**Ramanathan Chettiar**
**v.**
**Wickramarachchi and Others**

COURT OF APPEAL
SOZA, J., AND TAMBIAH, J.
CA (SC) APPLICATION NO. 238/78
OCTOBER. 15, 1978

*Certiorari and Mandamus – Land Acquisition Act No. 9 of 1950 as amended – Valuation – Failure to notify claim in terms of section 7(2)(c) – Does such a claimant have a right to appeal to Board of Review under section 22, against award of compensation – Does expression "right, title and interest" include compensation.*

*Dictrine of stare decisis – Per incuriam rule.*

It was decided to acquire a land belonging to the temporalities of the Kathiresan Kovil (of which the petitioner was trustee) under the provisions of the Land Acquisition Act and notice of the proposed acquisition was published in the Gazette requiring all persons interested in the land to appear before the Acquiring Officer (1st respondent) on 14.2.1972 and to notify in writing on or before 5.2.1972 the nature of their interests in the land, the particulars of their claims for compensation and the details of the compensation thereof. An application dated 31.1.72 for extension of two months' time to notify claims on the ground of illness by the petitioner's attorney was refused by the 1st respondent. On 14.2.72 the petitioner though absent was represented by Mr. Nadarajah a Valuer and on his application the 1st respondent under s. 9 of the Land Acquisition Act postponed the inquiry for 13.3.1972 on which date the petitioner's attorney, his Proctor and Nadarajah appeared and produced the petitioner's title deed and valuation report and adduced oral evidence. In the evidence Rs. 1,501,240 was claimed for the petitioner but the 1st respondent on 20.5.1972 made his award under s. 17 fixing compensation at Rs. 855,000/=. The petitioner appealed to the Board of Review but on the hearing of the appeal a preliminary objection was raised against him on the ground that he had failed to notify his claim in writing to the 1st respondent in terms of s. 7 (2)(c) and has therefore no right of appeal. The Board of Review upheld the preliminary objection by its order of 30.1.1978 and the present application is for certiorari quashing that order and mandamus directing the Board to hear the appeal.

**Held**

1. The provisions of s. 7(2)(c) and its proviso and s. 15 become applicable once a claim to a right, title or interest is entertained under s. 16 but with the time limit deleted. Strictly s. 15 cannot be utilised because it deals with the particular occasion when no interested person appears in response to the notice under s. 7.

2. Section 16 has been designed to avoid the hardship caused to claimants by the earlier rigid insistence on time limits and written claims, by the Act. The right to property is a right recognised by our law subject to prescribed limitations. When such rights are taken away by acquisition, they are substituted by the right to compensation. The right to dispute the quantum of compensation is part of this right to compensation. Section 16 has been enacted to preserve this right in respect of belated claims.

3. No doubt section 16 refers only to claims to the right, title and interest to in or over the land or servitude proposed to be acquired and section 22 refers only to claims for compensation. But the words "right, title or interest" have a broad spectrum of meaning and are per se wide enough to cover a claim for compensation for land and that is how the Legislature

intended to use the expression on the occasion when it amended section 20 (1) of the original Land Acquisition Act to its present form as section 22.

4. The decisions of the former Supreme Court in **Messrs. Kurunegala Estate Limited v.The District Land Officer Matale District and Pathiwille v. The acquiring Officer, Colombo District** have been decided **per incuriam** and are not absolutely binding on the Court of Appeal.

5. Although the doctrine of stare decisis achieves much needed certainty such certainty must not be achieved by perpetuating error or by insulating the law against the currents of social change.

6. Despite a statutory stipulation that a decision or order shall not be called in question in any court, certiorari will yet issue when the order or decision has been made ex facie without jurisdiction or in excess of it or there is non-compliance with mandatory provisions of the law which are a condition precedent to the making of the order or decision or there is non-compliance with the principles of natural justice. Mandamus will lie when there is failure to comply with a public duty imposed by law to compel compliance.

**Cases referred to**


1. *Messrs Kurunegala Estate Limited v. The District Land Officer, Matale District–Appeal No. B.R./3528/ML 47–S.C. 4 of 1976 decided on 1.4.1977.*
2. ***Pathiwille v The Acquiring Officer, Colombo District –*** *No. BR 3325/CL/834 – S.C. 1/75 decided on 11.5.1977.*
3. *Courtauld v. Legh [1869] L.R. 4 Ex. 126, 130*
4. *Re National Savings Bank Association [1866] L.R. 1 Ch. App. 547, 549, 500.*
5. *Maddox v. Storer [1963] 1QB 451, 455.*
6. *The King v. Hall [1822] 1 B & C 123, 136.*
7. *The Edinburgh Street Tramways Company v. Torbain [1877] 3 App. Cases 58, 68.*
8. *Young v. Bristol Aeroplane Co. [1944] 2 All E.R. 293.*
9. *Morelle Ltd. v. Wakeling [1955] 1 All E.R. 708, 718.*
10. *Alasupillai, v. Yavetpillai [1949] 39 CLW 107, 108.*

11. *Huddersfield Police Authority v. Watson [1947] 1 All ER 193, 196.*

12. *Edwards v. Jones [1947] 1 All E.R. 830, 833.*

13. *Rodgers v. Richards [1892] 1 QB 555.*

14. *Penny v. Nicholas [1950] 2 All ER 89, 91.*

15. *Broome, v. Cassell & Co. Ltd., [1971] 2 All ER 187, 199.*

16. *Dr. H. Billimoria v. Gamini Dissanayake and two others S.C. Appeal No. 1/79 decided on 20th April 1979.*

17. *Rookes v. Barnard [1964] 1 All ER 367.*

18. *Bandahamy v. Senanayake [1960] 62 NLR 313, 334.*

19. *Kodeeswaran v. The Attorney-General [1969] 72 NLR 337, 346.*

20. *High Commissioner for India v. Lall Air [1948] PC 121.*

21. *Boys v. Chaplin [1968] 1 All ER 283, 289.*

22. *Practice Note on Judicial Decision as Authority [1966] 3 All ER 77.*

23. *Chaplin v. Boys [1969] 2 All ER 1085.*

24. *Gallie v. Lee [1969] 1 All ER 1062, 1072 (affd. by House of Lords [1970] 2 WLR 1078).*

APPLICATION for writs of certiorari and mandamus

*C. Ranganathan, Q.C.* with *P. Somatillakam* for petitioner.

*D. C. Jayasuriya S.C.* for the 2nd respondent.

*Cur.adv.vult.*

November 23, 1979

**SOZA, J.**

This is an application for a mandate in the nature of a writ of certiorari and/or mandamus quashing the order made by the Land Acquisition Board of Review on 30th January 1978 dismissing an appeal made to it from an award of the acquiring officer (1st respondent) and directing the Board to entertain the petitioner's appeal. In this case a decision to acquire the land called Old Kathiresan Kovil Watta situated at Bambalapitiya and depicted as lot 1 in

preliminary plan No. 1481 had been made and the 1st respondent published notice R1 under Section 7 of the Land Acquisition Act (hereafter where convenient referred to as the Act) in the Government Gazette No. 14,900 of 24.12.1971 requiring all persons interested in the land to appear before him personally or by their authorised agents duly authorized in writing on 14th February 1972 at 10.00 a.m. at the Colombo Kachcheri and to notify him in writing on or before 5th February 1972 the nature of their interests in the land, the particulars of their claims for compensation, the amount of compensation and the details of the computation thereof. The notice of acquisition was exhibited on the land on 10.1.1972. Mr. S. Somanathan Proctor acting on behalf of the petitioner's attorney S. M. Lexamanan wrote letter R3 on 31.1.1972 to the 1st respondent requesting, on the ground of illness, an extension of two months' time to notify his claims but the 1st respondent refused the request by his letter R4 of 5.2.1972.

The petitioner is the trustee of the temporalities of the Old Kathiresan Temple. The land proposed to be acquired forms part of the temporalities of the Kathiresan Kovil and is in extent 2 Acres 0 roods and 00.56 perches. On 14.2.1972 the petitioner was not present before the 1st respondent but he was represented by Mr. M. Nadarajah a valuer by profession. On a request made by Mr. Nadarajah the 1st respondent postponed the inquiry under Section 9 of the Land Acquisition Act to 13th March 1972. On this date the petitioner's attorney Lexamanan, Mr. Somanathan Proctor and Mr. M. Nadarajah valuer appeared before the 1st respondent and produced the petitioner's title deed and a valuation report P1 regarding the market value of the land. Mr. Somanathan and Mr. Nadarajah gave evidence for the petitioner. Evidence was led at the inquiry of the valuation as computed by the petitioner which was a sum of Rs. 1,501,240/-; On 20th May 1972 the 1st respondent made his award under section 17 of the Act fixing the compensation at a sum of Rs. 855,000/-. The petitioner then lodged an appeal to the Board of Review in terms of Section 22 of the Act. The matter was taken up for argument before the Board of Review on 2nd March 1976 on which date a preliminary objection was raised against the petitioner on the ground that he had failed to notify his claim for compensation in writing to the 1st respondent in terms of section 7(2)(c) of the said Act and therefore he had no right of appeal. By its order dated 30th January 1978 made under section 25 of the Act the Board of Review upheld the preliminary objection and dismissed the petitioner's appeal with costs fixed at Rs. 200/-. It is in respect of this order that the present application has been filed. Apart from the 1st respondent who figured in the various steps that were taken in the matter of the acquisition, five other respondents have been named. The 2nd respondent is the present acquiring officer of the Colombo Kachcheri. The other four respondents are the members of the Land Acquisition Board of Review. Of these the 6th respondent did not sit on the Board of Review which made the order of 30th January 1978 but as he is the Chairman of the Board of Review he is made a party so that he may be bound by these proceedings. Only the 2nd respondent has filed an appearance in this case.

The compalint of the petitioner is that he has been denied his right of appeal by the Board of Review wrongly interpreting the provisions of the Land Acquisition Act relating to his right of appeal and the right to canvass the quantum of compensation.

It was submitted on behalf of the 2nd respondent that the petitioner is a person who has not notified his claim for compensation to the acquiring officer within the time allowed therefor by the Act and therefore he is not entitled to the right of appeal to the Board of Review under Section 22 of the Act. Learned Counsel for the 2nd respondent referred to the unreported case of **Messrs Kurunegala Estate Limited v. The District Land Officer, Matale District.**[1] In this case the Supreme Court which functioned under the Constitution of 1972 held that a person who has failed to notify his claim for compensation under Section 7(2)(c) at least seven days before the date specified in the notice has no right of appeal. This decision is based on the finding of that Court that the words "right, title and interest to, in or over the land" which appear in sections 10, 16 and 17 do not include a claim in respect of the quantum of compensation. This decision was followed by a Supreme Court in another unreported case[2]. On behalf of the petitioner it was submitted that these two decisions of the Supreme Court were given per incuriam and therefore this Court is not bound by them. I will deal with this question presently,

It is admitted in this case that the petitioner had failed to notify his claim for compensation in writing, under his own hand or his duly authorised agents, to the 1st respondent at least seven days before the date specified in the notice which, in this case, was 5.2.1972. Yet the petitioner claims he can come in under Section 16 of the Act as he had made his claim for compensation before the conclusion of the inquiry held under Section 9.

To determine whether the judgments in the two cases in question were not only wrongly decided but also given per incuriam and to decide whether there is merit in the petitioner's application it is necessary to examine the relevant statutory provisions.

When a decision is made to acquire a land or a servitude over a land, the acquiring officer is obliged to publish a notice of the proposed acquisition in the manner set out in subsection (1) of section 7. In this notice he had to describe the land or servitude intended to be acquired and to state that claims for compensation may be made to him (section 7(2)(a) & (b)). Subsection (c) of section 7(2) provides that the acquiring officer shall –

> "direct every person interested in the land which is to be acquired or over which the servitude is to be acquired to appear, personally or by agent duly authorised in writing, before such acquiring officer on a date and at a time and place specified in the notice (such date not being earlier than the twenty-first day after the date on which the notice is to

be exhibited for the first time on or near the land), and, at least seven days before the date specified in the notice, to notify in writing under the hand of that person or any agent duly authorised as aforesaid to such acquiring officer the nature of his interests in the land, the particulars of his claim for compensation, the amount of compensation and the details of the computation of the amount".

The proviso to this subsection states that for good cause shown within two weeks after the notice is exhibited, the period for notifying the claim for compensation and appearing before the acquiring officer could be extended up to a period of 28 days from the date specified in such notice.

Under Section 9 the acquiring officer had to proceed to hold an inquiry into –

(a) the market value of the land or of the servitude proposed to be acquired;

(b) such claims for compensation as may have been notified to him within the time allowed therefor or in accordance with the proviso to section 7(2)(c);

(c) the respective interests of the persons claiming compensation;

(d) any other matter which needs investigation.

Under subsection (2) it is open to the acquiring officer to adjourn or postpone the inquiry.

By virtue of section 10(1) the acquiring officer was under a duty at the conclusion of the inquiry –

(a) to make a decision on every claim made by any person to any right, title or interest to, in or over the land or servitude as well as on every dispute as may have arisen between the claimants as to their right, title or interest and give notice of his decision to the claimant or to each of the parties to the dispute; or

(b) to refer the claim or dispute for determination to the Court.

A claimant too can, if his claim is wholly or partly disallowed or if a dispute arises, move for reference of the matter to Court.

Section 15 stipulates that where no person interested in a land in respect of which a notice under Section 7 has been published appears personally or by agent duly authorised by him in writing on the day and at the time and place appointed therefor by the notice or under the proviso to section 7(2)(c)

then, the acquiring officer should postpone the inquiry under Section 9 for a day not earlier than the fourteenth day after the date fixed for appearance under Section 7(2)(c) or its proviso and also exhibit a notice in a conspicuous place on or near the land, not later than the seventh day before the date to which the inquiry is postponed. The notice must specify the date on which and time and place at which the postponed inquiry will be held. It must also require the persons interested in the land to state the nature of their interests and the amount and particulars of their claim for compensation. It must also mention that, whether any persons interested attended the inquiry or not, the amount of compensation would be determined.

Here notice must be taken of the fact that the original Land Acquisition Act No. 9 of 1950 underwent several amendments before it reached its present form. An amendment which effected substantial changes to the old Act was Act No. 39 of 1954. This amendment brought in a new Section 16. Subsection (1) of this section reads as follows:

> "An acquiring officer shall entertain and inquire into any claim to any right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired, made in writing at any time before the conclusion of an inquiry held by him under this Act, notwithstanding that such claim is made after the expiry of the time allowed therefor by any other provision of this Act; and accordingly such other provisions of this Act as are applicable to claims, other than those relating to the time within which claims may be made, shall apply in relation to such claims".

Under subsection (2) the acquiring officer was required to entertain and inquire into any claim to any right, title or interest to, in or over the land or servitude which is to be acquired if it is made before the conclusion of his inquiry though it is made orally. The acquiring officer is required to reduce the claim to writing by subsection 3. The effect of section 16 is to give an opportunity for a person who is interested to make a belated claim. But such a claim must be before the conclusion of the inquiry under Section 9.

Under Section 17 the acquiring officer had to make his determination on the following matters:

(a) the persons who are entitled to compensation in respect of the land or servitude which is to be acquired;

(b) the nature of the interests of those persons in the land which is to be acquired or over which the servitude is to be acquired;

(c) the total amount of the claims for compensation for the acquisition of the land or servitude;

(d) the amount of the compensation which in his opinion should be allowed for such acquisition in accordance with the provisions of part VI of the Act;

(e) the apportionment of compensation among those persons.

A person dissatisfied with the acquiring officer's determination under Section 17 can lodge an appeal to the Board of Review under Section 22(1) which reads as follows:

"A person to whom compensation is allowed by an award under section 17 and who has notified his claim for compensation to het acquiring officer within the time allowed therefor by this Act, may appeal to the Board against that award on the ground that the amount of the compensation allowed to him is insufficient".

This is how this provision stands today. But we must remember that this section takes its present form after significant amendment by Act No. 39 of 1954. Section 16(1), (2) & (3), as I said before, are completely new provisions brought in by this amendment. A consequential amendment was effected to the old section 20(1) which dealt with the right of appeal. In its amended form section 20 has been re-numbered as the present section 22. The former section 16 which dealt with the decision-making powers of the acquiring officer was re-numbered as section 17. Before amendment the comparable portion of section 20(1) of the original Act No. 9 of 1950 read as follows:

"A person to whom compensation is allowed by an award under Section 16 (re-numbered as s. 17) and who has notified his claim for compensation **in writing** to the acquiring officer within the time allowed therefor **by the notice under section 7 or section 15 or in accordance with the proviso to section 7(2)(c),** may appeal to the Board against that award on the ground that the amount of the compensation allowed to him is insufficient".

By this provision two qualifications were required for a person to have a right of appeal to the Board of Review:

(1) He should be a person to whom compensation is allowed by the award of the acquiring officer.

(2) He should have notified his claim for compensation in writing to the acquiring officer within the time allowed therefor by the notice under section 7 or section 15 or in accordance with the proviso to section 7(2)(c).

After the amendment of 1954 the first requirement was retained but two significant changes were made in regard to the second requirement.

It will be seen that firstly the words "in writing" are dropped in the new section 22(1) and secondly in place of the words "by the notice under section 7 or section 15 or in accordance with the proviso to section 7(2)(c)" there are the words "by this Act".

What is the significance of these two changes? I will take the first of these. The only occasion when a claim need not be in writing is when a claim under the new section 16(2) is made. The words "in writing" have, it is obvious been dropped to make way for a person who has made a claim under section 16(2) and who is aggrieved by an award of the acquiring officer to appeal to the Board of Review.

The second change is just as significant. The only provisions in the original Land Acquisition Act No. 9 of 1950 where time-limits wre prescribed for making claims were section 7(2)(c) and its proviso, and section 15. With the amendments brought in by the amending Act No. 39 of 1954, the new section 16(1) and section 16(2) also stipulated a time-limit for making claims, namely, before the conclusion of the inquiry.

Hence, the reference particularly to section 7, to the proviso to section 7(2)(c) and to section 15, was dropped and a compendious expression "by this Act" was substituted therefor. It is to be observed that after the amendments of 1954 there were no other new provisions prescribing time-limits for making claims except section 16(1) & (2). It is an accepted canon of interpretation that when the phraseology of the law is changed by an amending Act there is a presumption that some change in the law is intended – see **Bindra: Interpretation of Statutes** 6th Ed. (1975) p. 199.

Further the words "right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired" must be construed in relation to the last portion of subsection (1) and subsection (2) of scetion 16. The last portion of subsection (1) says that "such other provisions of this Act as are applicable to claims, other than those relating to the time within which claims may be made shall apply in relation to such claims". The expression "such claims" means claims to the right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired. This is the effect of the use of the definition "such" – see **Fowler's Modern English Usage** (1965) 2nd Ed. p. 602. Apart from section 16 the only other provisions applicable to claims and which prescribe time-limits for making claims are sections 7(2)(c) and its proviso and section15 immediately become applicable once a claim to a right, title or interest is entertained under Section 16 but with the time-limit deleted. Strictly secion 15 cannot be utilised because it deals with the particular occasion when no interested person appears in response to the notice under

section 7. Sections 9 to 14 and 17 also refer to claims and how they may be inquired into and disposed of and these provisions too become applicable. Similarly the last part of subsection (2) reads "such other provisions of this Act as are applicable to claims other than those relating to the time within which claims may ba made and requiring claims to be made in writing, shall apply in relation to such claims".

Under this subsection the provisions applicable to claims but with the time-limits and the requirement that claims should be made in writing deleted, become applicable. Here again sections 7(2)(c) and its proviso and section 15 and section 16(1) are the only other provisions applicable to claims which prescribe time-limits for the making of claims and also require the claims to be made in writing. These provisions become applicable but the time-limits and the requirement that the claim should be in writing become inoperative. Here too the provisions of sections 15 and 16(1) cannot be utilised – the former because it refers to a situation when no interested person appears in response to the notice under section 7 and the latter because its provisions are repeated in section 16(2). Once again sections 9 to 14 and 17 also become applicable. Hence when a claim to any right, title or interest to , in or over the land which is to be acquired or over which a servitude is to be acquired, is made under section 16, section 7(2)(c) and its proviso become applicable in the manner stated above and the claimant must set out the nature of his interests in the land, the particulars of his claim for compensation, the amount of compensation and the details of the computation of such amount in writing or orally. This is another reason why section 22 is applicable to claims under section 16.

Section 16 has been designed to avoid the hardship caused to claimants by the earlier rigid insistence on time-limits and written claims by the Act. The right to property is a right recognised by our law subject to prescribed limitations. When such rights are taken away by acquisition, they are substituted by the right to compensation. The right to dispute the quantum of compensation is part of this right to compensation. Section 16 has been enacted to preserve this right to belated claimants.

It is however argued against the petitioner that section 16 is not contemplated in section 22 as the latter section refers only to claims for compensation whereas section 16 refers only to claims to the right, title and interest to, in or over the land or servitude proposed to be acquired. Under Section 16(1) and (2) an acquiring officer can only entertain "any claim to any right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired", and these words do not cover a claim for compensation as contemplated in section 7(2)(c) or section 15 or section 22(1). It is pointed out that these words "right, title and interest to, in or over the land etc." occur also in Section 10 which lays it down that the acquiring officer must make a decision on every claim made by any person to any right, title or interest to, in or over the land which is to be acquired or

over which a servitude is to be acquired and on every such dispute as may have arisen between any claimants as to any such right, title or interest; or refer the claim or dispute for determination by a Court. Where the acquiring officer so refers the claim or dispute the Court is not empowered to decide on the amount of compensation. The jurisdication which the Court had to determine the amount of compensation under s. 11(d) of the old Land Acquisition Ordinance (Cap. 203 L.E.C. 1938 Revision) was taken away when the Land Acquisition Act No. 9 of 1950 was passed and today the jurisdiction of the Court is limited to deciding questions respecting to title to the land or any rights thereto or interests thereon of the parties named in the libel of reference made by the acquiring officer. It is true that even in the old Land Acquisition Ordinance the Legislature dealt with claims to the amount of compensation and claims to title to the land or any rights thereto or interests therein, under distinct heads. This distinction was carried into section 10(1) and section 17(1) and (2) of the Land Acquisition Act No. 9 of 1950.

But when by the amendment No. 39 of 1954 a new section 16(1), (2) and (3) to the Land Acquisition Act was included this distinction was not preserved. The words "right, title or interest" have a broad spectrum of meaning and are per se wide enough to cover a claim for compensation for land and that is how the Legislature intended to use the expression when it amended section 20(1) of the original Land Acquisition Act to its present form (s. 22). The limited meaning ascribed to the phrase 'right, title and interest' in section 10 is due to the context in which it is used.

Some comment on the interpretation of identical words or phrases in an enactment is appropriate at this stage. Cleasby B. in **Courtauld v. Legh**[3] said:

> "It is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act of Parliament or other document".

Tenner, L. J. in **Re National Savings Bank Association**[4] expressed his views thus:

> "I do not consider that it would be at all consistent with the law, or with the course of this Court, to put a different construction upon the same word in different parts of an Act of Parliament, without finding some very clear reason for doing so".

But the presumption that the same words are always used in the same meaning is very slight and it is proper to construe a word in one part of an Act. In fact a word may even be used in two different senses in the same section of an Act – see **Craises on Statute Law** (1971) 7th Ed. p. 169.

As Lord Parker C. J. said in **Madded v. Storer**[5]:

"Even when the same word does occur in the same section or the same schedule the context must govern the true meaning".

Abbott C. J. in **The King v Hall**[6] explained that principle thus:

"Now the meaning of particular words in Acts of Parliament, as well as other instruments, is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion, on which they are used, and the object that is intended to be attained".

Lord Blackburn expressed a similar view in **The Edinburgh Street Transways Company v. Torbain**[7]:

"I quite agree that in construing an Act of Parliament we are to see what is the intention which the Legislature has expressed by the words; but then the words again are to be understood by looking at the subject-matter they are speaking of and the object of the Legislature, and the words used with reference to that may convey an intention quite different from what the self-same set of words used in reference to another set of circumstances and another object would or might have produced".

Therefore the context, the subject-matter, the occasion, the object intended to be attained and the circumstances will govern the question whether the same word or phrase used in different parts of the same statute bears the same meaning or different meanings. In the instant case these are the factors and the circumstances that govern the meaning that should be attributed to the phrase "right, title or interest" as used in section 16(1) & (2). These words are wide enough to cover a claim for compensation and accordingly a claimant under section 16(1) or section 16(2) has the right of appeal conferred by section 22(1). I cannot therefore accept the arguments advanced by the 2nd respondent as correct.

In my view the case of **Messrs. Kurunegala Estate Limited v. The District Land Officer, Matale District** (supra) has been, if I may say so with the greatest respect, wrongly decided. Is this Court bound by this decision (given by the Supreme Court constituted under the Constitution of 1972) or is it one given per incuriam?

Prof. Rupert Cross in his book **"Precedent in English Law"** 2nd Ed. (1968) explains the principle governing decisions given per incuriam as follows at page 137:

"The principle appears to be that a decision can only be said to have been given per incuriam if it is possible to point to a step in the reasoning and show that it was faulty because of a failure to mention a statute, a

rule having statutory effect or an authoritative case which might have made the decision different from what it was".

Lord Greene M. R. in the leading case of **Young v. Bristol Aeroplane Co.**[8] held that the Court of Appeal in England is bound to follow previous decisions of its own as well as of those of Courts of co-ordinate and higher jurisdiction. But Lord Greene himself stated four exceptions to this rule one of which is that the court is not bound to follow an earlier decision of its own if it is satisfied that the decision was given per incuriam. This is one of the exceptions to the doctrine of stare decisis. His Lordship explained the commonest aspect of this exception thus at p. 300.:

> "But where the Court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of a statute the position is very different. It cannot, in our opinion, be right to say that in such a case the court is entitled to disregard the statutory provision and is bound to follow a decision of its own given when that provision was not present to its mind. Cases of this description are examples of decisions given per incuriam. We do not think that it would be right to say that there may not be other cases of decisions given per incuriam in which this court might properly consider itself entitled not to follow an earlier decision of its own. Such of the cases would be of the rarest occurrence and must be dealt with in accordance with their special facts".

His Lordship went to say that two classes of decisions fell outside the scope of the per incuriam rule:

(1) those where the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covers the case before it resulting in a conflict of authority. In such a situation a subsequent court must decide which of the two decisions it ought to follow;

(2) those where it has acted in ignorance of a decision of the House of Lords which covers the point. In such a case a subsequent court is bound by the decision of the House of Lords.

The per incuriam rule as enunciated in **Young's** case (supra) was followed by Lord Evershed M. R. in **Morelle, Ltd. v. Wakeling**[9]:

> "As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some authority binding on the court concerned: so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong. This definition is not necessarily exhaustive, but cases not strictly within

it which can properly be held to have been decided per incuriam must, in our judgment, consistently with the stare decisis rule which is an essential feature of our law, be, in the language of Lord Greene, M. R., of the rarest occurrence".

Basnayake J. (as he then was) in the case of **Alasupillai v. Yavetpillai**[10] gave the following definition:

"A decision per incuriam is one given when a case or statute has not been brought to the attention of the Court and it has given the decision in ignorance or forgetfulness of the existence of that case or that statute".

Basnayake, J. was here adopting the dictum of Lord Goddard C. J. in **Huddersfield Police Authority v. Watson.**[11]

Lord Goddard who was one of the six Judges who sat on the Bench that decided **Young's** case (supra), enlarged the scope of the per incuriam rule in two other cases. In **Edwards v. Jones**[12] His Lordship said:

"I should have no hesitation, if necessary, in differing from the decision in that case, not merely because we are sitting now as a court of three, and that was a court of two, but also because the case was not argued for the defendants, who did not appear, and when a case has been argued only on one side, it has not the authority of a case which has been fully argued".

The case His Lordship was referring to was that of **Rodger v. Richards.**[13]

Again in the case of **Penny v. Nicholas**[14] His Lordship said:

"We can, however, always differ from a case on the ground that it has been argued on both sides".

Lord Denning added a variant to the class of cases Lord Goddard was here speaking of by adding cases where a long standing rule of common law has been disregarded because the Court not having had the benefit of a full argument before it, rejected the common law — see **Broome v. Cassell & Co. Ltd.**[15] and the judgment of Samarakoon C. J. in the unreported case of **Dr. H. Billimoria v. Gamini Dissanayake and two others.**[16] In **Broome's** case (supra) Lord Denning presiding over the Court of Appeal took the view that a decision of the House of Lords (**Rookes v. Bernard**[17]) enunciating a new doctrine about exemplary damages was given per incuriam and refused to follow it. His Lordship held that it is not open to the House of Lords to overthrow the common law of England which was well settled before the decision in 1964 of **Rookes v. Bernard** (supra).

The views of Lord Goddard were referred to with approval by Basnayake C. J. in **Bandahamy v. Senanayake**[18]. In the Privy Council case of **Kodeeswaran v. The Attorney General**[19] Lord Diplock delivering the judgment of the Board declared that its own decision in the Indian case of **High Commissioner for India v. Lall**[20] was "given per incuriam since the relevant and prestigious authorities to the contrary" were not cited to the Board.

Perhaps it is not inapposite to add that the rule in **Young's** case (supra) is now under fire and there are signs it might be changed. Thus in **Boys v. Chaplin**[21] Lord Denning said:

> "I foresee the time may come when we have to reconsider the self-imposed limitation stated in Young's case, especially in view of the recent change in practice in the House of Lords."

His Lordship here was referring to the famous statement on Judicial Precedent made by the House of Lords (see note on **Judicial Decision as authority**[22]) whereby the House declared it would hold itself free to depart from its previous decisions. The Court of Appeal decision in **Boys v. Chaplin** (supra) was affirmed by the House of Lords – see **Chaplin v. Boys**[23].

In **Gallie v. Lee**[24] Lord Denning M. R. said as follows:

> "We are, of course, bound by the decisions of the House, but I do not think we are bound by prior decisions of our own, or at any rate, not absolutely bound. We are not fettered as it was once thought. It was a self imposed limitation; and we who imposed it can also remove it. The House of Lords have done it. So why should not we do likewise? We should be just as free, no more and no less, to depart from a prior precedent of our own, as in like case is the House of Lords or a judge of first instance. It is very, very rare that we will go against a previous decision of our own, but if it is clearly shown to be erroneous, we should be able to put it right".

The doctrine of stare decisis is no doubt an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs as well as a basis for orderly development of legal rules. Certainity in the law is no doubt very desirable because there is always the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into. Further there is also the especial need for certainty as to the criminal law. While the greatest weight must be given to these considerations, certainty must not be achieved by perpetuating error or by insulating the law against the currents of social change.

The question where the Court of Appeal is absolutely bound by decisions

of the Supreme Court that functioned under the Constitution of 1972, as it is by decisions of the present Supreme Court, is still open. However that may be, a decision given per incuriam by the former Supreme Court is, if I may say so respectfully, not absolutely binding on the present Court of Appeal. For as **Cross** says (ibid pp. 127, 128):

> "No doubt any court would decline to follow a case decided by itself or any other court (even one of superior jurisdiction) if the judgment erroneously assumed the existence or non-existence of a statute, and that assumption formed the basis of the decision. Thsi exception to the rule of stare decisis is probably best regarded as an aspect of a broader qualification of the rule, namely, that courts are not bound to follow decisions reached per incuriam".

This is obviously because case-law cannot overrule statutory provisions laid down by enactments of the Legislature.

From what has been discussed regarding the relevant provisions of the Land Acquisition Act, it is clear that the attention of the Court that made the decision in **Messrs. Kurunegala Estates Limited v. The District Land Officer, Matale** (supra) was not drawn to the fact that section 22(1) is in its present form after substantial amendments to the original section 20(1). The content and significance of these amendments have apparently not been argued at all or even placed before the Court. Nor does it seem that the relation of section 16 to section 22(1) has been brought to the notice of the Court. There is no doubt that but for these omissions, the Court would have decided the case in question differently. The decision in *BR 3325/CL/834 – S.C. 1/75* decided on 11.5.1977 merely followed the earlier decision in the **Messrs. Kurunegala Estates Limited** case (supra) without any critical discussion of it. Both these decisions have been given per incuriam and accordingly we are not bound by them.

For the reasons I have given I hold that in this case there is non-compliance with the mandatory provisions of the Land Acquisition Act and error on the face of the record.

Section 27 of the Act states that a decision of the Board shall be final and shall not be called in question in any court except as provided in section 28 by which a limited right of appeal only on certified questions of law is permitted. Section 22 of the *Interpretation Ordinance* (as amended by the Interpretation (Amendment) Act No. 18 of 1972) curtails our writ jurisdiction. Whenever any statute has the words "shall not be called in question in any court" it would be open to this Court to issue a writ like a writ of certiorari or mandamus only on one or more of three grounds –

(1) The order, decision, determination, direction or finding has been made ex facie without jurisdiction or in excess of it.

(2) There is non-compliance with mandatory provisions of law which are a condition precedent to the making of the order, decision, determination, direction or finding.

(3) There is non-compliance with the principles of natural justice.

But these limitations will not apply in the instant case because a right of appeal, although limited is provided to the Supreme Court (which by virtue of the provisions of Article 169(2) of the Constitution of 1978 means the Court of Appeal). Accordingly certiorari will lie to quash the order of 30th January 1978 because there is error on the face of the record and non-compliance with mandatory provisions of law. Mandamus will lie because there is here a failure on the part of the Board of Review to carry out a public duty imposed on it by law to hear the petitioner's appeal by section 22, 24 and 25 of the Act to compel compliance. As the Board of Review made the order in question because it felt itself bound by a judgment of the former Supreme Court, I do not think it would be just to cast the respondents in costs.

Let both writs issue as prayed for but there will be no costs.

**TAMBIAH, J.**

I agree.

*Writs of certiorari and mandamus issued*