

(1969) 06 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 3244 of 1968

N. Bommon Behram and Another

APPELLANT

Vs

The Government of Mysore and Others

RESPONDENT

Date of Decision : 06-06-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 123, 124
Land Acquisition Act, 1894 — Section 11, 15 A

Citation : AIR 1970 Kar 89

Hon'ble Judges : T.K. Tukol, J;M. Santhosh, J

Bench : Division Bench

Advocate : R.M. Patil and V.H. Ron, for the Appellant; V.S. Malimath, General, for the Respondent

Judgement

Tukol, J.—The petitioners have filed this writ petition under Articles 226 and 227 of the Constitution praying that this court should be pleased to strike down the proviso to Section 11 and Section 15-A of the Mysore Land Acquisition Act 17 of 1961 (hereinafter referred to as the Act). They have also prayed for a writ of prohibition against respondents 2 and 3 directing them not to follow the instructions given in letter No. RD 220 AQB '68 dated 29/30th August 1968 and to issue a mandamus directing them to maintain their own valuation expressed in the draft award dated 24th July 1968.

2. In order to appreciate the points urged on behalf of the petitioners, it is necessary to refer briefly to the relevant facts that have given rise to the writ petition. Certain lands which are owned by the petitioners were notified for acquisition u/s 4(1) of the Act. The lands were required for the use of the Border Security Force under the control of the Central Government. Prior to the issue of this Notification on 1-5-1967, there were certain negotiations between the petitioners, the Chief Secretary to Government of Mysore and other officers at a meeting held on March 31, 1967. The petitioners handed over possession of the property on April 6, 1967. The preliminary notification was followed by the

requisite declaration under the Section 6 of the Act by a Notification dated 1-7-1967. It appears that the petitioners claimed Rs. 18,83,650/- as compensation for their property. The Land Acquisition officer (respondent No. 3) prepared a draft award and made a reference to the State Government for approval, purporting to act under the proviso to Section 11 of the Act. Pending the award, the petitioners were paid a sum of Rs. 6,50,000/- on September 21, 1967.

It appears that in the draft award submitted for the approval of the State Government, respondent No. 3 assessed the amount of compensation at about Rupees 13,00,000/- or so. The Government did not approve the compensation assessed by Respondent No. 3. Accordingly the Secretary to the Government of Mysore in the Revenue Department addressed a communication dated 29/30th August, 1968 marked "Strictly Confidential" conveying the approval of the Government to the award for a total sum of Rs. 6,57,870.15 Ps. and called upon the Land Acquisition Officer to prepare a fresh draft of the award in accordance with the details given in their communication.

The petitioners filed this writ petition on September 19, 1968 contending that the proviso to Section 11 of the Act was inconsistent with the main Section and that the State Government had no power to amend Section 11 of the Central Land Acquisition Act, so as to take away the real power of the Land Acquisition Officer as envisaged in the Central Act. It is also contended that the amendment is inconsistent with the main section and therefore ultra vires the provisions contained in the Central Act. The petitioners also contended that the communication dated 29/30th August, 1968 issued by the first respondent amounted to interference with the course of statutory duty and the statutory proceedings contemplated by Section 11 of the Act. They prayed that besides striking down the said communication, the court should direct the Land Acquisition Officer to ignore the instructions contained in the communication and to maintain the valuation made by her in the draft award dated 24th July, 1968. According to the petitioners, the impugned communication, if allowed to be acted upon by respondents 2 and 3, would work irreparable loss to them and that it was not within the competence of the State Government to issue instructions of the type contained in the said communication.

3. In the counter-affidavit filed by the respondents it is admitted that the properties had been taken possession of by the concerned officers on April 6, 1967 and that the petitioners had been paid Rs. 6,50,000/- on September 21, 1967. It is also admitted that the impugned communication was issued by the State Government indicating that they approved the award only for the sum expressly stated therein and that the aforesaid communication was within the competence of the Government. They have further stated, while declining to sanction the draft as sent by the Land Acquisition Officer, that they had also indicated their reasons for proposing a modified estimate of compensation. They have denied the petitioners' allegation that there was a conspiracy between the

State Government and the Officer of the Security Forces in order to bring down the valuation of the property. They maintain that the proviso to Section 11 is legal and that the action taken by the State Government is Well within the ambit of its power conferred by that proviso.

They complain that the petitioners have not come with clean hands, suppressing the material facts in regard to the manner in which they had come in possession of the documents produced with the writ petition and that on that ground alone the writ petition was liable to be dismissed in limine. According to the respondents, the writ petition is premature and not maintainable. They have denied the other allegations of undue interference etc.

4. Respondent No. 3 who is the Land Acquisition Officer, has filed a separate counter referring to the relevant facts of the present acquisition proceedings, the payment of advance amount to the petitioners, the submission of the draft award and the receipt of the confidential communication from the Government. She has asserted that the Land Acquisition proceedings had been conducted in accordance with the statutory provisions and that as the award drafted was subject to the previous approval of the State Government under the proviso to Section 11 of the Act, the same had been submitted to the State Government for prior approval. It is maintained that the respondent is not entitled to make an award without the previous approval of the State Government in view of the impugned proviso.

As regards the communication, this respondent has stated that the said communication contained the reasons of the State Government for not according previous approval to the draft award and that it was within her competence to adopt reasons which she might think proper in support of the modified award which she may prepare and forward the same to the State Government for prior approval.

5. The communication (Exhibit D), which has occasioned the present writ petition was, as already stated, issued by the Secretary to the State Government in the Revenue Department to the Divisional Commissioner, Bangalore Division, Bangalore. The portions of the communications which were commented upon by the learned Advocate for the petitioners and have a bearing on the points at issue may be usefully extracted at this stage:

"I am directed to convey approval of Government to the award of a total sum of Rs. 6,57,870-15 P. (Rupees Six Lakhs Fifty Seven Thousand Eight Hundred and Seventy and Paise Fifteen only) in respect of lands measuring 86 acres, 22 guntas in S. Nos. 5, 9, 11, 12 and 13 belonging to Shri Bomman Behram and Smt. Mehra Mehta of Vaderapura village acquired for locating the VIII Battalion of the Border Security Force. The breakup of the total award with reasons indicated against each of the items is as under."

Then the communication indicates what in the opinion of the Government was the proper compensation for the different items including the statutory allowance

at 15 per cent on the permissible items so as to make up the total amount as approved by the Government. The concluding paragraphs of this communication read as follows :--

"Out of the total award of Rs. 6,57,870-15 P. a sum of Rs. 6,50,000/- already paid may be deducted and the balance only is payable to the party concerned together with interest due according to rules.

The draft award on the above basis may be drawn and sent up to Government for approval within a week.

It should be ensured that no reference is made to this letter in the award by the Land Acquisition Officer. Though the Land Acquisition Officer may adopt the reasoning in the letter in the modified award, it should appear as if it is his own reasoning."

It is contended on behalf of the petitioners that this communication is without jurisdiction and that the proviso to Section 11 under which the State Government was taking shelter was ultra vires.

6. In order to pronounce on the competence of the State Government to issue a communication approving the draft award for a specific sum or declining to approve the draft submitted by the third respondent, it is necessary to decide the legality of the proviso that is challenged by the petitioners. We might mention at this stage that the petitioners have also attacked Section 15-A of the Act and have prayed for striking down the provision. Since none of the reliefs sought for by the petitioners in this petition turns upon the validity or otherwise of Section 15-A, we refrain from dealing with the nature and scope of the power dealt with therein or with the legality thereof. No arguments were also addressed to us on that point.

7. Section 11, with the proviso reads as follows:--

"Enquiry and award by Deputy Commissioner:--

On the day so fixed, or on any other day to which the enquiry has been adjourned the Deputy Commissioner shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the notification u/s 4, Sub-section (1), and into the respective interests, of the persons claiming the compensation, and shall make an award under his hand of --

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no such award shall be made by the Deputy Commissioner, without the previous approval of the State Government or such officer as the State Government may appoint in this behalf who in the case of an award made by an officer below the rank of the Deputy Commissioner of a District, may be the Deputy Commissioner of the District."

It is obvious from the main section that the competent authority to make the award therein is the Deputy Commissioner; it is he who has to determine the value of the land, give his opinion as regards the compensation to be allowed for the land and where there are more claimants, indicate the apportionment of such compensation amongst such persons. As regards the proviso, it unequivocally lays down that no award shall be made by the Deputy Commissioner without the previous approval of the State Government.

8. What is contended in this context by Mr. R. M. Patil, learned Advocate for the petitioners, is that when the main section constituted the Deputy Commissioner the exclusive authority to form his opinion as regards the amount of compensation and make an award the proviso which has been engrafted by State Legislature empowers the State Government to interfere with the formation of such opinion by the Deputy Commissioner according to his own judgment and appreciation of the facts on the material before him. Even though it was contended in the main affidavit that the State Legislature could not have amended the Central Land Acquisition Act, no arguments have been advanced before us as to the competency of the State Legislature to amend the said Act. We may incidentally point out that the subject of acquisition and requisition of property is item No. 42 in list 3 of 7th schedule. It is undisputed that the amendments made by the State Legislature have been assented to by the President.

9. So, the sole ground of attack that requires consideration is, whether the proviso can be struck down as ultra vires on the ground that it materially interferes with the duties of the Land Acquisition Officer in forming his own opinion about the compensation that has to be allowed on the land. It is unnecessary to refer to the different sections which provide for or deal with the powers of the Deputy Commissioner in making the award and for that purpose forming his own opinion as to the various matters that are required to be included in the award.

There cannot be any doubt that the proviso, as it is worded, unambiguously requires the Deputy Commissioner to obtain the previous approval of the State Government before making an award; in other words, the compensation to be opposed (proposed?) by him in the award should have the approval of the State Government. Such amount, in some cases, may be fixed by the Government and communicated to the Land Acquisition Officer as proper compensation in their opinion. If the Land Acquisition Officer accepts the proposal made by the Government, then, there may not be further correspondence and he might prepare a modified draft of the award, obtaining, the consent of the Government

and then file the award u/s 12 of the Act. If he disagrees with the proposal made by the Government, there may be further correspondence or discussion between the Government and the Land Acquisition Officer, and in any case, the award as is required to be filed must be an award which has the previous approval of the Government.

10. In view of this position, it is not contended, and cannot be contended, by the State Government that fixation of the proposal as regards the amount of compensation made by the Government would interfere with the opinion which the Deputy Commissioner or the Land Acquisition Officer may form u/s 11 of the Act. The legality of such interference would necessarily depend upon the nature of the function or act which the Land Acquisition Officer is required to perform in drafting and submitting his award. If his function in that respect is quasi-judicial, interference by extraneous authority including the State Government would be repugnant to law. If on the other hand, the act of the Land Acquisition Officer is merely an administrative act and that act is sought by the Legislature to be controlled by the opinion of the Government, we do not think that the proviso would be repugnant to law.

11. It is unnecessary for us to go into the various sections of the Act in order to determine the precise nature of the act, which the Land Acquisition Officer performs in preparing his award, since there is the pronouncement of the Supreme Court in that subject. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, their Lordships had to deal with the question of limitation for making an application moving for a reference u/s 18 of the Act. In dealing with the question as to the nature of the award and when it should be said that the award has been made, their Lordships pronounced as follows on the legal character of the award and the nature of the act which the Land Acquisition Officer has to perform in preparing it :--

"In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector u/s 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer Section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the "award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his

acceptance". In *Ezra V. Secy*, of State ILR (1903) Cal. 36, it has been held that--

"the meaning to be attached to the word "award" u/s 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances but from the examination of the provisions of the Law relating to the Collector's proceedings culminating in the award. The consideration to which we have referred satisfy us that "the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer;" and that "consequently, although the Government is bound by his proceedings the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded."

Then the High Court has added that such tender once made is binding on the Government and the Government cannot require that the value fixed by its own officer acting on its behalf should be open to question at its own instance before the Civil Court. The said case was taken before the Privy Council in *Ezra v. Secy. of State* ILR (1905) Cal. 605, and their Lordships have expressly approved of the observations made by the High Court to which we have just referred. Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement of the contract law as its applicability to cases of award, made under the Act cannot be reasonably excluded..... (the underlining (here in " ") is ours). It would be manifest from these propositions laid down by the Supreme Court that the acquisition proceedings are initiated and held by the Deputy Commissioner as an agent of the State Government and that the compensation that he fixes in his award is an offer made on behalf of the Government. The judicial determination of compensation is required to be made by the District Court in case the owner of the property to be acquired declines to accept the offer and applies for a reference u/s 18 of the Act. In law an offer made by an agent is binding on his principal. In this view of the legal position, it would be difficult to contend that the State Legislature could not have required the Deputy Commissioner to seek the previous approval of the State Government, his principal, before finally making the award and filing it u/s 12 of the Act, in law an agent (has?) to act with the consent of his master or within the scope of the authority and in enacting the proviso, the State Legislature has given effect to this legal concept, by clarifying the scope of powers of the Deputy Commissioner in the matter of fixing the compensation in his award.

12. There appears to be another reason why the State Legislature seems to have amended Section 11 of the Act by incorporating this proviso. It is not unlikely, though the cases may be very rare, that in fixing up the compensation the Land Acquisition Officers may be influenced by extraneous considerations in determining the amount of compensation and may fix compensation far in excess of the real market value of such property at the relevant date. The proviso is

intended to safeguard against such vagaries

and proposals for payment of inflated amounts of compensation which might subject Government to heavy losses.

13. We have no doubt in our mind, from the propositions of law laid down by their Lordships and extracted above, that the action of the Collector in holding the enquiry relating to acquisition under the Act is an administrative proceeding in order to enable him to form his own opinion regarding the various matters to be embodied in the award. A party who is aggrieved by the award made by the Land Acquisition Officer, has got his remedy u/s 18 of the Act by praying for a reference so that the amount of compensation should be judicially fixed by a competent court. In this context, we should also note that when the Land Acquisition Officer makes the award, the law does not provide any remedy to the State Government to challenge the compensation awarded under the award for the simple reason that the award is an offer of compensation on behalf of the State Government. The Proviso is intended as an equitable measure to safeguard the rights of the State.

14. As regards the contention raised by the learned Advocate for the petitioners that the proviso is inconsistent with the main section and that on that account it is repugnant to law, it has to be noted that the subject of a proviso is to qualify or modify the scope and the ambit of the matter dealt with in the main section; the proviso may impose certain restrictions on the power to be exercised as conferred by the main section or it may in certain cases incorporate circumstances under which extended power may be exercised by the authority concerned. But, under any circumstances, it is well established that the section and the proviso have to be read together and have to be construed harmoniously. Mr. V. S. Malimath, learned Advocate General appearing for the State, has drawn our attention to the following paragraph at page 219 of "Crazies on Statute law" (Sixth Edition by S. G. G. Edgar) on the construction of repugnant provisos and Saving clauses.

"It sometimes happens that there is repugnancy between the enacting clauses and the provisos and saving clauses. The question then arises, how is the Act, taken as a whole, to be construed? The generally accepted rule with regard to the construction of a proviso in an Act which is repugnant to the purview of the Act is that laid down in *Att. Gen. v. Chelsea Water-works*, namely "that where the proviso of an Act of Parliament is directly repugnant to the purview, the proviso shall stand and be a repeal of the purview, as it speaks the last intention of the makers."

If the proviso is intended to act as a restraint on the power conferred by the main section, that power shall be construed as one which emerges after conformation with the requirements of the proviso. As already indicated, the Land Acquisition Officer acts on behalf of the Government and hence there cannot be any repugnancy between the main section and the proviso, if the

Officer is required to obtain the prior approval of the Government. If the section and the proviso are read together, it would mean that before the Land Acquisition Officer makes the award as regards the compensation to be paid for the property to be acquired, he shall secure the prior approval of the State Government. In other words, for the purpose of the section the opinion which the Land Acquisition Officer has to embody in the award is the opinion as modified by the order or direction, if any, given by the Government while approving the proposed amount of compensation. From this point of view, we are unable to see any repugnancy between the proviso and the main section.

15. Our view that the proviso is not illegal even if it is held to override the opinion of the Land Acquisition Officer or the Deputy Commissioner, is supported from the proposition laid down by the Supreme Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, . In that case, their Lordships had to decide upon the powers u/s 43-A that had been incorporated by the Madras Legislature by Madras Act No. 20 of 1948, amending the Motor Vehicles Act, 1939. What was contended before their Lordships was that that section interfered both with the administrative and quasi-judicial functions to be performed by the authorities under the Act and that it was therefore ultra vires. Section 43-A reads thus;

"The State Government may issue such orders and directions of a general character as it may consider necessary, in respect of any matter relating to road transport to the State Transport Authority or Regional Transport Authority and such Transport Authority shall give effect to all such orders and directions."

When dealing with this question, their Lordships made a distinction between the orders and directions which are of administrative nature, and orders and directions which affect the quasi-judicial power exercisable by the authorities specified therein. In dealing with this section, their Lordships stated:

"In interpreting Section 43-A, we think, it would be legitimate to assume that the Legislature intended to respect the basic and elementary postulate of the rule of law, that in exercising their authority and in discharging their quasi-judicial function the Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the principles which have to be followed by the Tribunals in dealing with the said matters. The scope of the jurisdiction of the Tribunals constituted by

statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the Constitution After scrutinising the provisions of law, their Lordships held that--

"On a fair and reasonable construction of Section 43-A it ought to be held that the said section authorises the State Government to issue orders and directions of a general character only in respect of administrative matters which fall to be dealt with by the State Transport Authority or Regional Transport Authority under the relevant provisions of the Act in their administrative capacity."

Applying the ratio of this decision, it should follow that the proviso which imposes certain restrictions on the opinion of the Land Acquisition Officer in proposing the compensation, the Legislature has done nothing more than laying down the policy which should guide the fixation of compensation to be embodied in an award to be made by the Land Acquisition Officer. The learned Advocate General drew our attention to a decision of this court in *Vadivelu Gounder v. Spl. Land Acquisition Officer 1969 (1) MysLJ 301*. In that case, there was no contest as to the vires of the proviso. All that was contended on behalf of the petitioners was that in exercising its power under the proviso, the State Government should have given them an opportunity of hearing. That contention was repelled.

16. This brings us to the question of the legality or illegality of the communication impugned by the petitioners. We have already quoted the relevant portions of that communication and indicated that the communication was primarily intended to convey the approval of the Government to the award for a total sum of Rs. 6,57,870-15 P. In effect, the Government have declined to give their approval to the draft award submitted by the Land Acquisition Officer in July 1968. What is, however, objected to by the learned Advocate for the petitioners is what is contained in the last three paragraphs of this communication. It is stated that the petitioners had already been paid Rs. 6,50,000/- and taking into consideration the amount of compensation proposed by the Government, only the balance after deducting the amount paid, should be made payable to the party together with interest according to the rules. It also calls upon the Land Acquisition Officer to draft the award on the basis given in the communication and send it to the Government for approval, Mr. Patil, learned Advocate for the petitioners, submitted that this direction from the State Government completely smashes the voice of the Land Acquisition Officer and requires him to be only the mouth-piece of the State Government.

We have already indicated what the power of the State Government is. We have stated that if the main section and the proviso are read together, there shall not be an award without the previous approval of the State Government. Therefore, if the State Government indicated that in their opinion the total amount of compensation should not exceed Rs. 6,57,870-15 P. we are unable to see how this part of the communication can be said to be either without jurisdiction or in

excess of jurisdiction. The learned Advocate for the petitioners, however, emphasised that the concluding paragraph which required the Land Acquisition Officer to adopt the reasoning given in the letter without making it appear that he adopted the reasoning of the State Government is what is objectionable. We agree that the concluding portion of this letter is out of tune and to a certain extent not called for. We are unable to understand why such secretive direction was sought to be given, when it was an indication in unequivocal terms of their opinion about proper compensation and well within the competence of the State Government.

Some comment was made on the sentence opens with the words "I am directed to convey". The word "direct" is normally employed in official communications issued on behalf of a Government to convey any decision or direction and has no other connotation. It is common experience that communications like these drafted by executive officers do not conform to set patterns or to the legal requirements of any particular occasion or performance of duty. It has been often indicated that the Court should not scrutinise such documents as meticulously as they would scrutinise a document which is drawn to a form and set pattern.

17. Even assuming, as has been contended by the learned Advocate for the petitioners, that the concluding paragraph of this communication is in excess of jurisdiction, the question that we have to consider is whether a writ or certiorari can issue quashing this portion. The hurdles in granting this prayer are many. Firstly, it is a confidential communication issued by the State Government to one of its subordinate officers giving certain directions which they are competent to give under the law. Secondly, it does not embody any official decision in the matter, so as to affect adversely the rights of the petitioners, and thirdly, it is an administrative communication made in the course of the official duties and is not one which is made by either judicial or quasi-judicial body, calling for our interference under Article 226 of the Constitution. As laid down by the Madras High Court in *Kandaswamy and Others Vs. The Deputy Registrar of Co-operative Societies, Coimbatore and Another*, , a departmental communication is not liable to be quashed by a writ of certiorari.

18. The learned Advocate for the petitioners has drawn our attention to a number of decisions in support of the proposition that even administrative orders are liable to be quashed in exercise of the power vested in the High Court under Article 226 of the Constitution. We simply note those decisions as, in our opinion, they do not need elaborate discussion. They are: AIR 1964 P&H 533 ; AIR 1957 Trav. Co. 203 (sic); (3) *Rameshwar Prasad and Another Vs. Superintendent of Police Moradabad and Another*, and AIR 1965 Mys. 255.

In all these decisions, the orders or notices had been issued in exercise of some administrative power or in the discharge of some function under some Act or the other and those notices or orders affected either the fundamental or statutory rights of persons to whom they had been issued. It was in the context of the

rights of the aggrieved party and their infringement by the executive action complained of that their Lordships in the various decisions came to the conclusion that executive actions which directly affect or threaten to affect the fundamental or statutory rights of persons can be struck down by High Courts, when approached by such persons, in exercise of their powers under Article 226 of the Constitution.

19. In the present case, the impugned communication was not issued to the petitioners. The petitioners have been meticulously silent in their affidavit as to how they came in possession of these documents. The learned Advocate for the petitioners when questioned, submitted that it was unnecessary for him to explain the possession of the documents. In our opinion, when an official communication addressed either by Government or by some superior authority to their or his subordinate and marked "Confidential" is secured dubiously by persons who are interested in securing a decision in their favour on its basis, it would not be correct to treat the matter very lightly. It is the duty of the petitioners to explain in what legal manner they came in possession of these documents. It is an elementary principle that persons seeking the assistance of the court in exercise of its extraordinary jurisdiction must come with clean hands. They should not suppress facts or state false facts or withhold material facts from the court.

An attempt was made by referring to Sections 123 and 124 of the Evidence Act to contend that since the State Government had not claimed any privilege as regards these documents, the question of their admissibility would not be a matter of agitation before the court. We may state that the question of admissibility has not been raised and could not have been raised. The petitioners have sought for relief on documents which are genuine but which were not expected to be in their possession. The Government have conceded the genuineness of the documents and the instructions contained therein. The petitioners have made very strong allegations of conspiracy etc. against the respondents and the officers of the Security Force. We are unable to spell out or infer any such conspiracy because no such conspiracy is called for in the matter of compensation as the State Government has got wide powers and the rights of the owner of the property are amply safeguarded by conferring upon him the right to agitate before a competent judicial tribunal and have the matter judicially decided. Some of the lengthy arguments on the contents of this letter could have been avoided had the draughtsman of this letter confined himself only to relevant without being unnecessarily secretive about what he was doing in exercise of what the law authorises him to do.

20. The only other point that needs reference before we conclude is as regards two other letters which the petitioners have produced with their affidavits. What we have already stated as regards the possession of the confidential communication applies to these two letters also. They are produced at Exhibit C. The first-is a copy of the letter D. O. No. H. D. 323 SST 67, dated 10-7-1968

from the Secretary to Government, Home Department, addressed to the Deputy Commissioner, Bangalore District. Reference is made in this letter to the Secretary having forwarded a semiofficial letter from Sri P. E. Rajagopal, Deputy Director (Admn.) Directorate General of Border Security Force, New Delhi. It has been stated by the Secretary to the Deputy Commissioner that in view of what Rajagopal has stated in his communication, the Deputy Commissioner should not make further payment to the petitioner in addition to Rs. 6,50,000/- already paid. The second communication is a D.O. from P. R. Rajagopal to the Home Secretary. In this letter, Mr. Rajagopal has requested the Home Secretary not to make further payment to Shri Behram and has further stated-- "The Home Ministry of the Government of India is anxiously awaiting your communication on the final award of the Mysore Government. Should this award be in excess over what was originally proposed, the chances are that the Ministry may decide to call off the entire deal."

The argument of the learned Advocate for the petitioners is that it is on account of this threat held by Rajagopal that the State Government had been persuaded to limit the compensation to Rs. 6,57,870-15 P. We are unable to see the connection between this communication and the assessment of the compensation by the State Government. The reason is that possession of the property has already been taken and if the compensation proceedings are either dropped or closed at this stage, the State Government or the Central Government, as the case may be, would expose themselves for payment of damages. It is unnecessary to dilate on the implications of these letters which are not relevant to the points in issue,

21. In the result, we are of the opinion that the petitioners are not entitled to any relief. We have held that the proviso to Section 11 of the Act is valid and that the impugned notification which is only an official communication issued during the usual course of official business cannot be quashed. There cannot be a mandamus to respondents 2 and 3 to maintain their estimate of compensation as their opinion is subject to the approval of the Government.

22. The petition therefore fails and is accordingly dismissed with costs. Advocate's fee Rs. 150/-.

23. Petition dismissed.