

**WICKREMRATNE**  
**v.**  
**JAYARATNE AND OTHER**

COURT OF APPEAL  
GUNAWARDANE, J. (P/CA)  
C.A. 120/98  
APRIL 28<sup>TH</sup>, 2001

*State Land - Acquisition under Land Acquisition Act 28 of 1964 - Is it lawful - should the procedure outlined in State Lands (Recovery) of Possession Act 7 of 1979 be invoked ? What is legitimate expectation - Opportunity not given to make representations - What is a land ?*

Lease of corpus was originally granted to the Petitioner's father. After his death the Provincial Land Commissioner recommended that a portion of the corpus be leased to the Petitioner. The Petitioner agreed to this. The District Secretary requested the Petitioner to handover possession of the entire land whilst retaining the area agreed to be retained by him. However, thereafter the District Secretary decided to take possession of the entire land on behalf of the State, without affording an opportunity to the Petitioner to make representations.

It was contended that (1) the State ought to have moved under the State Lands (Recovery) of Possession Act and not under the Land Acquisition Act as the land was State land (2) that the Petitioner had a legitimate expectation that he would be given a lease of the land (portion).

**Held :**

- (i) 'Land' includes any interest in or any benefit which is to arise out of any land and any leasehold or other interest held by any person in any State land, and also things attached to the earth or permanently fastened to anything attached to the earth.

The Petitioner is working a quarry and there are buildings on the land.

In the light of the definition of the term 'land' as used in the Land Acquisition Act because the term 'land' means not only the land itself but also any interest in the land or any other structure erected on the land the proposition that the Land Acquisition Act could only be used to acquire private lands and not State Lands, is untenable.

- (ii) It is the fact that the legitimate expectation had arisen against the State itself (on the basis the State must be held to have acted through

its officers, who are agents of the State) that makes it (expectation) enforceable against the State. If it had been otherwise, that is if the legitimate expectation had not arisen directly as against State itself - then the State could still have proceeded to acquire the land - undeterred by the fact that the legitimate expectation had arisen as against the officers only - because it is the State that is seeking to acquire the lands, but the State is bound, because the officials had in giving assurances, acted as agents of the State and not in their private capacity.

- (iii) The State itself has to honour and cannot renege on the promise held out by its servants to the Petitioner.

*Per* Gunawardena, J. (P/CA)

"The doctrine of legitimate expectation is not limited to cases involving a legitimate expectation of a hearing before some right or expectation was affected but is also extended to situations even where no right to be heard was available or existed but fairness required a public body or officials to act in compliance with its public undertakings and assurances."

"Public Officers or the State although are at liberty to alter the Policy, yet by no means are free to ignore legitimate expectations engendered by their actions and/or conduct."

- (iv) The undertaking may or may not be binding on the State, most probably not, but the sacred principle is that No authority, not even the State, in the generality or circumstances, could renege from the undertaking that one has given without first giving the person adversely affected by the revocation or withdrawal of the promise an opportunity to make representation.

**APPLICATION** for a Writ of Certiorari/Mandamus.

**Cases referred to :**

1. *In Re L(AC) an infant* - 1971 3 All ER 743.
2. *Robertson v. Minister of Pensions* - 1949 1 KB 227.
3. *Wells v. Minister of Housing and Local government* - 1967 1 WLR 1000.
4. *Innes v. Onslow Fane* - 1978 1 WLR 1520.
5. *Schmidt v. Secretary of State* - (1969) 2 CA 149.

6. *Liverpool Taxi Fleet Operators case* - 1972 2 QB 299.
7. *Attorney General of Hong Kong v. Ng Yuen Shiu* - 1983 2 AC 629.
8. *R v. Devon County Council ex parte Baker and another* - 1995 1 All ER 73

Rohan Sahabandu for Petitioner.

Ms Farzana Jameel, S. S. C. for Respondents.

*Cur. adv. vult.*

August 07, 2001.

**U. DE Z. GUNAWARDANA, J. (P/CA)**

This is an application seeking to quash by an order of certiorari notices marked P10 and P11 that had been served on the petitioner in pursuance of sections 2 and 38(a), respectively, of the Land Acquisition Act No. 28 of 1964 (as amended) and also a letter (P12) dated 28. 01. 1998 informing or notifying the petitioner that the 3<sup>rd</sup> respondent (Divisional Secretary) will take over possession of the relevant land called Galwala watta morefully described in the notice (P2) issued under section 2 of the Land Acquisition Act No. 28 of 1964 (as amended). Where any land is acquired, the minister is empowered under section 38A of the said Act for immediate possession to be taken over on the ground of urgency.

The petitioner by the aforesaid application had also sought an order of mandamus to compel the respondents (to use the very words in the application) "to hand over the agreement to release A. O. R2 P21 - a part of the land to this petitioner" - which is somewhat vague as to the nature of relief sought.

Two matters of nicety had been urged on behalf of the petitioner and they are:

- (i) that the procedure adopted by the respondents to acquire the land in question is wrong in that they ought to have moved or taken steps under the State Lands (Recovery of Possession) Act No. 07 of 1979 as amended and not under the Land Acquisition Act;

- (ii) that the petitioner must be held to have had a "legitimate expectation" that he would be given a lease of A. O. R2 P21 out of the entire extent of the land.

To deal with the above - mentioned two points in order: the learned counsel for the petitioner, in his fluid and somewhat elusive submissions, seems to say that the respondents should, in order to get vacant possession and eject the petitioner from the land in question, have invoked the procedure laid down in the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, which submission implies by necessary implication that the petitioner is a trespasser or is in "unauthorized possession or occupation" of the land in question. But that argument overlooks the definition of the term "land" as set out in the interpretation section, appended to the Land Acquisition Act as amended, wherein the term "land" (to reproduce only the relevant excerpt of the definition) is defined thus: "land" includes any interest in or any benefit which is to arise out of any land and any leasehold or other interest held by any person in any state land, and also things attached to the earth or permanently fastened to anything attached to the earth".

It is thus clear that the term "land" as employed in the Land Acquisition Act is a term of art and it is in that sense, that is, in the sense of the above definition of "land" that the term "land" is used in section 2, of the aforesaid Act, and it is in pursuance of section 2(1) of the Land Acquisition Act that the relevant minister had made the decision that the land in question viz. Galwala Watta is needed for a public purpose. As at present, the petitioner is in physical occupation of the said land working a quarry thereon. It is to be observed that the term "land" as used in the Land Acquisition Act includes or means not only, so to say, the solid part of the earth's surface, that is, the ground or soil, but also buildings thereon. As remarked above, the petitioner, as at present, is working a quarry on the land in question on which land, although not pointed out in the submissions, there are buildings, as borne out by IR1, which structures or buildings apparently belong to the petitioner. The

submission of the petitioner's counsel seems to be that the State cannot acquire ownership of this land as it (the land) already belongs to the State or as the title to the same already resides in the State. To reproduce the relevant excerpt from his written submissions: "furthermore, ..... Land Acquisition Act could only be used to acquire private lands and not State lands".

But this submission is untenable in the light of the definition of the term "land" as used in the Land Acquisition Act because the term "land" means not only the land itself but also any interest in the land or any other structure erected on the land.

The learned counsel for the petitioner, must also be taken to have submitted that the respondents - the 2<sup>nd</sup> respondent (Land Commissioner -Western Province) and the 3<sup>rd</sup> respondent who is the Divisional Secretary, Kaduwela, in particular, had committed themselves to one course of action, that is, to give the petitioner a lease of an extent of 2 RR 21 PP out of the entire extent of land described in the notice (P10) issued under section 2 of the Land Acquisition Act to the effect that the land is needed for a public purpose. It was submitted, if I may fine down his submissions, by the Learned Counsel for the petitioner that this commitment had arisen in consequence of the statements in P4, P4(a) P5 - P8 which statements are analogous to promises or undertakings to grant a lease to the petitioner - if, in fact, they are not veritably so, and that the 1<sup>st</sup> - 5<sup>th</sup> respondents are precluded from shrinking back from that commitment.

P 2 a (gazette notification) evidences the fact that a lease of this land had been originally granted to W. D. Wimalasena on 16<sup>th</sup> August 1985. The uses to which the land would be put were to run a garage for the repair of motor vehicles and carry on a metal works site. Wimalasena was the father of the petitioner. Thereafter, Provincial Land Commissioner (Western Province) who is the 2<sup>nd</sup> respondent had considered the matter and had made a recommendation to the Commissioner of Lands that a lease of the relevant property be given to the petitioner as evidenced by P4 dated 03. 08. 1994. By letter P4(a) dated

30. 05. 1996 the Commissioner of Lands instructed the Provincial Land Commissioner, Western Province, (2<sup>nd</sup> respondent) to "give" an extent 2 roods 21 perches to the petitioner, and take possession of the balance land - the extent of the entire land being 1A. 2RR. 3PP. Acting on those instructions, the Provincial Land Commissioner (2<sup>nd</sup> respondent) had written to the petitioner inquiring from him by letter (P6) as to whether he was willing to take only 2RR. 21PP out of the entire land to which suggestion the petitioner had readily agreed. By P7 dated 11. 09. 1996 the District Secretary - Kaduwela (3<sup>rd</sup> respondent) had invited the petitioner to call at the office of the Divisional Secretariat to formally hand over possession of the land to the State whilst retaining 2RR. 21PP. as agreed between the parties. It is to be observed that the Provincial Land Commissioner, Western Province (2<sup>nd</sup> respondent) had also directed or instructed the Divisional Secretary (3<sup>rd</sup> respondent) by letter dated 14. 08. 1996 (P5), with a copy to the petitioner, to take over possession of the entire land on behalf of the State - (except) the extent that had been promised to be "given" to the petitioner - presumably on lease.

There is no gainsaying that, inasmuch as the course of dealing of the above - mentioned officials had engendered in the petitioner a legitimate expectation, they cannot be held any longer to retain their discretion or any choice of alternatives but be obliged to act so as to fulfil that expectation which the behavior or the conduct of the officials had aroused in the petitioner. The Learned Counsel for the petitioner, although he did not articulate the position with precision, or distinctly (perhaps, the learned counsel felt that the injustice that his client (petitioner) had suffered was ineffable (or too great for words) seems to say that there is unjustifiable inconsistency between the conduct and representations made by the aforesaid officials on the one hand and the decision of the 1<sup>st</sup> respondent (the Minister) on the other in acquiring the relevant land. It may, perhaps, be argued that although a legitimate expectation had been aroused - the 1<sup>st</sup> respondent (Minister) who took the decision to acquire the land under section 2 of the relevant

Act was not the one whose conduct created that expectation. In other words, the decision - maker has not induced the legitimate expectation.

But all the functionaries or officials, at least, the Commissioner of Lands, Western Province (2<sup>nd</sup> respondent) and the Minister of Lands (1<sup>st</sup> respondent) who took steps, under the Land Acquisition Act, to acquire the land, the Divisional Secretary (3<sup>rd</sup> respondent) who had even gone to the length of inviting the petitioner to call at his office, in order to "give" the petitioner an extent of 2RR-21PP, had acted on behalf of or as representatives of the State or the relevant ministry of the Central Government. The Commissioner of Lands (of the Central Government) or rather his deputy, by P4) a dated 30. 05. 1996 instructed (with a copy of the same to the petitioner) the Provincial Land Commissioner "to give" an extent of 2RR 21PP to the petitioner and take over, on behalf of the state, the rest of the land.

The Commissioner of Lands (5<sup>th</sup> respondent) obviously comes under the purview of the Ministry of Lands of the Central Government. As such, there is no scope for the argument that the ministry or the minister (1<sup>st</sup> respondent) is not bound by an expectation or are not obliged to fulfil an expectation generated by the conduct of or undertakings given to the petitioner by the officials who operate under the aegis, so to say, of the Ministry of Lands of the Central Government of which Ministry 1<sup>st</sup> respondent is the Minister or the head. In fact, legitimate expectation could be said to arise against the Ministry, if not the State, Public Authority or a ministry or the State has necessarily to act through its officials or officers.

There is a group of thinkers, of whom Lord Denning was the most outstanding, who take the view that in circumstances when public bodies and officers take it upon themselves to assume authority in respect of a matter relating to a citizen - the citizen is entitled to rely on the officials having the authority that they have asserted. In *Re L (AC) (an infant)*<sup>(11)</sup> *Cumming -*

Bruce J held that the local authority, having misled the mother in to believing that she need not lodge a second formal objection to the authority's application for parental rights, is not entitled to rely on her failure to lodge the second objection in due time. A case which deserves mention in this context is *Robertson v. Minister of Pensions*<sup>(2)</sup>. Robertson who was an army officer was injured. He would have qualified for a Pension only if his disability was "attributable to military service". To Robertson's inquiry from the War office the reply was as follows: "your case has been duly considered and your disability has been accepted as attributable to military service". On the faith of that letter Robertson did not take the steps he would otherwise have taken to get independent medical opinion. Robertson was injured in December 1939 and entitlement to Pension in respect of injuries suffered after September 1939 should have been dealt with by the Minister of Pensions. That ministry later decided that Robertson's injury was not attributable to military service. The Pensions Appeal Tribunal upheld that decision and Robertson appealed against that decision on the ground that the minister was bound by War office letter to the effect that injury was "attributable to military service".

Lord Denning said that the War office letter was on the face of it an authoritative decision intended to be binding and to be acted on. Robertson's forbearing to get independent medical opinion made the letter from the War office binding. The department had assumed authority over the matter and Robertson was entitled to assume that the War office had consulted the Minister of Pensions. Lord Denning based his judgment also on the point: that the War office was bound as it was but an agent for the crown. As the War office was an agent of the crown, the crown was bound. And as the crown was bound, so were its other departments. However, the concern of the courts in these cases has been their unwillingness to allow the concept of legitimate expectation to result in the enlargement of the powers actually conferred on an authority by the terms of legislation. It is not all that clear what the petitioner in this case claims by way of relief. He seems to be asking for a lease of



sorts. It had been pointed out by the learned Senior State Counsel that a long lease can be granted only by Her Excellency the President. But the petitioner cannot be expected to know the limits of authority of the officials who made the petitioner understand that the State was willing "to give" the petitioner an extent of 2RR. 21PP if the petitioner was agreeable to relinquish the balance extent of the land. In any event, there are statutory provisions in the State Lands Ordinance enabling the President to delegate powers relating to the grant of leases to the ministers and to officials (Vide section 105 of the State Lands Ordinance No. 8 of 1967) as amended assuming that it is only H. E. the President who can grant the lease.

Thus, public authorities have been held bound by assurances given in *disregard of statutory requirements upon which an individual relied to his detriment vide wells v. Minister of Housing and local government*<sup>(3)</sup>. The Court of Appeal (England) applied the same principle to a determination by a planning official even though the power to decide had not been formally delegated to the official. However, one fact that must not be lost sight of is that the concept of legitimate expectation cannot be made use of to compel a public authority to overstep the bounds of statutory powers. Ofcourse, in this case, as stressed by the learned Senior State Counsel, who with unflagging zest, adduced every possible argument, there are competing considerations of public interest. This land is sought to be acquired on an application made to the 1<sup>st</sup> respondent who is the Minister of Lands (of the Central Government) by the Ministry of Agriculture of the Western Provincial Council for the purpose of setting up a veterinary surgeon's office, which, according to the averments in the affidavit of the 1<sup>st</sup> respondent (Minister of Agriculture and Lands of the Central Government) was a pressing need in the area. There cannot be any doubt that the Minister (1<sup>st</sup> respondent) possessing discretionary powers should retain an unencumbered discretion to exercise those powers as and how public interest may from time to time require. In developing the doctrine of legitimate expectation the court seeks to achieve a compromise between that duty and

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the idea that for a body to exercise such discretionary powers in such way as confounds the expectations resulting from its own prior behaviour may itself be considered an abuse of discretionary power.

There is a substantial body of legal opinion which seems to suggest that there is a judicial reluctance to allow claims based on legitimate expectation to succeed or prevail over the public interest. The learned Senior State Counsel seemed to suggest that the respondents, being public functionaries could at any time resile from any promise or undertaking when, as in this case (according to her submission) there is an overriding public interest that they should do so. Ofcourse, the court has to be alive to the possibility that any policy or undertaking given by a public body or official might have to be revised from time to time as the public interest required. But in this case the petitioners interest lay in some ultimate benefit which he hoped to attain or possibly retain. In this context it is apposite to recall that the 3<sup>rd</sup> respondent (Divisional Secretary) had even invited the petitioner by letter (P7) to call at the office of the former, so that the petitioner could formally be "given", presumably on a lease, an extent of 2RR 21PP out of the entire land - upon the petitioner relinquishing or in consideration of the petitioner surrendering possession of the rest of the land in question. It is a strange quirk of fate that it was this self-same official (K. B. H. Perera) i.e. Divisional Secretary (3<sup>rd</sup> respondent) who later by his letter P12 informed the petitioner that he would take over possession of the entire land under section 38(A) of the Land Acquisition Act. It is worth pointing out that the petitioner is already in occupation of the entire land having being validly placed in possession of the same by the relevant authorities or at least, the authorities had no objection to the petitioner being in possession in succession to his father. Thus the petitioner had even a protectable interest quite separate from that derived from the legitimate expectation. The petitioner clearly had an expectation that he would be given 2RR 21 PP because he had been given as assurance to that effect by the 2<sup>nd</sup> respondent (Provincial Land Commissioner) by P6 and by the 3<sup>rd</sup> respondent (Divisional Secretary) by P7. The Commissioner of Lands

(Central Government) himself must be taken to have indicated to the petitioner by P4(a) that the State or the authorities were agreeable or willing "to give" the petitioner an extent of 2RR 21PP, because, although P4(a) had been addressed by the Commissioner of Lands to the Provincial Land Commissioner requiring the latter "to give" the petitioner 2RR 21PP, if the petitioner and the heirs of the petitioner's father (Wimalasena) were agreeable to surrender possession of the rest of the land to the State a copy thereof had been sent to the petitioner for his information. It can even be said that the petitioner had acted on those indications which amount to promises or assurances given, in particular, by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, who are State officials or agents, to his (petitioner's) detriment. It is felt that acting to one's detriment in reliance upon a promise or undertaking given by a public authority or anyone else can strengthen or add to the weight of the legitimate expectation induced thereby, in such a situation, therefore, the counterbalancing public interest should be weightier than in a case where there had been no such detrimental reliance. It is not without interest to note that, in a way, in this case there is some sort of detrimental reliance on the part of the petitioner because he had agreed to surrender possession of the balance land in consideration of promise held out by the 2<sup>nd</sup> respondent (Provincial Land Commissioner) and the 3<sup>rd</sup> respondent (Divisional Secretary) "to give" the petitioner 2RR 21PP if the petitioner agreed to surrender the balance extent of land which the petitioner was willing to do.

The petitioner ought to be considered a person with a vested interest i.e. a personal interest in the land in question with an added expectation. There are structures and buildings on the said land belonging to the petitioner. He is carrying on a business or industry on the land which yields him an income. That is the way in which the petitioner earns his living. It is stated in de Smith thus: "Hearing is required in most situations where licences or similar benefits are revoked. A strong presumption exists that a person whose licence is threatened with revocation should receive prior notice of that fact and an

opportunity to be heard. The presumption should be especially strong where revocation causes deprivation of livelihood or serious pecuniary loss".

As had been held in *Innes v Onslow Fane*<sup>(4)</sup> where there is a vested interest to defend there is an implied right to be heard. I think that the fairness required the respondents to act in compliance with the undertaking given to the petitioner, as explained above, by public or State officials and they or the State could not have resiled from the undertaking "to give" the petitioner a portion of the land which was 2RR 21PP in extent, (even if there was an overriding public interest that they should so act) without affording a hearing to the petitioner who was an interested party and whose interests were threatened with extinction by the acquisition of the land. The petitioner had, undoubtedly, more than a vested interest.

It cannot be gainsaid that the State had undoubtedly the right to acquire this land even assuming that a lease, in fact, had been given. But if the State was going to acquire the land, say, during the currency or duration of the lease and before the period of the lease had expired then it was bound to give a hearing to the lessee. To explain the matter further, the State could refuse to extend the lease, without giving a hearing to the erstwhile lessee because since the lease had expired he had no protectable interest or an interest worthy of protection. In the case of *Schmidt v. Secretary of State for Home Affairs*<sup>(5)</sup> Lord Denning MR pointed out that there was a difference between the revocation of a licence to be in the country before it expires and a plea by persons to have a licence extended: the former situation gave rise to an expectation that they could remain in the country for the duration of the licence whereas the latter situation did not. Of course, no lease as yet had been given of the promised extent of 2RR 21PP although what amounts to a promise had, in fact, been given by the state officials, as explained above, which has generated an expectation in the petitioner that the promise or undertaking would be honoured by the State. One thing that calls for remark

in this context is that the right to a hearing or, at least, the petitioner to be consulted had arisen out of the action of officials themselves in giving assurances to the petitioner that the State would "give" the petitioner an extent of 2RR 21PP, if the petitioner surrendered the balance land to the State, to which suggestion the petitioner, as explained above, had promptly agreed. This undertaking may or may not be binding on the State, most probably not, but the sacred principle is that no authority, not even the State, in the generality of circumstances, could resile from an undertaking that one has given without first giving the person adversely affected by the revocation or withdrawal of the promise an opportunity to make representations. To defeat the petitioner's legitimate expectation is to do the petitioner an act which should, in the circumstances, have been preceded by a warning, and what is immeasurably more important was the giving of an opportunity to make representations. The petitioner had been given a warning, for notice under section 2 of the Land Acquisition Act had been served on him. But that was of no use whatsoever unless an opportunity had also been given to offer his thoughts against the sudden decision to acquire the land wholesale or altogether - so to speak.

The complaint of the petitioner, that he had a legitimate expectation that had arisen in him, in consequence of the assurances given by the officials referred to above and that expectation was confounded by the summary acquisition of the land in question, is more than than vindicated by the material before me and I have no option, but to quash the acquisition of the land by the State which had been done without the expected and recognised procedure - arising in consequence of the legitimate expectation that had been induced in the petitioner - being complied with - there being a procedural obligation to have given the petitioner an opportunity to make representations prior to taking the decision complained of. In fact, it would have been fitting and proper had an opportunity been afforded to the petitioner to show cause, so to say, as to why the land ought not to be acquired or to make his wishes known to the

authorities in that regard. Section 4 of the Land Acquisition Act makes provision for making objections to the intended acquisition of the land which section in this instance had been by passed over or ignored so that the authorities could act quickly. Public Officers or the State although are at liberty to alter the policy, yet by no means are free to ignore legitimate expectations engendered by their actions and or conduct. Had an opportunity been given to the petitioner under section 4 of the Land Acquisition Act, for making objections or representations against the proposed acquisition, this application for an order of certiorari would, in all probability, have been dismissed - for, then the scope for arguing that relevant considerations had been ignored or not considered before taking the decision complained of would have been considerably diminished and the impression of unfairness would have been almost wholly removed. One is apt to recall the words of Lord Denning MR in *Schmidt v. Secretary of State for Home Affairs*(*supra*) "..... all depends on whether he has some right or interest or I would add, some legitimate expectation of which it would not be fair to deprive him without hearing what he had to say. I strongly feel that an opportunity ought to have been given to the petitioner to persuade the authorities to reconsider the decision or to explain to the authorities the available options. It is to be recalled, at first, the State did not want to take over the whole land for the State was content with the balance land after "giving" the petitioner a certain extent, OA 2RR 21PP to be exact, out of the entire land. If the petitioner had been heard before the decision to acquire the land in its entirety was made, he (the petitioner) could have arrived at some settlement of the issue or some arrangement acceptable to both the individual (petitioner) and the State which would have protected both the "public interest" and the interest of the individual. This would have obviated the need to disappoint or confound the expectation which the petitioner entertained. In *Liverpool Taxi Fleet Operators case*<sup>(6)</sup>, Lord Denning emphasised that public interest was better served by honouring rather than breaking undertakings. The doctrine of inconsistency or of legitimate expectation prohibits decisions

being taken which confounds or disappoints an expectation which an official or other authority or person has engendered in some individual except, perhaps, where some countervailing facet of the public interest so requires - this being judged in the light of the harm being done to the applicant.

I must not be understood to mean that the officials or the authority could not depart from its undertaking, but the minister and the officials, representing the State to which the land belonged, could do so only after hearing what the petitioner had to say.

The concept of legitimate expectation had been developed in a Privy Council case i.e. *Attorney - General of Hong Kong v. Ng Yuen Shiu*<sup>(7)</sup> which drew on the case of *R. v. Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators Association (Supra)*.

In both cases an authority had given undertakings about how they proposed to deal with illegal immigrants and the granting of taxi licences respectively. In both cases it was held that the failure to honour the undertakings was unlawful. In the Liverpool case the undertaking was broken without giving the interested parties (taxi operators) a hearing and in Ng Yuen Shiu (above referred to) while the immigrant was interviewed, he was not given an opportunity to make representations about the change in policy which adversely affected him.

Of course, the decision in the case of *R. v. Liverpool Corporation ex parte Liverpool Taxi Fleet Operators Association case (supra)* was not based on the concept of legitimate expectation, as such, but is usually discussed in relation to that concept. I think it would be better and more instructive if I set out the facts of that case more fully which facts are as follows: Liverpool City Council was under the duty of licensing a number of taxis it thought appropriate and had thought it fit to fix the number of taxis at 300. That number was maintained for some years. The City Council contemplated

increasing the number of taxis which was not to the liking of Fleet Operators Association which was interested in the number of taxis not being increased. The Association Communicated its view to the council at the invitation of the City Council. The City Council made a decision to increase the number by stages but accompanied this with an assurance to the Fleet Operators Association that the scheme to introduce more taxis in stages would not be put into effect until private bill promoted by it and aimed at controlling the number of private hire vehicles operating in the city, was in force. The Council was later advised that the aforesaid undertaking given by it to the Fleet Operators Association was not binding on it and the council without telling the Fleet Operators Association decided to implement the increase in the number of licences (taxis) forthwith. The Court of Appeal of England held that while the undertaking not to increase number of taxis might not be binding on it - yet the City Council could not resile from or without first giving the Fleet Operators Association an opportunity to make representations.

Just as much as an undertaking given by an official or a representative of the City Council has to be honoured by the City Council itself or the City Council was, at least, bound to the extent that it could not renege on the promise (given on its behalf) without first giving an opportunity to those affected in consequence of the departure from the promise - so is the State obliged to give a hearing to the petitioner who will be adversely affected for a certainty, if the minister was going to act contrary to the expectations generated in the petitioner by promises made by officials who were agents or officials of the State. The minister (1<sup>st</sup> respondent) who formally made the decision to acquire the land and officials who held out the promise were all acting on behalf of the State and not in their private capacity - the consequence being that legitimate expectation arises as against the State, which has necessarily to act through its officials or functionaries who must necessarily be taken have acted by the state's authority. It is to be recalled that one of the grounds on which the decision in *Robertson v. Minister of Pensions (Supra)* was rested was that the Crown was bound by the war office



letter (to the effect that Robertson's disability was attributable to military service) as the War office was an agent for the crown. And as the crown was bound, so were its (crown's) other departments. This is eminently a situation in which the maxim: "*qui facit per alium facit per se*" should apply. This means that he who does a thing by the instrumentality of another is considered as if he had acted in his own person. It is the vogue, nowadays, to invoke the concept of legitimate expectation, without discernment almost blindly and by force of habit - as it were. Although the petitioner has sought relief relying on the concept of legitimate expectation, he had chosen to slur over or be mealy - mouthed or not out - spoken as to the question as against whom the legitimate expectation had arisen. It is obvious that the petitioner did not know or was not sure.

Apart from vaguely saying that a legitimate expectation had arisen, no one pointed out that the legitimate expectation had arisen as against the State itself. In fact, none of the aspects discussed in this judgment nor the basis on which the legitimate expectation is held to be enforceable as against the State itself, nor the authorities cited in the course of this judgment were ever presented to me at the hearing. The matter was left in an utterly inconclusive State at the hearing. In fact, it is the fact that the legitimate expectation is held to be enforceable against the State itself that had enabled the petitioner to succeed in this case. It is the fact that the legitimate expectation had arisen against the State itself (on the basis that the State must be held to have acted through its officers, who are agents of the State) that makes it (expectation) enforceable against the State. If it had been otherwise, that is, if the legitimate expectation had not arisen directly as against State itself - then the State could still have proceeded to acquire the land - undeterred by the fact that the legitimate expectation had arisen as against the officers only - because it is the State that is seeking to acquire the land. But the State is bound, because the officials above - mentioned had, in giving assurances, acted as agents of the State, and not in their private capacity. If the undertaking referred to above had been given by the officials in their private capacity, the State wouldn't incur any obligation to honour them - as they (officials)

had not acted in their capacity as servants of agents of the State. THE DECISION OF THIS CASE WHICH APPEARED TO BE SO ESOTERIC, AT THE OUTSET, RESTS ON ONE SIMPLE PROPOSITION, VIZ. THAT THE STATE ITSELF HAS TO HONOUR AND CANNOT RENEGE ON THE PROMISE HELD OUT BY ITS SERVANTS TO THE PETITIONER.

The doctrine of legitimate expectation is not limited to cases involving a legitimate expectation of a hearing before some right or expectation was affected, but is also extended to situations even where no right to be heard was available or existed but fairness required a public body or official to act in compliance with its public undertakings and assurances. Simon Brown LJ explained this aspect in *R. v. Devon Country Council, ex parte Baker and another*<sup>(8)</sup> in which the concept of legitimate expectation was used to refer to the fair procedure itself i.e. that the applicant claims to have a legitimate expectation that public authority will act fairly towards him. It is not procedurally fair for the State to have promised the petitioner an extent of land 2RR 21PP in extent upon his surrendering the balance land and then proceed to acquire the whole of the land without the petitioner being given any opportunity to make representations.

In this case the State had though its officials acted in a way which would make it unfair or inconsistent with administration to have denied the petitioner an inquiry into his case or an opportunity to make representations.

For the aforesaid reasons I do hereby grant an order of certiorari quashing the notice under section 2 of Land Acquisition Act (P10) and also quashing the order made under section 38(A) of the Land Acquisition Act, respectively, in so far as they relate to the land which is the subject - matter of the application to this court.

*Application allowed.*