
(1976) 12 MAD CK 0003
In the Madras High Court

Padmavathi and Bheema Raja

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 15-12-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A(1)

Citation : (1978) ILR (Mad) 135 : (1978) 91 LW 80 : (1978) 1 MLJ 223

Hon'ble Judges : Koshal, J;Balasubrahmanyam, J

Bench : Full Bench

Judgement

Koshal, J.—By this order I shall dispose of two petitions under Article 226 of the Constitution of India, viz., Writ Petitions Nos. 746 and

889 of 1972, in each of which there is a single petitioner who challenges the acquisition of his land situated in Coimbatore town. The acquisition

proceedings were initiated by a notification, dated the 15th of April, 1970 issued under Sub-section (1) of Section 4 of the Land Acquisition Act

(herein after referred to as the Act). Notices of the proposed acquisition were published in conformity with Rule (1) of the rules framed by the

Tamil Nadu Government u/s 55(1) of the Act, but no notice thereof was served individually on either of the petitioners and it is contended on their

behalf that the acquisition proceedings are void for want of such notices which it was incumbent on the Collector to serve as per instruction (1)

contained in paragraph 9 of Standing Order 90 issued by the Board of Revenue. That instruction states:

(1) Besides publishing the notice as prescribed in Rule 1 of the Appendix I, the Collector should see that individual notices are served as far as

possible on every person known or believed to be interested in the land and to be acquired in the manner prescribed by Sub-sections (3) and (4)

of Section 9 of the Land Acquisition Act (I of 1894). In cases in which it has been impossible at the time of the issue of the notification u/s 4(1) so

to describe all or any of the lands to be acquired that the persons interested therein can understand that their lands are likely to be needed for the

public purpose, the individual notice should be issued as soon as the necessary details are available allowing 15 days thereafter for the presentation

of objections to the acquisition.

This instruction was considered in *I. Easwara Pillai and Others Vs. The State of Tamil Nadu and Another*, by Palaniswamy, J., who laid down

the following two propositions in regard to it:

(1) The instruction has statutory force and is not merely an executive instruction in the sense that it emanates from a superior to a subordinate

official.

(2) Even if it is regarded as an executive instruction it is based on the principle of natural justice that nobody shall be condemned and for that

reason also it is binding on the acquisition authorities.

2. Attention of Palaniswamy, J., was drawn to *Associated Equipment Services v. State of Madras* W.P. No. 1734 of 1964, decided by

Ramakrishnan, J., and *Meclec Nutriments and Pharmaceuticals Ltd. v. State of Madras* W.P. No. 1846 of 1965, decided by Kailasam, J. (as his

Lordship then was), in both of which it was held that the Act did not prescribe as an obligatory direction that notice be given for an enquiry u/s 5-A

thereof to particular persons individually. Each one of these cases was distinguished by Palaniswamy, J., on the ground that the instruction above

extracted was not brought to the notice of the learned Judge who decided the same. As it is, learned Counsel for the State of Tamil Nadu and the

Special Tahsildar for Land Acquisition, Coimbatore who are the two respondents before me, has contended that *Easwara Pillai's* case 2, was not

correctly decided and that the instruction above extracted is neither statutory in character nor liable to be enforced in writ proceedings on the basis

of principles of natural justice. Reliance for this contention is placed on a Bench decision of this Court in *Ghousia Begum Vs. The Union Territory*

of Pondicherry, which repeats the dictum given by Ramakrishnan, J., and Kailasam, J., in the cases above cited, although no reference therein

also is made to the said instruction.

3. After hearing learned Counsel for the parties at some length I have begun to entertain doubts (and I say so with the utmost respect to

Palaniswamy, J.) about the correctness of the decision in *I. Easwara Pillai and Others Vs. The State of Tamil Nadu and Another*, although I have

not formed any definite opinion in that behalf. The points raised are not free from difficulty and are of great general importance. I consider the cases

before me, therefore, to be fit ones for decision by a larger Bench and direct that their records be laid before my lord the Chief Justice with a

request that such a Bench may be constituted.

S. Ramalingam, for S. Jagadeesan and M. Venkatachalapathy, for Petitioner in Writ Petition No. 746 of 1972.

R. Krishnamoorthy, D. Raju and A.R. Lakshmanan, for Petitioner in Writ Petition No. 889 of 1972.

B. Ramamurthi, for Government Pleader on behalf of the Respondents in both the writ petitions on 23 rd November, 1976 and of the Government

Pleader on behalf of the Respondents in both the writ petition on 24th November, 1976.

The Order of the Court was pronounced by

Balasubrahmanyam, J.

4. These two writ petitions come before us on a reference by Koshal, J. Each is filed by a different individual. But both raise a common question of

law under the Land Acquisition Act, 1894.

5. The writ petitioners are owners of fractional interests in two pieces of land in Coimbatore Town. Those lands were notified by the State

Government for compulsory acquisition for a public purpose. The notification was published in the official gazette. Public notices of the gazette

notification would appear to have been displayed in the locality. But individual notices were not given to the petitioners. The question raised before

Koshal, J., was whether for want of individual notices on the petitioners, as persons interested in the lands, the subsequent proceedings would be

rendered invalid. The learned Judge was referred to a decision in *I. Easwara Pillai and Others Vs. The State of Tamil Nadu and Another*, in

which Palaniswami, J., held that individual notices were indispensable under the law and in the absence of such individual notices the persons

aggrieved were entitled to move this Court under Article 226 of the Constitution

for setting aside all proceedings subsequent to the Government's notification in the Gazette. But a contrary view was found expressed in two earlier unreported decisions rendered by learned single Judges of this Court. According to this earlier view, the omission to send individual notices of acquisition to each and every one of the persons interested in the lands was of no consequence to the validity of the acquisition. With these citations before him and not wishing to hazard yet another single Judge opinion to the existing conflict of authority in this Court, Koshal, J., deemed it proper to refer these writ petitions to be heard and determined by a larger Bench.

6-7. The facts bearing on the question before us are not very much in dispute. The Coimbatore Municipality is running an elementary school in Oppanakara Street in Coimbatore Town. The building in which the school is housed is its own. But the accommodation was found inadequate to its growing needs. The Municipality, accordingly resolved, to acquire portions of land which lay on either side of the existing premises for expansion of the school. The council then moved the State Government to acquire the said lands for the school, undertaking to meet the cost of acquisition from out of municipal funds. The State Government thereupon issued a notification in the Gazette u/s 4(1) of the Land Acquisition Act. The notification was published on 26th March, 1970. It set out the purpose of the acquisition, the particulars of the lands to be acquired and the names of the person interested in the lands. The Special Deputy Tahsildar (Land Acquisition) Town Planning, Coimbatore was named as the authority to discharge the functions of the Collector under the Land Acquisition Act in relation to this acquisition. Following the Gazette Notification, the Special Tahsildar caused public notices to be displayed in the village chavadi and the municipal office. The notification of acquisition was also broadcast in the locality by beat of tom-tom. The lands notified belonged to a number of persons as co-owners. In response to the public notices, a few of them came forward to file their objections before the Special Tahsildar, objecting to the acquisition of their lands for the school. The Tahsildar held an inquiry into the objections on 17th June, 1970, 4th July, 1970 and 14th July, 1970. At the conclusion of his inquiry he forwarded the proceedings along with his recommendations to the

Government. On 28th April, 1971, the Government published a declaration in the Gazette declaring that the lands notified were required for the extension of the municipal school, The Tahsildar there upon took orders from the Government for acquisition and proceeded to conduct the inquiry into compensation to be awarded to the persons interested in the lands. At the conclusion of the inquiry, he announced his award of compensation on 8th March, 1972. He followed it up by sending notices of the award to such of those persons who were not present at the time he made the award. Among the absentees who received notices of the award were Padmavathi and Bheema Raju, who are the two writ petitioners before us.

8. In the events that happened, as narrated above, the complaint of the petitioners before us is that proper notice of the acquisition had not been given to them by the Tahsildar. It is not the petitioners' case that no public notices were at all published by the Tahsildar following the Government's notification in the Gazette. Nor do they contend that the manner of their publication fell short of the legal requirements. Their one and only grievance is that the Tahsildar did not give them any individual notices informing them about the Government's preliminary notification for acquisition. Their complaint before us is that there by they had been deprived of the opportunity of objecting to the acquisition at the right moment and of availing themselves of the inquiry held by the Tahsildar.

9. In the counter-affidavits filed in this Court on behalf of the Special Tahsildar and the State Government there is no denial of the allegation in the writ petition that the petitioners were not served with any individual notices of acquisition immediately following the preliminary notification by the Government in the Gazette. Nor do the records, which we had an opportunity to peruse at the hearing, show that any such notices were addressed by the Tahsildar to the writ petitioners or, for that matter, to any of the other persons interested in the lands in question. It may, therefore, be taken as a fact that apart from public notices, no individual notices were given to the petitioners informing them about the Government's preliminary notification. Even so, the case of the respondents is that on that account the whole course of the subsequent proceedings for acquisition could not be held to be invalid. It was pointed out that the public notices, in response to which some of the persons interested had filed their objections, must

be held to be adequate notice under the law to all the persons, concerned, including the petitioners.

10. The question for our consideration, then, is whether it is a necessary requirement of the law that owners of land should receive individual

notices from the Land Acquisition Collector of the Government's intention to acquire the land for a public purpose, so as to enable them, if they so

chose, to object to the acquisition. The further question is, whether the acquisition proceedings would be invalid if such individual notices were not

given to the persons interested in the land. The answer to these questions must be found, first, in the provisions of the Land Acquisition Act, 1894.

Section 4(1) of the Act, which is the pertinent provision in this regard, is in the following terms:

Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for a public purpose a notification

to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at

convenient places in the locality.

11. The section deals with the genesis of the proceedings for compulsory acquisition. The appropriate Government must first be satisfied that any

land in a given locality is needed, actually or potentially, for a public purpose. If the Government is so satisfied, then a notification to that effect has

to be published in the Gazette. The section does not require that even for the initial formation of its opinion that the land is needed for a public

purpose, the Government should send notices to the owners of the land, convene them, and listen to their objections. The satisfaction of the

Government both as to the needs of public purpose and as to the particular land that would satisfy those needs is purely a subjective satisfaction.

The Gazette notification is to be issued solely on the basis of this subjective opinion of the Government. What should follow the gazette notification

is also laid down in the section. It provides that the Collector should cause public notice of the gist of the Government's notification in convenient

places in the locality. The marginal note to the section sums up the procedure correctly when it refers to "publication of preliminary notification."

Public notice by the Collector is mandatory, as might be seen from the use of the word "shall" in the section. He would be failing in his duty if he did

not cause public notice to be displayed in convenient places in the locality. Failure or omission to comply with this step in the procedure for

acquisition would invalidate subsequent proceedings, and any person aggrieved would have a right to move the Court under Article 226 of the

Constitution to have them quashed, vide observations of the Supreme Court in State of Mysore and Others Vs. V.K. Kangan and Others, ,

wherein this position is clearly laid down, although the person aggrieved in that case was not allowed to challenge the proceedings on this ground,

on account of unreasonable delay.

12. In the present case, as we had earlier pointed out, the writ petitioners do not seek to challenge the acquisition proceedings on the score that no

public notice was given as required by Section 4(1), or even on the ground that the public notice as actually given by the Collector fell short of

what is contemplated by the section. Their grievance is that the Collector did not personally inform them about the Gazette notification by issuing to

them individual notices containing the gist of the Government's decision to acquire the lands in question for a public purpose. This argument,

manifestly, could not be founded on the words of Section 4(1). This is because the section, while being positive about the Collector's duty to give

public notice in that locality stops short with that provision. It does not impose on the Collector any other positive duty in regard to notice of the

Government's Gazette notification. Sub-section (2) of Section 4 deals with the next step in the procedure for compulsory acquisition, and it begins

with these words, ""Thereupon, it shall be lawful for any officer, etc."" These words are an indication that the issue of Gazette notification and

publicising of the Gazette notification by display of public notices in the locality are both intended to exhaust the process of notice-giving at the

preliminary stage. There are other indications, too, in Section 4(2) to the same effect. The sub-Section provides that on the publication of the

Government's preliminary notification in the Gazette and the Collector's public notices in the locality, the Government may authorise any of its

officers to enter upon and purvey the lands in the locality and to do any acts necessary to ascertain whether the land notified for acquisition for the

avowed public purpose is suitable for that purpose. The Government might, under this sub-section authorise its officers to enter any building or

dwelling-house or any enclosed Court or garden attached thereto. But the proviso to Section 4(2) clearly enacts that this power of entry of residential buildings etc., cannot be exercised by the officers without previously giving the occupier of the premises at least seven days' notice in writing of his intention to do so. The reference to notice in this proviso is specific and detailed. It requires that the notice should be in writing, it should be addressed to the occupier, it should be served on him personally, and it should give him seven days' time. The proviso, no doubt, dispenses with notice as unnecessary wherever the occupier himself consents to the inspection of the premises. But, short of obtaining the occupier's consent, the power of entry can be exercised by the officers authorized in that behalf only after service of individual notices on the occupier. How the notice on the occupier is to be served is dealt with by Section 45(1), which provides that in the case of a notice u/s 4 it shall be effected by "the officer therein mentioned" by delivering or tendering a copy thereof signed by him to the person intended to be served with the notice. Section 45(1) in terms, only refers to "Section 4", but it is obvious that this reference cannot appertain to any notice under Sub-section (1) of that section; it can only refer to the notice of intention to enter the premises issued to the owner or occupier of a residential house by officers generally or specially authorized in that behalf by the Government, in connection with the proceedings contemplated by Section 4(2) and the proviso thereto.

13. On the terms of Section 4(1), therefore, there can be no scope for assuming that the Collector's statutory obligation to publicise the Government's preliminary Gazette notification for acquisition extends to the giving of individual notices to the persons interested in the lands notified for acquisition.

14. Mr. Ramalingam, learned Counsel for the writ petitioners, however referred to Section 5-A of the Act as an aid to the understanding of the true scope and intendment of the statute regarding notice of the acquisition even at the preliminary stage. In this case, the procedure u/s 5-A had not been dispensed with by any direction made by the Government in exercise of its powers u/s 17(4). Section 5-A would, accordingly have full force and effect. learned Counsel urged that u/s 5-A (1) any person interested in the

land notified for compulsory acquisition was at liberty to object to the acquisition, and, when once he lodges his objections, the Collector would be under duty bound to give him an opportunity of being heard.

learned Counsel proceeded to urge that the opportunity of being heard which Section 5-A conferred could only have meaning and reality if all the

persons interested in the land were first made aware of the desire of the Government to acquire the lands. According to learned Counsel, it was

implicit in Section 5-A that every one who had a stake in the land should be individually served with the notice of the acquisition. learned Counsel

referred, in this connection, to an unreported judgment of Ramaprasada Rao, J., in *S. Palani Gounder v. The Land Acquisition Officer, Omalur*,

Salem District W.P.No. 1686 of 1971, dated 31st January, 1973. The facts of the case are not necessary to be noticed. The conclusion of the

learned Judge was that individual notices to persons aggrieved must be given in every case. This position was derived by the learned Judge on his

construction of Section 5-A. He observed:

The very intention of Section 5-A of the Act is to give all persons interested in the land, which is subject to the compulsory process, to state their

objections and after such objections are received, the Land Acquisition Officer is mandatorily obliged to give such an objector an opportunity of

being heard either in person or by pleader. After giving such a full hearing, as contemplated u/s 5-A (2), the Land Acquisition Officer shall make

his recommendations and submit the case for decision to the appropriate authority.

15. It seems to us that the learned Judge has read more into the section than its language can bear. Section 5-A has three sub-sections. Under

Sub-section (1) any person interested in any land which has been notified u/s 4(1) is at liberty to object to the acquisition of the land within 30 days

after the issue of Gazette notification. Sub-section (2) requires that objection shall be made to the Collector in writing. It further provides that after

the receipt of written objection from any person interested the Collector shall give to him an opportunity of being heard either in person or by

pleader. It is also provided in the same sub-section that the Collector shall himself hear the objections. Apart from hearing the objections, the

Collector is also empowered to institute further inquiries. On the conclusion of

the inquiry, the Collector is to make a report to the Government containing a record of the proceedings and also his recommendations on the objections. Any decision that the Government might take on the objections is declared by this sub-section to be final. Sub-section (3) of Section 5-A merely lays down the locus standi of the objectors by inserting a special definition of the expression "person interested." But this definition is more or less a repetition of the definition in the interpretation clause contained in Section 3(b) of the Act. According to these provisions, a person shall be deemed to be interested in the land who would be entitled to claim an interest in compensation if the land were acquired under the Act.

16. The foregoing analysis of Section 5-A of the Act would show that the section deals not with the stage of notice of acquisition, but with a subsequent stage. We have earlier described Section 4(1) as marking the very beginning of the acquisition proceedings under the Land Acquisition Act. Section 5-A, no doubt, confers on the persons interested a right to object to the acquisition, but under Sub-section (1) this right has to be exercised by them within 30 days after the preliminary notification u/s 4(1). The prescription of a time-limit in Section 5-A (1) and its computation as of a fixed period after the notification u/s 4(1) clearly show that the provision deals with a stage subsequent to the stage of notification of the acquisition. The right to object, u/s 5-A, begins to operate from the date of the notification. The person objecting may file his objection on the very next day after the Gazette publication or on any day falling within a period of 30 days. By that time, the Collector may or may not have given public notices in prominent places in the locality in accordance with Section 4(1). Irrespective of the date of his public notice the Collector has to entertain the objections, provided they are filed within 30 days after the Gazette publication. This, again, shows that the right conferred by Section 5-A (1) has nothing whatever to do with the mechanics of notice which the statute contemplates for publicising the notification of the Government u/s 4(1).

We are satisfied that the right u/s 5-A (1), in content as well as in chronology, is a bare right to object to the acquisition. The section does not deal with any right, properly so-called, to notice of the acquisition itself.

17. Of what use, it was asked in argument, is a right to object, if the person

concerned does not know, and has no means of knowing, that his land has been notified for acquisition? This, however, is mere rhetoric, of a kind that a law reformer may properly employ to some purpose on the floor of the Legislature or in his published writings. But for lawyers and Courts whose task it is to interpret the legislative enactment, the answer must only be found in the words of the section or not at all. Ramaprasada Rao, J., had taken the view that it is implicit in Section 5-A that notices ought to go to all the individuals interested in the land. In our view, however, the language of Section 5-A, when read in juxtaposition to Section 4(1), does not bear any such implication being read into it.

18. Mr. Ramalingam made a reference to the statement of Objects and Reasons set out in the Bill which introduced Section 5-A in the Act in the year 1923. According to this statement:

The object of the Bill is to provide that a local Government shall not declare u/s 6 of the Act that any land is needed for a public purpose unless time has been allowed after the notification u/s 4 for persons interested in the land to put in objection and for such objections to be considered by the local Government.

19. We do not find even in this statement of Objects and Reasons any indication of an intention to enlarge the scope of the notice. It may be

observed that while Section 5-A was newly introduced by the Land Acquisition Amendment Act (XXXVIII of 1923), the provisions of Section

4(1) relating to notice were not subjected to any amendment whatever. Indeed, right from 1894, upto the present day Section 4(1) has remained

the same, in this regard. The Law Commission in its 10th Report, dated 26th September, 1958, had suggested an amendment of Section 4(1) in

the direction of liberalising the procedure for notice. Under the Law Commission's proposals.

the Collector shall cause--

(a) public notice of the substance of such notification to be given at convenient places in the locality in which the land is situated, and

(b) a copy of such notification to be served on the owner, and where the owner is not the occupier, also on the occupier, of the land.

20. These amendments, especially Clause (b), are yet to be written into the statute book. Till that time comes, we must construe and persist in

construing Section 4(1) only on its present terms. We would not be justified in writing into the section what properly is the function of future

legislation. The canons of statutory construction do not include anticipatory interpretation.

21. Reference was then made to Rule 1 of the Madras Land Acquisition Rules framed by the State Government in exercise of its rule-making

power u/s 55(1) of the Act. The said Rule is in the following terms:

Rule 1: ""Immediately after the publication of the notification u/s 4(1), the Collector shall issue a notice stating that the land is needed, or is likely to

be needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within 30 days

after the issue of the notification, a statement in writing of their objections if any, to the proposed acquisition. This notice should be published at

convenient places in the said locality, and copies thereof fixed up in the office of the Collector, the Tahsildar, and in the nearest Police Station.

22. This Rule does not so much as whisper anything about individual notices to the persons interested in the land. All it does is to repeat the

provisions of Section 4(1) and, by way of elucidation, make mention of the places where copies of the public notice should be exhibited.

23. It would appear that different States have different Rules on the subject of notice. In *Ajitsingh Vs. The State of Maharashtra and Others*, , a

Division Bench of the Bombay High Court had occasion to construe the relevant rule in force in the State of Maharashtra . In the course of their

judgment, the learned Judges observed that ""Neither Section 4 nor Section 5-A, contains any provision for the service of individual notice on any

person interested in the land sought to be acquired by a notification u/s 4."" They were, however, referred to Rule 1 framed by the Government of

Maharashtra. It was to the following effect:

Whenever any notification u/s 4 has been published but the provisions of the section have not been applied and the Collector has u/s 4(1) issued

notice to the parties interested, and on or before the last day fixed by the Collector in those notices in this behalf any objection is lodged u/s 5-

A(2): Firstly the Collector shall record the objection in his proceedings, secondly, the Collector shall consider whether the objection is admissible

according to these rules.

24. Before the learned Judges, there was no dispute that this rule formed part of the statutory rules made by the State Government in exercise of its

powers u/s 55(1) of the Act and hence it had the force of law. Proceeding to construe the rule, the learned Judges held that the words ""the

Collector has, u/s 4(1), issued notices to the parties interested"" clearly indicated that individual notice should be given to all the parties interested in

the land. Since such notices were not given to the writ petitioners before them, the learned Judges quashed the proceedings.

25. Whether or not the conclusion of the learned Judges is justified on the construction of the words of Rule 1 of the Maharashtra Rules is not for

us to say. So far as the relevant Rule in force in this State is concerned we have no doubt whatever that it does not envisage or contemplate, much

less expressly provide, that individual notices shall be addressed to all the persons interested in the land, in addition to the publication of notices in

prominent places in the locality.

26. learned Counsel referred us, in this connection, to a decision of the Supreme Court in *State of Mysore and Others Vs. V.K. Kangan and*

Others, . The Supreme Court in that case was concerned with the question of validity of Rule 3(b) of the Madras Land Acquisition Rules. This

Rule provided that the Collector, while conducting an inquiry u/s 5-A (2) of the Act, must also issue notice of the hearing to the Department at

whose instance the land was proposed to be acquired. In the case before the Supreme Court the Collector did not give notice to the Education

Department, which was the concerned Department interested in that acquisition. It was argued that Rule 3(b) was not mandatory, and, if it was, it

would be against the provisions of Section 5-A (2) which invested the Collector with a complete discretion in the matter of conducting the inquiry,

his only statutory obligation being that he should serve the notice of the inquiry on the persons who had lodged their objections. This argument was

repelled by the Supreme Court. The learned Judges held that the concerned Rule 3(b) was not only intra vires the Act, but also mandatory in

character.

27. We do not see how this decision can be relied on as authority for the position that the persons interested in the land must be given individual

notices of the intended acquisition. The provisions of Rule 3(b) and Section 5-A,

with which the Supreme Court was concerned, deal with a stage in the compulsory acquisition proceedings which, as we have shown earlier, is subsequent to the issue of the gazette notification by the Government u/s 4(1). While Section 4(1) and Rule 1 are obviously intended to facilitate objections to be lodged by the persons interested in the subject-matter of the acquisition, neither Section 4(1) nor Rule 1 contemplates that the Collector should serve individual notices on the persons interested in the lands. Under the scheme of Section 5-A the question of sending individual notices to persons hardly arises until the proceedings reach a stage when objections are actually lodged with the Collector and an inquiry into these objections has to be gone into by him. Besides, even at the stage when the Collector has taken the objections on file, his obligation u/s 5-A (2) to send notices of inquiry does not extend to all persons interested in the land, but is limited only to those of them who had lodged their objections before the Collector within 30 days of the gazette notification. It follows, therefore, that for the purposes of seeing whether or not the initial notices of acquisition should be served individually on all the persons interested in the land, we would not have to be searching the provisions of Section 5-A or of the relevant rules bearing on Section 5-A, but have to look only to Section 4(1) and Rule 1 for the purpose. The decision of the Supreme Court cited above is not addressed to any question touching the notice of acquisition, but is concerned rather with the subsequent notice of the inquiry which is taken up by the Collector after he receives the objections on file.

28. Mr. Ramalingam then pressed before us the contention that, notwithstanding the absence of any specific provision in the Act or in the Rules in force in this State for sending individual notices of acquisition to persons interested in the land at the stage of proceedings u/s 4(1) of the Act, such notices must be given even at that particular stage, since they are required to be given under executive instructions issued to the officers concerned by the State Government. He relied on a circular issued by the State Government in G.O. No. 196 Revenue, dated 6th February, 1926, set out at pages 84 and 85 of the Land Acquisition Manual (1961). Paragraph 1 of the circular states as under:

The statutory rules framed under the Act, require that immediately after the

publication of the notification u/s 4(1) the Collector shall issue a notice calling on all persons interested in the land to prefer in writing their objections, if any, to the acquisition. The notice should be published at convenient places in the locality and copies thereof should be affixed to the notice boards in the offices of the Collector and Tahsildar and in the nearest Police Station".

29. The above passage is more or less a repetition of Rule 1 of the Land Acquisition Rules. But the G.O. lays down the following further instructions:

The notice should also be served individually on every person known or believed to be interested in the land to be acquired in the manner prescribed by Sub-sections (3) and (4) of Section 9.

30. It is this last passage on which Mr. Ramalingam places strong reliance. According to him, these instructions issued by the Government are binding on the Collector, and since they were not complied with in the present case, the acquisition proceedings must be held to be invalid.

31. learned Counsel supported the aforesaid contention on the basis of the decision of Palaniswami, J., in I. Easwara Pillai and Others Vs. The State of Tamil Nadu and Another, , to which we have made reference at the beginning of this judgment. In that case the Collector had already entered upon his inquiry u/s 5-A (2). The question before the learned Judge was whether the Collector was under a duty to issue a notice to a person interested in the land who had not lodged his objections u/s 5-A (1), but whose interest in the land had subsequently come to the knowledge of the Collector in the course of the inquiry u/s 5-A (2). It appears that in the notification u/s 4(1) the name of Ayyappan Pillai figured as the owner of a particular item of land which was included in the subject-matter of acquisition. Actually, however, this item of land had long ago been partitioned and been allotted to the share of Ayyappan's sons, prior to the notification u/s 4(1).

Accordingly, when notice of inquiry u/s 5-A (2) was served on him, Ayyappan appeared before the Collector and placed the Correct facts relating to present ownership of the land. The Collector omitted to act on that information and did not direct notices to be served on Ayyappan's sons. He proceeded, instead to continue the inquiry u/s 5-A (2) in their absence.

Subsequently, a draft declaration was made u/s 6(1), and further proceedings were taken for inquiry into the compensation. At this stage, the sons of Ayyappan approached this Court and sought for a certiorari to quash all the proceedings taken by the Collector subsequent to the notification u/s 4(1). Their contention was that the Collector was bound to serve individual notices on them of the inquiry u/s 5-A (2), giving them an opportunity to object to the acquisition, considering that he knew that they were the real owners of the land which had been notified by the Government for acquisition. Before Palaniswami, J., reliance for the petitioners was mainly placed on Board's Standing Order No. 90, which, in turn was based on G.O. No. 196, Revenue, dated 6th February, 1926, issued by the State Government portions of which we have set out earlier in this judgment. The Board's Standing Order is to be found at page 41 of the Land Acquisition Manual and it contains inter alia, the following instructions:

Besides publishing the notice as prescribed in Rule 1 of the Appendix, the Collector should see that the individual notices are served as far as possible on every person known or believed to be interested in the land to be acquired in the manner prescribed by Sub-sections (3) and (4) of Section 9 of the Land Acquisition Act, I of 1894".

32. A foot-note to the Standing Order shows that the source of the Board's instructions was to be found in G.O. No. 196, Revenue, dated 6th February, 1926.

33. In the course of his examination of the relevant provisions, Palaniswami, J., observed that neither the G.O. nor the Board's Standing Order could be regarded as a statutory rule made u/s 55 of the Land Acquisition Act. The learned Judge noticed that for exercise by the Government of its rule-making power u/s 55 there were certain requirements to be fulfilled and formalities to be observed in order that the Rules may acquire "the force of law". Those are: (i) previous publication of Rules in draft form, and (ii) final publication of the Rules in the Gazette. The learned Judge recognised the legal position that a Board's Standing Order or an executive direction by the Government cannot be equated to a statutory rule made by the Government u/s 55. Nevertheless, the learned Judge took the view that the instructions contained in the G.O. and the Board's

Standing Order had "statutory force". According to the learned Judge, the instructions issued by the Government and the Board of Revenue and

incorporated, in the Land Acquisition Manual could not be dismissed as those emanating from a superior official to a subordinate official. The

learned Judge further observed that the instructions which related to the issue of individual notices to the persons interested in the land obviously

satisfied the principles of natural justice. On these reasonings, the learned Judge held that any violation of the instructions contained in the Board's

Standing Orders would give rise to a cause of action to a person aggrieved and this Court would have jurisdiction to interfere under Article 226 of

the Constitution. In this view of the matter, on the admitted fact that the petitioners were not given individual notices of the acquisition, the learned

Judge quashed all the proceedings in that case subsequent to the notification u/s 4(1) of the Act.

34. With respect, we do not subscribe to the view of Palaniswami, J. The Board's Standing Order No. 90, on which the learned Judge relied,

forms part of the Land Acquisition Manual prepared by the Government of Tamil Nadu. The introduction to the Manual states that the scope of

the Manual is to present in a form readily available for reference by the Officers responsible for land acquisition proceedings, information relating to

general principles and details of the procedure to be followed at each stage of the proceedings. Board's Standing Order Nos. 90 and 91 are set

out in Part II of the Manual. Board's Standing Order No. 90, with which we are concerned, relates to acquisition of land for public purposes. It is

divided into many sections. Section 2 is entitled Preliminary Proceedings. Paragraph 9 in Section 2 contains the relevant instructions that "besides

publishing the notice as prescribed in Rule 1, the Collector should see that individual notices are served as far as possible on every person known

or believed to be interested in the land to be acquired".

35. Neither the Board's Standing Order nor any other part of the Land Acquisition Manual indicates under what authority these instructions had

been issued to the Collectors and other officers functioning under the Land Acquisition Act. The Board of Revenue at Madras is a statutory

authority whose powers and functions were defined for the first time in statutory form in the Madras Board of Revenue Regulation (I of 1803)

passed by the Governor-General-in-Council on 1st January, 1803. It appears from the preamble to the Regulation that prior to the establishment of Courts of judicature in the Presidency for administering justice in all cases, civil and criminal, it was usual for the Board of Revenue to exercise judicial authority in the determination of certain cases of a civil nature by way of appeals from the Collectors Who were entrusted with the administration of revenue and dispensation of justice in their respective districts. After the establishment of Courts of judicature it was decided that the judicial authority theretofore being exercised by the Board of Revenue should be formally abrogated and the powers and authorities of the Board of Revenue should be re-defined in respect of its executive administration of the revenue. Accordingly, Sections 4 and 5 of the Regulation enacted the duties of the Board of Revenue and its powers of superintendence and control of persons employed in the executive administration of revenues. Section 4 enacts that the duties of the Board of Revenue have been, and are declared to be, (i) the general superintendence of the revenues from whatever source they may arise, and (ii) the recommendation of such propositions to the State Government and in their judgment may be calculated to augment or improve those revenues. Section 5 enacts that the Board of Revenue had, and are declared to have, authority to superintend and control all persons employed in the executive administration of the public revenue, all zamindars or proprietors of land paying revenue, and all farmers, securities, raiyats or other persons concerned in, or responsible for, any part of the revenue of Government, as far as the said superintendence and control may relate to the executive administration of the revenue under the regulations now enacted, or to be hereafter enacted. Section 33 of the Regulation enacts that the Board of Revenue shall be responsible that the executive officers employed under them discharge the duties of their respective stations with assiduity and for that purpose the Board shall require the officers to pay ready and implicit obedience to all its orders and regulations. To the same end, the Board was empowered to punish, at its discretion any neglect on the part of such officers.

36. The above provisions make it clear that the Board of Revenue is only concerned with the superintendence of the revenues of the State from

whatever source derived. Its powers of superintendence and control are limited to the persons employed in the executive administration of public revenue, and even those powers only relate to the control of the executive administration of revenue under the appropriate regulations. Even its disciplinary jurisdiction is confined strictly to the subordinate officers of the revenue. The subject of compulsory acquisition of land for public purposes is by no means connected with the administration of the revenue of the State. Payment of compensation out of the coffers of the State may have to do with the expenditure of the revenues, but what Regulation I of 1803, has entrusted to the Board is the raising of the revenues from whatever source derived. The Board's position at the summit of the revenue administration cannot give it, on that account and without more, a similar position in the hierarchy of officials entrusted by the law with the implementation of the land acquisition proceedings. If the Board claims any powers of superintendence, control and administration over the Land Acquisition Collectors and their subordinates that must be spelled out from the provisions of the Land Acquisition Act itself or from any other express piece of legislation on the subject. We have not come across any piece of legislation in which the Board of Revenue has been given any powers as respects proceedings or officers under the Land Acquisition Act. As for the Land Acquisition Act itself, it is quite remarkable that in all its various provisions there is not a single place in which the Board gets so much as a passing mention. The authorities exercising powers and functions under the Land Acquisition Act are three in number, but the Board of Revenue is not one of them. The three authorities, in fact, are the Government, the Collector and the Courts of Law. Besides, the Act establishes a direct link between the Collector and the Government for certain purposes and between the Collector and the Courts for certain other purposes. Subject to the authority of the Government in regard to certain matters, on the one hand, and subject to the Courts jurisdiction in certain other matters, on the other, the Collector is all-in-all under the Act and the Board is nowhere in the picture. The Collector, for purposes of the Land Acquisition Act may be either the District Collector or any other officer specially appointed to perform the functions of a Land Acquisition Collector. Whatever departmental disciplines and loyalties to which the District Collector and other revenue officials might be subject as subordinates of the Board of

Revenue in so far as revenue administration is concerned, their status is that of distinctive statutory authorities once they begin functioning as

Collectors under the Land Acquisition Act. The first piece of legislation for compulsory acquisition of land was the Bengal Regulation (I of 1824)

which was applied with some modification to the Presidency of Madras for the first time by Act XX of 1852. The first all-India enactment was Act

VI of 1857 which was replaced by Act X of 1870 which ultimately yielded place to the present Land Acquisition Act of 1894. At no point in the

evolution of the statute law relating to land acquisition in this country has the State Board of Revenue figured as an authority entrusted by the statute

with any powers or duties or functions connected with compulsory acquisition of land for public purposes. The Legislature has apparently

deliberately provided for the appointment of the District Collector who is the head of the Revenue Administration in the District as the Land

Acquisition Officer while at the same time desisting from handing over the entire set up of the administrative machinery entrusted with

implementation of the provisions of the Land Acquisition Act, to the higher echelons of the revenue hierarchy.

37. That the Board of Revenue has no powers of superintendence or control apart from what the Board of Revenue Regulation or other statute

confers on it, is illustrated by a decision of a learned single Judge of this Court reported in K.M. Duraiswami Reddiar Vs. The Secretary of State

for India in Council and Others, . In that case, a person was appointed as village headman by the Revenue Divisional Officer. His order was

confirmed in appeal by the District Collector. Another individual whose claim was rejected by both the officers purported to file what he was

pleaded to describe as a second appeal to the Board of Revenue. The Board of Revenue allowed the appeal and set aside the orders of the

Revenue Divisional Officer and the District Collector. The person aggrieved against the Board's decision filed a civil suit to set aside the Board's

orders. One of the questions raised in the suit was whether the Board of Revenue had jurisdiction to interfere with the orders passed by the

Revenue Divisional Officer and the District Collector under the Madras Hereditary Village Offices Act, 1895. In second appeal, Wadsworth, J.,

held that the order of the Board of Revenue was illegal. Under the scheme of the Madras Hereditary Village Offices Act, 1895, whenever there

was a vacancy to an hereditary office, the Collector shall fill up that vacancy and that any dissatisfied claimant shall have the remedy of a suit before

the Collector to establish that he had a better right. Under the Subordinate Collector's Regulation, 1828, the powers of the Collector are to be

wielded in the first instance by the Revenue Divisional Officer, subject to revision by the Collector. In this statutory scheme, the learned Judge

considered the locus standi of the Board of Revenue to interfere in so-called second appeal or revision with the appointment of the Village Officer.

The learned Judge observed as follows:

The only power which can be claimed by the Board of Revenue is based on Section 5 of the Board of Revenue Regulation (I of 1803), whereby

the Board of Revenue is given authority to superintend and control all persons employed in the executive administration of the public revenue....

But I am emphatically of opinion that these general powers of superintendence did not authorise the Board of Revenue to arrogate to itself a power

of interference in revision or in second appeal from a statutory order, when machinery of the statute itself confers no such power....

The learned Judge further observed thus:

In my opinion, the order of the Board of Revenue purporting to act in second appeal or revision and to decide a matter which according to the

machinery of the Act should have been decided by a suit u/s 13 of Act III of 1895, was an illegal attempt to invade the vested rights of the plaintiff.

The above decision has been approved by a Full Bench of this Court in K. Nagarathnammal Vs. S. Ibrahim Saheb and Another, .

38. The same is the position in the present case under the Land Acquisition Act which is not only a special enactment but a complete code in itself.

We therefore, hold that the Board's Standing Order No. 90 relied on by learned Counsel for the petitioners has no statutory sanction.

39. Palaniswami, J., in I. Easwara Pillai and Others Vs. The State of Tamil Nadu and Another, , clearly observed that the instructions contained in

Board's Standing Order No. 90 were not issued u/s 55 and strictly speaking they are not statutory rules. The learned Judge, however, proceeded

to observe, ""But, nonetheless, the instructions have statutory force"". It is difficult to understand how the instructions of the Board, which are neither

statutory nor rules, could yet possess ""Statutory force"". In our opinion, the

only force that executive instructions can have, or hope to have, is executive force; they cannot have legislative or statutory force. u/s 55(3) of the Act, rules framed by the appropriate Government after following the requirements of that section, can alone possess the "force of law" and not any other instruments. We have earlier shown how the Board of Revenue has no place in the scheme of the Land Acquisition Act. Considered from that view-point, Board's Standing Order No. 90 cannot even claim the Status of executive instructions.

40. Before us learned Counsel for the petitioners did not rely so much on the Board's Standing Order No. 90. He relied rather, on the order passed by the State Government in G.O. No. 196, Revenue, dated 6th February, 1926, relevant portions of which we have extracted and set out in an earlier part of this judgment. But the question would still remain the same. Can the instructions issued by the Government have statutory force? The answer, to our minds must be in the negative. The G.O. relied on is found published in the Land Acquisition Manual in Part III entitled "General Principles and Procedure". The particular G.O. is included in Chapter V of Part III. Chapter I of Part III contains an order by the Government, G.O. Ms. No. 2475, Revenue, dated 4th March, 1946, which explains the scope and effectiveness of the instructions contained in that Part. This Gazette Order is published at page 77 of the Manual and is as under:

Rules have been framed u/s 55(1) of the Land Acquisition Act prescribing the procedure to be adopted to give full effect to the spirit of the amending Act, and these have the force of law. They have been further supplemented by executive instructions which though not having the force of law, yet bind the officers of the Government in their land acquisition work.

The above G.O. makes two things clear. (i) The instructions contained in Part III including G.O. No. 196, Revenue, dated 6th February, 1926 are not rules framed by the State Government in exercise of its powers u/s 55. (ii) The instructions have no legal force.

41. Apparently this order, G.O. No. 2475, dated 4th March, 1946, was not brought to the notice of Palaniswami, J. Quite apart from the recognition by the Government in this G.O., that the executive instructions issued by it have no statutory force, the true position in law of such

instructions could never have been in doubt. It was urged that the instructions by the Government are for the guidance of the officials. But under the peculiar terms of Section 55(1), which Palaniswamy, J., carefully noted, even instructions issued by the Government for the guidance of officers can have validity only if they are promulgated in the form of statutory rules, following the procedure and formalities laid down in Section 55. Even otherwise, assuming that the Government is not barred from issuing "extra-statutory" instructions for the guidance of its officers, those instructions can only be interpretative of the existing statutory provisions. In this context, the departmental interpretation must necessarily give way to judicial interpretation. What the Courts say of a statute is the law; by which is meant, not only that it is binding on all authorities entrusted with the task of administering the statute, but also that the Court's interpretation can be got over only by legislative amendment. In contrast, departmental or governmental interpretation of Acts of the Legislature have no such binding authority. Even the officers of the Government cannot excuse themselves from Court's interpretation by the protest that they are bound, under the departmental discipline, to obey their superior's instructions. It may be observed that whenever a question is raised before the Court on a matter of statutory interpretation, not only is the Court not bound by any executive instructions on the subject, but the Court will not even be swayed by the consideration that any action of an executive authority has been done under the colour of the authority of those instructions. We do not, therefore, concur with the views of Palaniswami, J., based, as they are, on the Board's Standing Orders or on the Government's instructions. In our considered opinion, Government literature on land acquisition procedure cannot be relied upon by the petitioners to support their contention that the acquisition proceedings in this case are invalid because they were not served with individual notices of acquisition immediately following the Gazette notification u/s 4(1).

42. Mr. Ramalingam, learned Counsel for the petitioners cited a decision of the Supreme Court in *Union of India (UOI) Vs. K.P. Joseph and*

Others, , to support the proposition that even executive instructions issued by the Government could confer rights on the subject and when those

instructions are not complied with by subordinate officials the subject would have a right to move this Court for redress. The question in that case

was, whether a general order passed by the Ministry of Defence on 15th July, 1960 applied to a clerk who belonged to ex-military personnel and

who was employed on the civil side. It was contended by the Central Government that the order was purely an administrative direction and it did

not confer any justifiable right on the official in question such as could be enforced by the issue of a mandamus by the Court. This contention

however was not accepted. The Supreme Court held that the order passed by the Defence Ministry must be regarded as supplementing the rules

framed under Article 309 of the Constitution of India and since they were not inconsistent with those rules, the instructions must be regarded as

governing the conditions of service of the concerned Government servant. It was in that context that the Supreme Court observed thus:

To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights

and impose duties.

We do not think that the above decision of the Supreme Court on the construction of Service Rules and instructions can have application to a case

like the present where the questions are: (i) whether the Board of Revenue can have locus standi to issue guidelines to officers functioning as

independent statutory authorities, and (ii) whether the Government could issue rules for guidance otherwise than u/s 55. Besides, their Lordships

have themselves expressly stated in the above decision that ""We should not be understood as laying down any general proposition on this

question.

43. The next major contention of the learned Counsel for the petitioners is that even if the Board's Standing Order No. 90 or the Government's

instructions in the Manual were to be held non-statutory yet the omission of the Special Tahsildar to give individual notices to the writ petitioners

and the other persons interested was in violation of the rules of natural justice and on this account, the subsequent proceedings taken by him must

be held to be void.

44. A Similar argument addressed before Palaniswami, J., in *I. Easwara Pillai and Others Vs. The State of Tamil Nadu and Another*, found

favour with the learned Judge and he observed as follows:

... rules of natural justice would have to be complied with in the absence of a

statutory provision. Violation of these instructions would result in denial of natural justice and would give rise to a cause of action to a person aggrieved by such denial.

The learned Judge relied on a decision of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and observed that the principle laid down by the Supreme Court in that decision would squarely apply to the case before him. The question which the Supreme Court had to decide did not arise under the Land Acquisition Act but under certain Service Regulations relating to recruitment. The question was whether the recommendations of a Special Selection Board for recruitment to the posts in Junior and Senior Scales in the Indian Forest Service was vitiated by the circumstance that the name of one of the members of the Selection Board itself figured in the list of persons to be considered for selection. The recommendations of the Selection Board were impugned on the ground of bias and as being opposed to the rules of natural justice, one of which lays down that "no man can be a judge in his own cause." It was urged before the Court, on behalf of the Union, that principles of natural justice would not apply to purely administrative decisions. The Court however repelled this argument holding that the observance of rules of natural justice extended to administrative decision-making as well.

45. We regard the above decision as authority for the position that the rules of natural justice are not confined in their application to judicial and quasi-judicial proceedings, but apply equally to administrative proceedings. But we do not understand the decision to lay down that even in cases where the statute elaborately deals with, not only the powers and functions of an administrative agency but also the particular procedures that that agency should follow in proceedings within its cognizance the principles of natural justice should be freely applied to test the procedural validity of the action taken by the administrative agency. That this was not the broad result intended is shown by the following observations of the Court:

What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever

a complaint is made before a Court that some principles of natural justice had been contravened the Court has to decide whether the observance

of that rule was necessary for a just decision on the facts of that case.

The question of the applicability of the rules of natural justices cannot, in our opinion, be judged de hors the provisions of the statute, and this

position is made clear by the Supreme Court in the above passage. Earlier in this judgment we have subjected the relevant provisions of the Land

Acquisition Act relating to notice of acquisition to detailed scrutiny. We have explained how under the very scheme of its various provisions the

Land Acquisition Act does not contemplate the issue of individual notices of acquisition to all the persons interested in the land at the preliminary

stage of Gazette notification. Our analysis of Section 4(1), supplemented by reference to the proviso to Section 4(2) read with Section 45(1) and

to Section 5-A by way of contrast, shows that the omission in the Act to provide for individual notices could not have been accidental. There are

other provisions too, such for instance, as Sections 9(4) and 12(2), which point to the same conclusion. These latter sections in the Act specifically

provide for service of individual notices on the persons aggrieved, in the context of the subsequent proceedings for determination of compensation.

The pattern which thus emerges is that of an Act which is deliberately choosy, to employ a colloquialism, in the matter of giving notices. Wherever

it was felt necessary and just to give individual notices, the Legislature had made clear and specific provision therefor; wherever it was felt that

public notice would more than meet the needs, having regard to the stage of the acquisition, the need for expedition and the requirements of public

purpose itself, the Legislature has stopped short with providing for public notice. That the stage of the Gazette notification u/s 4(1) is only the

preliminary stage of land acquisition is not only clear from the arrangement and contents of the sections in the Act, but also by decided cases on the

subject. It is also clear that the right to object to the acquisition conferred by Section 5-A on the persons interested in the land can be taken away

in any case of urgency by the Government making a direction u/s 17(4) to the effect that the provisions of Section 5-A shall not apply to the land in

question.

46. The Land Acquisition Act is a complete Code in itself. Hence, wherever in the

context of particular proceedings under the Act the Legislature

has not provided for individual notices, that must be regarded not as an accidental or inadvertent omission on the part of the Legislature to provide

for full procedure, which omission may be supplied by grafting the principles of natural justice to the relevant provisions, but as a deliberate

decision of the Legislature not to import the principles of natural justice, to the fullest extent, into those provisions.

47. learned Counsel for the writ petitioners cited the decision of the Supreme Court in *State of Gujarat and Others Vs. Ambalal Haiderbhai and*

Others, , which decided the scope of an inquiry under Rule 4 of the Land Acquisition (Companies) Rules (1963). Under the said Rule, the

Collector was to inquire into any application made by a company to the Government for acquisition of any land for its purpose. The Rule explicitly

made provision for hearing by the Collector of the company in question and also of representations from other Departments of Government. The

rule, however, contained no provision for any opportunity to be given, at that stage to the owners of the land sought to be acquired for the purpose

of the company. Even though the rule in question was silent regarding the mode of inquiry to be held by the Collector, the Supreme Court yet held

that in the interest of fair play, the Collector has to observe the principles of natural justice by affording the persons interested in the lands

reasonable opportunity of being heard and of adducing material before the Collector to refute the allegations of the company.

48. Our understanding of the above decision is that while the Rule contemplated an inquiry to be made by the Collector, since the procedure for

holding the inquiry was not fully laid down, the principles of natural justice could very well be inducted into the Rule for determining what the lawful

requirements of the inquiry should be. We do not think that the above decision of the Supreme Court has any application to Section 4(1). We have

earlier shown how, on its own terms, as well as in comparison with other provisions in the Act, the public notice contemplated u/s 4(1) must be

regarded as exhaustive of the mode of notice. The question of importing rules of natural justice would only arise where the statutory provision can

be held to have left gaps that are capable of being filled by the rules of natural justice, without doing violence to the legislative intentions deducible

from the terms of the relevant statutory provision .

49. We may refer in this connection, to a recent decision of the Privy Council in *Furnell v. Whangrei High Schools Board* (1973) 2 W.L.R. 92, as

to the proper approach that a Court of law must take whenever natural justice is invoked for the purpose of supplementing express statutory

provisions. The Privy Council held in that case that it is not the function of Courts to re-draft the code for the purpose of applying the principles of

natural justice.

Lord Morris, delivering the judgment of the Board,, quoted from a decision of the Canadian Supreme Court in *Brettin-ghaum-Moore v.*

Municipality of St. Leonards (1969) 121 C.L.R. 509, the following passage, as relevant:

The Legislature has addressed itself to the very question and it is not for the Court to amend the statute, by engrafting upon it some provision which

the Court might think more consonant with a complete opportunity for an aggrieved person to present his views and to support them by evidentiary

material.

50. Reference was also made to the judgment of Lord Reid in *Wisemann v. Borneman* (1971) A.C.297, and in particular to the following passage

in that judgment at page 308:

Natural Justice requires that the procedure before any Tribunal which is acting judicially shall be fair in all the circumstances... For a long time, the

Courts have without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary, for

this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and

that to require additional steps would not frustrate the apparent purpose of the legislation.

51. In *Pearlberg v. Varty* (1972)1 W.L.R. 534, another decision of the House of Lords, Lord Dilhorne quoted the above passage from Lord Reid

and proceeded to observe:

I respectfully agree. I would only emphasise that one should not start by assuming that what Parliament has done in the lengthy process of

legislation is unfair. One should rather assume that that has been done is fair until the contrary is shown"".

52. In our view, the Land Acquisition Act is a piece of legislation wherein is to be found not merely the policy of the Government to acquire lands

for public purpose, but also the means for giving effect to such a policy. In this situation, our function as a Court in relation to this enacted law is

limited to interpreting and applying its provisions. In the task of interpretation it is necessary for us to ascertain what the means are which the

Legislature has enacted for the purpose of achieving its policies. Having ascertained those means, effect must be given to those means and to no

other. We do not conceive it to be our function to add to the means which the Legislature has enacted merely on the score that the provisions do

not fulfil to perfection the dictates of natural justice.

53. We may quote the following general observations of Lord Diplock in *Director of Public Prosecutions v. Bhagwan* (1970)3 AII E.R. 97 , on

the scope of judicial construction of statutes interfering with subject's rights. The observations were made in a different context while considering a

different statutory situation, but we feel that they are apposite to the present purpose:

Under our system of Parliamentary Government what Parliament enacts are not policies but means for giving effect to policies. Those means often

involve imposing on private citizens fresh obligations or restrictions on their liberties to which they were not previously subject at common law. The

constitutional function of the Courts in relation to enacted law is limited to interpreting and applying it. It is the duty of the Judge to ascertain what

are the means which Parliament has enacted by the Act. In construing the enacting words he may take account of what the Act discloses as the

purpose that those means were intended to achieve and, in the case of ambiguity alone, he may interpret them in the sense in which they are more

likely to promote than hinder its achievement. But it is no function of a Judge to add to the means which Parliament has enacted in derogation of

rights which citizens previously enjoyed at common law, because he thinks that the particular case in which he has to apply the Act demonstrates

that those means are not adequate to achieve what he conceives to be the policy of the Act. To do so is not to carry out the intention of Parliament

but to usurp its functions. The choice of means is itself part of the Parliamentary choice of policy. It represents the price, by way of deprivation of

freedom to do or not to do as the wish, which Parliament is prepared to exact from individual citizens, to promote those objects to which the Act is

directed. To raise the price is to change the policy, not to give effect to it. If the policy is to be changed, it is for Parliament, not the Courts to

change it....

54. For the reasons stated above we do not feel persuaded to imply in the provisions of Section 4(1) and Section 5-A of the Act, the necessity for

issuing individual notices to persons aggrieved, promoted by consideration of natural justice. This means that the writ petitioners cannot make a

grievance of not having been individually served with notices of acquisition.

55. On these conclusions of ours we must reject the ruling of Palaniswami, J., in *I. Easwara Pillai and Others Vs. The State of Tamil Nadu and*

Another, as unacceptable. The learned Judge had referred in his judgment to two earlier decisions of learned single Judges of this Court, both of

them unreported. One of them was rendered by Kailasam, J. (as my Lord the Chief Justice then was) in *Meclec Nutriments & Pharmaceuticals*

Ltd. v. The State of Madras by the Secretary to Government, Home Department, Madras and another W.P. No. 1846 of 195 dated 7th

February, 1966. The other was by Ramakrishnan, J., in *The Associated Equipment Services (Registered) Partnership firm by its Partner K.P.*

Subramaniam v. The State of Madras, represented by the Tahsildar for Land Acquisition Special Indian Institute of Technology having his office at

Saidapet, Madras-15 W.P.Nos.1734, 1770 and 1771 of 1967, dated 27th July, 1967. Palaniswami, J., felt that neither decision laid down the

law correctly and, in that view felt free to differ from them. As we shall show presently, the views expressed in the two unreported decisions

eminently merit acceptance both on principle and on precedent.

56. The earlier of the two unreported decisions arose in a case where the owner contended that there was no proper publication of the notification

u/s 4(1) of the Act. It was further contended that the property notified for acquisition was under mortgage, and the Collector should have given

notice personally to the mortgagee. Dealing with the latter contention Kailasam, J. observed:

Regarding the contention that there was no proper notice to the petitioner or to the Hyderabad Investment Trust, it has to be mentioned that neither

Section 4(1) nor Section 9(1) contemplates service of any personal notice on the owner or occupier of the land that is sought to be acquired.

57. Referring to the nature and scope of the notice u/s 4(1), it was observed:

The notice contemplated at this stage is only a public notice at convenient places in the locality.

58. Elaborating the theme at a later part of the judgment, it was observed as follows:

The plea of the learned Counsel for the petitioner that Section 4(1) read with Section 45 contemplates service of notices on the person in

occupation or interested in the property cannot be accepted for there is no mention of service of any personal notice u/s 4. What is contemplated

u/s 45 is that service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice u/s 4, by

the officer therein mentioned. The proviso to Section 4(2) states that no person shall enter any building without giving the occupier at least seven

days notice in writing of his, intention to do so. So far as the notice u/s 4(1) is concerned, it is not required that it should be served on any person.

59. In this view, among other considerations, the writ petition in that case was dismissed. The comment of Palaniswami, J., on the above decision

is that there was no consideration by the learned Judge of the executive instructions and the Board Standing Orders bearing on the subject of

notice u/s 4(1). We have earlier expressed the view that those instructions have no legal efficacy. On the terms of Section 4(1) the views expressed

in the above unreported judgment are those with which we fully agree.

60. Ramakrishnan, J., in the course of his judgment in the other unreported case referred to by us, adverted to the Rules made by the State

Government under the Land Acquisition Act. He observed that ""these Rules prescribe only for the publication of notices at convenient places in the

locality, in the office of the Collector, the Tahsildar and in the nearest Police Station. But individual notices to the persons interested in the land are

not enjoined either by the Statute or the Rules."" While concluding, Ramakrishnan, J., referred to the earlier unreported decisions of this Court in

these terms: ""That such individual notices are not obligatory is the view held by this Court in earlier decisions: Vide unreported decisions in W.P.

Nos. 1846 of 1965 and 219 of 1963. The learned Judge also adverted to the

executive instructions on the subject found at pages 41 and 85 of the Land Acquisition Manual, but the learned Judge's view seemed to be that the provision of individual notices in those instructions was only "by way of abundant caution". It is not clear as to what the learned Judge meant to indicate by this description. It is, however, quite clear that the learned Judge was not prepared to quash the proceedings merely on the basis of the executive instructions, considering the view he had expressed as to the scope of Section 4(1) of the Act and Rule 1 of the Madras Land Acquisition Rules on the subject of notice.

61. While referring to the above decisions, Palaniswami, J., expressed the criticism that the learned Judge had not adverted to the terms of the statutory form of notice to be issued u/s 5-A of the Act. This is, no doubt, true, but, in our view, the statutory form of notice referred to by

Palaniswami, J., does not lead to the conclusion that the Act contemplates individual notices to be observed on the persons interested even at the

stage of Section 4(1) notification. The learned Judge himself concedes that "Section 5-A does not say that before holding an inquiry the Acquisition

Officer should issue notice to the persons interested". Form 3 is not a statutory form. Even Form 3, printed at page 262 of the Land Acquisition

Manual cannot bear the inference which the learned Judge has drawn from its contents. The form of notice no doubt calls upon "all persons

interested in the land are accordingly required to lodge within 30 days from the date of publication of the above notification a statement in writing...

etc." But there is nothing in the form to suggest that the notice in that form should actually be issued to each and every one of the persons interested

in the land. From the mere aspect of that which has been prescribed as the subject-matter of any given notice, we cannot proceed to draw any

conclusion as to the mode of service of that notice. The content of a notice is one thing: the mode of service of that notice is quite another. If the

Rules had really contemplated individual service of notices on all potential objectors u/s 5-A it should have been the easiest for the rule-making

authority to have so prescribed in explicit terms. However much the language of Form 3 can be strained, it cannot, in our opinion, lead to the

inference that notice in that form must be sent to all the persons interested in the land.

62. In view of the above considerations, we hold that the views expressed in the two unreported decisions of this Court are to be preferred to

those found in *I. Easwara Pillai and Others Vs. The State of Tamil Nadu and Another*, .

63. The last submission made by the learned Counsel for the petitioners relates to a subsequent stage of the acquisition proceedings, namely, the

stage of what is popularly termed as "the award inquiry." learned Counsel complained that the notices for the award inquiry were not properly

served on his clients. The provisions regarding the award inquiry are to be found in Sections 9 and 10 of the Land Acquisition Act. Section 9 deals

with notices to persons interested. It provides that the Collector shall give public notice at convenient places on or near the land to be taken, stating

that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him.

Section 9(2) requires that the public notice shall state the particulars of the land so needed, and shall require all persons interested in the land to

appear personally or by agent before the Collector at a time and place mentioned therein and to state the nature of the interest in the land and the

amount and particulars of their claim to compensation for such interests, as well as their objections, if any, to the measurements. Section 9(3)

contemplates that individual notices must be served on the occupier of the land and on all persons known or believed to be interested in the land.

Sub-section (4) provides that in the event of any such person residing elsewhere and having no agent in residence at the locality, then the notice will

have to be sent to him by registered post addressed to him at his last place of residence or place of business. Section 45, which specifically deals

with modes of service of individual notices, enacts that service of any notice under this Act shall be made by delivering or tendering a copy of such

notice. It further says that whenever practicable, service of the notice shall be made on the persons therein named. But when such person cannot

be found, service may be made on any adult male member of his family, residing with him, and if no such adult male member can be found, the

notice may be served by affixing the notice on the outer door of the house in which the person therein named ordinarily dwells or carries on

business, or by affixing a copy thereof in some conspicuous place in the office of the Collector or in the Court-house, and also in some

conspicuous part of the land to be acquired. Provision is also made, at the Collector's discretion, to send notice by registered post to the person

sought to be served, addressing him at his last known residence or place of business. The section provides that production of postal

acknowledgment would be good proof of service in such cases.

64. In the present case, the facts relating to the service of the notices of the award inquiry are to be found from the counter-affidavit filed by the

Special Tahsildar. He states that notices under Sections 9(1) and 10 of the Land Acquisition Act and 9(3) and 10 were published and served on

all the interested persons in accordance with the Statute. In so far as the petitioner Padmavathi in W.P. No. 746 of 1972 is concerned, it is stated

that since she was out of Coimbatore, the notice u/s 9(3) was served by affixture. In the case of the other petitioner in W.P. No. 889 of 1972, the

counter-affidavit filed by the Deputy Secretary to Government, Education Department states that the notice under Sections 9(1) and 10 and 9(3)

of the Act were published and served on all the interested persons in accordance with the terms of those provisions. As for the notice directed to

Bheema Raju, it is stated that the notice intended for him was received by his father, Chinnaswami Chettiar, who acknowledged the receipt of the

notice on behalf of his son.

65. The above facts set out in the respondents counter-affidavits have not been controverted before us. However, it is the case of both the writ

petitioners that the notices were not actually served on them personally. Padmavathi, in her affidavit in support of her Writ Petition No. 746 of

1972, states that the land, which is the subject-matter of acquisition in T.S. No. 3978, Oppanakkara Street, Coimbatore Town is owned by 10

persons, being herself, her three sisters, her five brothers and her mother, all of whom are entitled to the property as co-heirs of her father. She

further states that while a portion of the premises had been let out to a tenant, the remaining portion ""is set apart for our personal occupation as and

when we visit Coimbatore where our mother Kamalammal is permanently residing there"". Bheema Raju, in his affidavit in W.P. No. 889 of 1972,

states that T.S. No. 3980 of Oppanakkara Street, Coimbatore Town, in which he is interested as a co-owner, belongs to his family consisting of 7

members, namely, the petitioner's father, the petitioner, his brother and four

sisters. He further states that a portion of the house property had been let out to a tenant, and in the remaining portion the petitioner's family is permanently residing. It is further stated that a portion of the premises is set apart for the petitioner's sisters whenever they visit Coimbatore Town.

66. We are satisfied that the services of notices u/s 9(3) read with Section 45 have been validly made on the petitioner on the basis of their own affidavits in support of the writ petitions. Section 45(3) provides that when a person named in the notice cannot be found, service may be made on any adult male member of his family residing with him. On the admission made by Bheema Raju that his father was residing with him in his family house service of notice on the father is a valid service of notice on the petitioner himself. In the case of Padmavathi, since she was not found in the residence at the time when the notice was sought to be served on her, the notice-server, affixed a copy of the notice at the residence. It was argued that the house in question was not her residence, but this cannot be accepted, in the face of the admission made by her in the affidavit that whenever she visited Coimbatore she used to stay in the house and a portion in the house was specially reserved for such stay. Law does not say that a person can have only one ordinary residence. A person can have more than one ordinary residence, and service of notice at any one of the residences would be good service u/s 9(3) read with Section 45. In these circumstances the contention that service of notice u/s 9(3) was not proper must also be rejected as untenable.

67. It would be appreciated that the contentions raised by the petitioners are all in the nature of mere procedural wrangles. The writ petitioners have not raised before us any contention either that the purpose of the acquisition is not a public purpose, or that the land sought to be acquired would not be suitable for that public purpose. Undoubtedly, the expansion of the Municipal elementary school must fall within the conception of a public purpose. Undoubtedly, again, the requirements of expansion can be fulfilled in this case in no other way then by acquiring the adjacent lands on either side of the existing premises, short of asking the school to shift its present premises bag and baggage and plant it elsewhere in the Town. Perhaps because the petitioners have no case on merits, they have been hard put to it to raise technical contentions, concerning notice, service,

etc., which after consideration we have rejected in the foregoing paragraphs.

68. In the circumstances, the writ petitioners are dismissed, but again in the circumstances, without costs.