 to which I have made reference prescribes the composition of Courts for hearing of appeals in respect of orders and judgments from the Magistrate's Courts, District Courts and the High Courts. But section 14 does not indicate the number of Judges who have to function where the Supreme Court has to make any correction in respect of errors of fact or law committed by any subordinate Court.

The second proviso to section 14 indicates that jurisdiction under section 12 shall be exercised by not less than three Judges. It will therefore be seen that the number of judges who will have jurisdiction for the correction of all errors of fact or in law committed by subordinate Courts is not prescribed by this law. In this connection one has to refer to section 40 which indicates that the jurisdiction vested in any Court by this Law shall include all ministerial powers and duties incidental to such jurisdiction and nothing in this law shall be deemed to limit or affect the powers of any Court to make such orders as may be necessary to do justice or to prevent the abuse of the process of the Court.

It appears to me therefore that the calling of these records in the first instance by two Judges in chambers and subsequently issue of notices to show

cause by three Judges in chambers are ministerial acts and are acts involving ministerial powers and contemplates duties incidental to such jurisdiction and did not come within the ambit if section 14 of the Law. Such ministerial acts in my view are not the acts that had to be done at a sitting of Court as contemplated under section 7 of the Law. Incidentally it will be noted that in certain applications the law provides for one Judge to make orders in chambers.

It also appears to me that these questions are really academic though I venture to say the steps taken are not in conflict of any of the provisions of the Law. Since the present bench to hear and determine these cases has been constituted in accordance with the provisions of section 14(3) (c) of the Administration of Justice Law and the present bench has been constituted to hear and determine all these applications by the Acting Chief Justice by the powers conferred on him. I am also of the opinion that the original order calling for records and the subsequent order issuing notices to show cause are purely ministerial acts and are not therefore in any way in conflict with any express provision of the law. I therefore hold that the objections on the question of jurisdiction must necessarily fail. I therefore hold that since this bench is properly constituted under section 14(3) (c) that this Court has the jurisdiction to hear and determine all these applications.

The next question that arises for consideration is solely concerned with the interpretation of section 24 of the Interpretation (Amendment) Act of 1972. Section 24(1) of the Act reads:—

> 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 proceeding 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.

In the light of the wording of this section, counsel for respondents contended that this section excluded any act done or intended to be done or about to be done by a Minister either *mala fide* or without jurisdiction or in excess of his powers. Counsel for respondents contended that such acts were a nullity and fell outside the scope of section 24(1) and where such acts were done *mala fide* or without jurisdiction or in the pretended exercise of the Minister's powers the Court could grant an injunction against the Minister. Counsel for respondents contended the words "in the exercise of any power or authority vested in law by such person or authority" necessarily contemplated that these words referred to the *bona fide* genuine, lawful or due exercise of the powers and not to *mala fide* exercise of powers or purported or pretended exercise of powers or exercise of powers without jurisdiction.

In this connection reference was made to section 22 of the Interpretation (Amendment) Act. It is clear that section 22 of this Act completely does away with the jurisdiction of Court. Section 24 on the other hand clearly restricts only a remedy that is open to a subject. Section 22 reads:—

> 22: Where there appears in any enactment, whether passed or made before or after the commencement of this ordinance 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 which any person, authority or tribunal is empowered to make or issue under such enactment no Court shall, in any proceedings and upon any ground whatsoever, have jurisdiction to pronounce upon the validity or legality of such 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:
>
> Provided ....."

It will therefore be seen that the exclusion of the jurisdiction of the Courts in section 22 is so specific as to leave no ambiguity. The exclusion of the jurisdiction of the Court in section 22 is absolute. The words are "**no Court shall in any proceedings and upon any ground whatsoever, have jurisdiction** pronounce upon the validity or legality of such 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."

The words that arise for determination in these proceedings in section 24 are the words "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 of authority vested

in law in any such person or authority." It will therefore be seen that the language in section 24 subsection (1) with regard to the limitation of the Court's powers is different to the exclusion of the Court's jurisdiction contemplated in section 22 of the Interpretation Act.

In this connection it will be pertinent to refer to the Draft Bill presented to the Parliament. This bill was referred to in the arguments adduced by counsel for the respondents as well as by the learned Solicitor-General. The phraseology of the Draft Bill in relation to section 24 occurs in this form:—

> ". . . . in respect of any act done or purported to be done by any such person or authority in the exercise or purported exercise of powers vested by law in such person or authority."

The Parliament had considered the Draft Bill at the Committee stage and ultimately in the Bill to which assent was given the words "purported to be done and purported exercise of powers" had been deleted. One must take it that the legislative body had considered the Draft Bill and the impact of the words "purported to be done and purported exercise of powers" and had decided to delete these words from the Bill that had ultimately been passed. The legislature must have given careful consideration to the draft that had been presented and it is very significant that these words had been deleted in the Bill that was ultimately passed by the legislature. The question arises whether in deleting these words it was intended to exclude *mala fide* acts, acts in excess of jurisdiction and acts without jurisdiction from the scope of Section 24.

Reference was also made by Counsel on both sides to the Crown Proceedings Act of 1947 passed by the Parliament. Section 21 of that Act reads as follows:—

> "21 (1) In any civil proceedings against the Crown the Court shall subject to the provisions of this Act, have powers 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.

(2) 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."

The Solicitor-General argued that the provisions of section 24 of the Interpretation (Amendment) Act was practically similar in the wording of section 21(1) of the Crown Proceedings Act. In examining this contention one has to keep in mind that the relief by way of injunction against the Crown has always been available to a subject in our country, whereas in England relief by way of injunction against the Crown was never available to a subject. It is in the light of the background of the law existing in England that the Crown Proceedings Act was enacted. In Ceylon, however, the subject always had the right of going into Court and ask for an injunction. The Civil Courts in our country always had the right to grant either an interim injunction or permanent injunction in appropriate cases so that a *status quo* between parties can be maintained until a suit is finally determined. In the case reported in *Buddhadasa v. Nadarajah,* (supra) there was an application for an injunction to restrain the respondent in his supposed performance of his functions as deputy fiscal from wrongly seizing and selling the movable property of the petitioner in alleged pursuance of the provisions of section 79 subsection (2) 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. The facts in this case indicated that the deputy fiscal was sued in his own name and was described by the office he held at the time. In that case the Court considered whether a servant of the Crown purporting to act in his official capacity on behalf of the Crown can be restrained in so acting by an injunction issued against him as an individual. After reviewing several authorities which were cited in the course of the arguments in that case the Court held that in such an event an injunction could be issued as an individual.

Remedy by way of injunction both interim and perpetual have been always recognised by law as being available to the subject to restrain the threatened wrong before it takes place. An injunction also is issued to prevent or arrest a threatened wrong and is granted in appropriate cases to maintain a *status quo* until a final determination of the matter in issue.

It is well settled law that all powers vested by statute must be exercised in good faith and for the purposes for which it is granted. The person in whom the powers reposes must act within the powers and cannot act outside such powers, if such person abuses his authority or the power granted to him the purported exercise would be a nullity.

In the case reported in *Tobin v. Rex,*[129] a naval officer purported to act in pursuance of a statutory authority wrongly seized a ship of the suppliant. It was held on demurrer to a petition of right that the statement of the suppliant showed a wrong for which an action might lie against the officer, but did not show a complaint in respect of which a petition of right could be maintained against the queen, on the ground, amongst others, that the officer in seizing the vessel was not acting in obedience to a command of Her Majesty, but in the supposed performance of a duty imposed upon him by Act of Parliament, and in such a case the maxim 'respondent superior' did not apply. Again in *Musgrave v. Pulido,*[130] it was held that the Governor of a colony cannot defend himself in an action for trespass for wrongly seizing the plaintiff's goods merely by averring that the acts complained of were done by him as Governor or as acts of the State. Similarly in the case reported in 1901 A.C. page 561,[131] an aboriginal inhabitant of New Zealand sued the Commissioner of Crown Lands for an injunction to restrain the Commissioner from advertising the sale or disposal of lands as being the property of the Crown. The respondent's authority to sell on behalf of the Crown is derived solely from the statute and is confined within the four corners of the statute. If the lands were not within the powers of those sections as alleged by the appellant, the respondent had no power to sell the land, and his threat to do so was an unauthorised invasion of the appellant's alleged rights. It will therefore be seen that the remedy by way of injunction is often invoked to prevent powers being exceeded and is often invoked in cases where *ultra vires* doctrine is applicable. Therefore statutory powers must be exercised in good faith and for the purposes for which such powers had been granted and must act reasonably.

In the case reported in 59 NLR – page 313, (supra) the Supreme Court was of the view that neither in our Civil Procedure Code nor in any other enactment was there any provision as contemplated in section 21 subsection 2 of the Crown Proceedings Act. Basnayake, C.J., proceeded to hold that an injunction under section 86 of the Courts Ordinance can be issued against the Land Commissioner restraining him from taking steps to acquire a land unlawfully. This matter went up in appeal to the Privy Council in 62 N.L.R. page 169 (supra). Their Lordships in that case reserved their opinion upon the question as to whether in the circumstances such as those in the present case an injunction against the Attorney-General could or ought to be granted. In the case reported in 70 NLR – page 398 (supra) it was held that there was

[129] 16 C.D.N.S. 310.
[130] (1879) 5 A.C. 102.
[131] N. Tanaki v. Baker.

uncertainty as to the precise location of the land. The plaintiff was therefore entitled to an interim injunction restraining the acquisition. The facts of that reported case indicated that the notice under section 4 the declaration of the action filed under section 5 and the order under section 38 of the Land Acquisition Act did not set out the particular land to be acquired. The judgment that was delivered by T. S. Fernando, J., indicated that acquisition cannot be made of an undetermined corpus and therefore an interim injunction as applied for by the plaintiff was granted. In the case reported in 72 NLR–page 60, (supra) on the facts of that reported case it was held that the petitioner was entitled to issue temporary injunction restraining the respondents in respect of the acquisition of the lands. 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 where there was a substantial question to be investigated, and the matter ought to be preserved in *status quo*, until that question can be finally disposed of. In the light of applications that have been made in several of the cases under review it will be necessary to point out certain observations made by Samerawickrame, J. at page 63 of the reported case. He states,

> "I cannot resist the observation that it is remarkable how often over the years it has turned out by some extraordinary coincidence that the public interest appeared to require the acquisition of lands belonging to persons politically opposed to the party in power at the time. It is, therefore, necessary that Courts, while discouraging frivolous and groundless objections to acquisition, 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 from an ulterior motive. In fairness to the persons against whom the petitioners have made allegations, I should state that the Court is not called upon, at this state, to consider the truth of the petitioner's case and it has not done so. . ."

In the light of these decisions there has no doubt been a large increase in applications for injunctions on the Minister to restrain him from acquiring lands the Minister has sought to acquire. The Solicitor-General submitted that not in a single instance has *mala fides* been established against the Minister. He also submitted that in cases where acquisition was shown to be *ultra vires* or without jurisdiction, administratively acquisition proceedings were withdrawn on orders made by the Minister. He further contended that section 24 had been introduced in order to obviate unnecessary prolonged delays in acquisition proceedings consequent on needless applications being made for interim injunctions and perpetual injunctions alleging *mala fides* etc.

In the course of the argument we were also referred to extracts from the Hansard where the Minister for Justice had drawn the attention of the Parliament to delays consequent on applications made by way of injunctions, both temporary and perpetual, in acquisition proceedings. He also admitted

that over 60 land acquisition matters today are pending because of applications being made on the ground of *mala fide* in those pending cases. It is in this background that section 24 of the Interpretation (Amendment) Act has been passed. As I indicated earlier there appears to be a substantial difference between the Draft Bill that was prepared and the Bill that was finally drafted and passed at the Committee stage. The attention of the Legislature had been drawn specifically on two reported cases – *Smith v. East Elloe Rural District Council & Others* (supra) and *Anisminic v. The Foreign Compensation Commission & Another.* (supra) I will advert to these reported cases later in my judgment. Extracts from these judgments had apparently been cited in the course of the debate at the House and the Members of the then Parliament were specifically made aware of legal implications consequent on these reported cases. It was not as if the Members of the then Parliament were not aware of the existence of these cases which restricted the exercise of the powers of the Minister. It is with this background that the Legislature had modified the Draft Bill that had been presented and brought out legislation in the form in which section 24 subsection (1) had been framed. One therefore has to consider whether section 24(1) in the background of facts as I have indicated above, has ousted the jurisdiction of Courts with regard to a remedy available to a subject completely, or whether section 24 would only apply in cases of acts done within the four corners of the statute, that is, the Land Acquisition Act. The question really is whether the words used in section 24 subsection (1) closed the doors for injunctions against the Minister in the case of *mala fides* etc. or whether it is still open to a subject to come into Court and ask for injunctions interim or perpetual on applications of *mala fides* etc. against the Minister. For this purpose it will be necessary to pay due regard to the wording of this section and to the judicial authorities which were cited in the course of the arguments interpreting the phraseology used in section 24 or analogous to it.

It is to be noted that the words "purported to be done" and "purportedly exercised" which appeared in the Draft Bill were omitted from section 24 of the Act when the Parliament passed the Bill in the present form. It is clear therefore that the omission of these two phrases from the Bill which originally stood in the draft form had been after due consideration had been given and after discussion at the Committee stage; the omission of these words is therefore significant and has materially changed the effect of this section.

It is also to be noted that the proviso to section 24 subsection (1) was not in the Draft Bill but has been incorporated into the Bill that was passed at the Committee stage. This proviso had been incorporated into this Bill verbatim from the English statute.

This proviso indicates that in lieu of the right of the subject to have an injunction the Courts could give a declaratory decree.

In Sri Lanka the subject under the common law always had the right to ask for a declaratory decree. Vide 69 N.L.R.–page 73[132] 57 N.L.R. page 401, (supra) and 72 N.L.R. page 337 (supra).

It is also necessary to refer to the 2nd subsection of section 24. This subsection too is identical to the subsection in the English statute. It will be pertinent to point out that in England the subject did not have the right to an injunction either against the Crown directly or against an officer of the Crown and therefore against the Crown indirectly whereas in Ceylon the subject had a right to ask for an injunction against the public officer suing him in his personal capacity and designating him by office–vide-59 N.L.R.–page 313 (supra).

In the course of the arguments analysing the provision of section 24 – subsection (1) reference was also made to section 88 of the Police Ordinance and section 461 of the Civil Procedure Code.

In several cases that came up for determination in our Courts in respect of these two provisions of the law it was held that a police officer who acts maliciously and not in the *bona fide* exercise of his official duties is not entitled to rely on the limitation of actions provided in section 79 (now corresponding to section 88 of Chapter 53) vide 23 N.L.R.–192 (supra). Section 79 of the Police Ordinance extends protection to any act which a police officer does in the reasonable and *bona fide* belief that he is acting within the scope of his authority and which is not actuated by any malice or *ultra vires* motive vide – 29 N.L.R.–139 (supra).

The Courts have also considered the impact of the words "An act purporting to be done by him in his official capacity" with reference to section 461 of the Civil Procedure Code–in the case quoted in 16 N.L.R.–page 49 (supra) it was held that a public officer who does an act maliciously in the pretended exercise of his authority cannot be said to be "purporting to act" as a public officer and was therefore not entitled to notice of action. Similarly in the case reported in 9 N.L.R.–page 138 (supra) Woodrenton, J. held that the public officer who does a legal 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 within the meaning of section 461 of the Civil Procedure Code and was therefore not entitled to the notice of action provided by that section.

Basnayake, C.J., in 57 N.L.R. – page 457 (supra) was of the view that the use of the words "purported" in section 461 covers both malicious acts as well as the *bona fide* acts and acts within the statute. He proceeded to define what is meant by "purported" and referred to the case 9 N.L.R. – page 138 (supra).

[132] Thiagarajah v. Karthigesu (1960) 69 N.L.R. 73.

But it is clear that in the authority cited by him the word "purported" has not been given the meaning attributed in his judgment.

In the case reported in *Hirdaramani v. Ratnavel* (supra)–our Courts have considered Regulation 55 of the Emergency Regulations by which rights in the nature of *habeas corpus* have been denied to persons detained under the Emergency Regulations. It was held in that case that in such an instance an order for detention can be challenged if it had been made in the abuse of its powers.

In the course of the judgment in that case it was stated that the petitioner had failed to establish a *prima facie* case against the good faith of the Permanent Secretary and therefore the onus did not shift to the Permanent Secretary to satisfy the Court of his good faith. The majority decision in that case however proceeded on the basis that in Regulation 55 although it provides "that section 45 of the Courts Ordinance shall not apply in regard to any person detained or held in custody under Emergency Regulations" is not applicable in the case of a person unlawfully detained under an invalid order made in abuse of the powers conferred by Regulation 18 subsection (1).

In this case the dictum in 75 NLR–page 477 (supra) was accepted and approved. Considering the facts of that case, it was held that the Assistant Superintendent of Police had proceeded to arrest a person under Regulation 19 of Emergency Regulations No. 6 of 1971, merely on the orders of his superior officer and he was not personally aware of the actual offence of which the person was suspected by his superior. It was held that such arrest was liable to be declared to have been unlawful in *habeas corpus* proceedings.

In Sri Lanka unlike in England a subject could always sue an officer of the Crown–vide 72 N.L.R. 337 (supra) this right did not exist in England. The subject there did not have the right to sue the Crown but had to make an application by way of petition of right to sue the Crown. The Crown Proceedings Act of 1947 simplified the process for the ordinary citizen under section 21 of that Act. The Court is empowered to give some relief against the Crown as against the subject. The only limitation is that in case of an injunction or for specific performance or for an order for recovery of rent or delivery of other property, the subject will only be entitled to a declaratory judgment.

In Ceylon the right of the subject to ask for and obtain an injunction against the Crown has been indirectly exercised in that the subject always had the right to proceed against the officers of the Crown though no authority was cited for or against the proposition that the subject in Ceylon had the right to obtain an injunction against the Crown itself. Therefore it will be seen that the provisions contained in section 24 of the Interpretation Ordinance takes away

the right a subject enjoyed in Ceylon right throughout. It will therefore be seen that where a statute seeks to take away from the subject a right already existing in that subject, very strict interpretation must be placed on the words which seek to take away such right from the subject. The approach to this question in our country must necessarily be different to the approach in England because in England the subject did not have the right to sue the Crown directly or indirectly.

It is therefore necessary to consider the several authorities which have been cited in the course of the arguments to find out whether the language used in section 24 of the Interpretation Act or language similar to the language occurring in section 24 have been judicially interpreted. It is for this very purpose that reference was made to judicial decisions to interpret the language used in section 88 of the Police Ordinance, section 461 of the Civil Procedure Code and Regulation 55 of the Emergency regulations. In the light of the preclusion clause in section 24 it will be necessary to consider whether such clause operates where a person exercising the power, uses it for a *mala fide* purpose or ulterior object.

In *Smith v. East Elloe* (supra) the preclusion clause was to the effect that an order made under the Acquisition of Land (Authorisation Procedure) Act of 1946 may be questioned in the High Court within 6 weeks from the notification of the Minister's confirmation on the ground of procedural error or *ultra vires*, but after the expiration of that period such order "shall not either before or after which has been confirmed or given be questioned in any legal proceedings whatsoever." The House of Lords by majority of 3 to 2 held that this order could not be questioned in any Court of Law on any ground whatsoever and included malice and bad faith. This authority stood unchallenged in England right up to 1969 when the case *Anisminic v. The Foreign Compensation Commission* (supra) was decided in the House of Lords.

Long before that in 1963–the interpretation of the preclusion clause came to be considered in India in the case reported in 1963 AIR Supreme Court – page 151 in the case of *Somawanti and Others v. The State of Punjab* (supra). The *ratio decidendi* in that case was in direct conflict to the ratio in the East Elloe case. In the course of the majority judgment in that case, it was held that whether in a particular case the purpose for which the land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the Legislative competence then the declaration of the Government will be final, subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or not purpose at

all the action of the Government would be colourable and not relatable to the power conferred upon it by the Act and its declaration will be a nullity. To such a declaration the protection of section 6 subsection (3) will not extend. For the question whether a particular action was the result of fraud or not is always justiciable provisions such as section 6 subsection (3) notwithstanding.

In the Land Acquisition Act of 1894 the declaration under section 6 was that the particular land was needed for a public purpose or for a company and was not to be made by the Government arbitrarily, but on the basis of material placed before it by the Collector. Subsection (3) of section 6 proceeds to state that such declaration shall be conclusive evidence that the land is needed for a public purpose or for the company. At page 166 of the judgment the Supreme Court considered the East Elloe case (supra). Considering the principles enunciated in the East Elloe case–Mudholkar, J. with whom the majority Judges agreed stated, "The House of Lords held by majority that the action could not proceed except against the clerk for damages because the plain prohibition in paragraph 16 precluded the Court challenging the validity of the order. They also held that paragraph 15 gave no opportunity to a person aggrieved to question the validity of a compulsory purchase order on the ground that it was made or conferred in bad faith. As we have already said the condition for the exercise of the power by the State Government is the existence of a public purpose or a purpose of a company and if the Government makes that declaration under section 6 – subsection (1) in fraud of the powers conferred upon it by that section the satisfaction on which the declaration is made is not about a matter with respect to which it is required to be satisfied by the provision and, therefore its declaration is open to challenge as being without any legal effect. We are not prepared to go as far as the House of Lords in the above case."

In the Anisminic case (supra) by a majority decision it was held that on a true construction of section 4 subsection 4 of the Foreign Compensation Act 1950, determination meant a real determination and not a purported determination, and accordingly this subsection did not operate to exclude inquiry by a Court of Law in the present case. In the course of the judgment the dictum in the East Elloe case (supra) was doubted.

Lord Reid at page 215 states, "the case which gives most difficulty is *Smith V. East Elloe Rural District Council and Others* (supra) where the form of the ouster clause was similar to that in the present case. But I cannot regard it as a very satisfactory case. . . There was no citation of the authorities on the question whether a clause ousting the jurisdiction of the Court applies when nullity was in question and there was little about this matter in the speeches. I do not therefore regard this case as a binding authority on this question . . . I have come without hesitation to the conclusion that in this case we are not

prevented from inquiring whether the order of the commission was a nullity. It has sometimes been said that it is only when a tribunal acts without jurisdiction that its decision is a nullity. But in such cases 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 had 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 provision 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 the 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."

At page 246 Lord Wilberforce agreeing with Lord Reid and Lord Pearce states, "I cannot regard *Smith v. East Elloe* (supra) as a reliable solvent of this appeal, or on any case where similar question arises. The preclusive clause was indeed very similar to the present, but, however inevitable the particular decision may have been, it was given on too narrow basis to assist us here."

As I indicated earlier in the arguments before Parliament when the Draft Bill was presented the attention of the House was pinpointed and specifically drawn to the East Elloe case and the Anisminic case. The deletion of certain words from the original Draft Bill and the incorporation of subsection (1) which did not exist in the Draft Bill and had been made by the House apparently after considering the effect of these cases. The House must necessarily have given considerable thought to the wording of the Bill in the present form. The intention of Parliament therefore must be inferred from the words used in the particular enactment, the language used in the enactment and from an analysis of the language used. It is also indicative of the intention of the Parliament that it had amended the original Draft bill substantially in order to give effect to its intention.

Lord Simonds in 1951–2 All E.R.–page 839 (supra) states, 'The duty of the Court is to interpret the words that the Legislature had used. Those words may be ambiguous, but even if they are, the power and the duty of the court to travel outside of them on a voyage of discovery are strictly limited.' He

proceeds to state that it is not the duty of the court once the intention of Parliament has been ascertained to fill in the gaps or for the Court to write what the Legislature has not written. That would be a naked usurpation of the Legislative function under the disguise of interpretation and he proceeds to state, "and it is the least justifiable when it is guess work with what material the Legislature would if it had discovered the gap, had filled it in. If a gap is disclosed the remedy lies in an Amending Act."

I would also refer to a case in 1968–2 AER (supra) page 356. It was contended in that case that there was sufficient grounds for inferring that Parliament intended to exclude the general rule that *mens rea* is an essential element in every offence. In the course of the judgment–Lord Reid stated, "the rule is firmly established that we may look at the Hansard and in general I agree with it for reasons which I gave last year in *Beswick v. Beswick.*" He proceeded to refer to the undesirability of looking into Parliament proceedings in order to arrive at the intention of Parliament. He indicated that this would lead into realms of conjecture and lead to unnecessary speculation and surmises.

Learned Solicitor-General referred us to Craies on Statute Law–7th Edition (supra)–page 125 and referred us to passage cited from *Jawkins v. Gather* . . . reproduced therein which reads, "The dominant purpose in construing a statute is to ascertain the intention of the Legislature to be . . . .from the course and the necessity of the act being made, from a comparison of its several parts and from foreign circumstances so far as they could justly be considered to throw light upon the subject." This dictum would undoubtedly be good if the intention of the Legislature was reflected in the wording of section 24 had not been judicially interpreted in parallel instances both in our Courts and in Courts beyond our shores. In the same authority cited by me at page 91 Willes, J. states, "No doubt the general rule is that the language of an Act is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy or injustice . . . but I utterly repudiate the notion that it is competent to a Judge to modify the language of an Act in order to bring it in accordance with his views of what is right or reasonable."

In the context of this passage and in view of the avowed intentions of the then Parliament the question arises for consideration whether the wording of this section was meant to cover an illegal act, a *mala fide* act, or an *ultra vires* act, or whether this section contemplated that the relief would not be available only in cases where an act is done within the four corners of this statute or in the *bona fide* belief that the act is within the statute. Can it therefore be said that under the guise of this statute the Legislature sought to condone even *mala fide* acts on the ground of expediency ?

Undoubtedly by section 22 there was an ouster of jurisdiction of Court in no ambiguous terms. It would be seen that when one compares the words in section 22 with the words in section 24, the ouster clause in section 24 is not as emphatic nor as wide nor so absolute as in section 22. Words similar to or having the same effect as, "No Court shall in any proceedings and upon any ground whatsoever, have jurisdiction to pronounce upon the validity or legality or such order, decision, determination, direction or finding, made or issued in the exercise or the apparent exercise of the power conferred on such person" is not reflected in the wordings of section 24. The wordings in section 24 completely oust jurisdiction of Courts. If it was sought to oust one of the remedies that was open to the subject by section 24 one could conceivably have used words to like effect as in section 22. But the wording in section 24 would bear close analysis, particularly in view of judicial review of cases where exclusion clauses of similar import have been made. The words in Section 24 .... "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" appears to my mind to qualify the earlier part of section 24 – subsection (1) – when a person does any act in the exercise of any power or authority vested by law in any such person or authority one clearly envisages a person acting within the four comers of that Law or of the authority. If a person acts *bona fide* in the belief that he is so entitled to Act under that Law or by that authority then clearly that person cannot be said to be acting *mala fide* or in the purported exercise of such power or without jurisdiction or excess of such power but if a person makes use of the power or authority for co-lateral purposes and is actuated by malice or *mala fides* then it appears to me that he would not be acting in the exercise of any such power or any such authority. The deletion of the words "purported" in the Draft Bill to my mind is clearly indicative that the words "in the exercise of any power or authority" must necessarily mean in the due or proper exercise of such power or authority.

If it was the intention of the Legislature that the section 24 was meant to cover up all acts including *mala fides*, those without jurisdiction and those in excess of jurisdiction, then it appears to me that the use of the words "in the exercise of any power or authority" clearly negatives such intention on the part of the Legislature.

It also appears to me that if subsection (1) stopped at the words "of such commission," without the remaining parts of the section being incorporated in this section then an argument could be adduced with force and logic behind it, that remedy by way of injunction would not be available to the subject in proceedings contemplated in section 24. The inclusion of the words from "in respect of any Act" up to such person or authority" is in fact a limitation of the absolute withdrawal of the remedy in the earlier part of the section.

On a careful consideration of all the authorities and references made by Attorneys for State and the respondents it is my opinion that the subject is left without the remedy by way of injunction, perpetual and interim, by virtue of the provision of section 24 of the Interpretation Amendment Act only in cases where there has been a due or proper exercise of any power or authority vested by Law in any person or authority who exercises that power, and the subject will still have the right to resort to injunctions where *mala fides* and excess of jurisdiction or absence of jurisdiction or bad faith etc. exists or is alleged to exist.

I am therefore of the opinion that the notices issued in these several cases should be discharged and the cases be remitted to the respective Courts for the cases to be proceeded with in the normal course.

I would make no order with regard to costs in this Court as these matters came up for hearing at the instance of this Court.