
(1969) 12 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 364 of 1964, 734, 1189 and 1967 of 1965 and 1771 of 1966

Pithana Apprao

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 31-12-1969

Acts Referred:

Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 — Section 15, 3, 3(1), 4, 6
Constitution of India, 1950 — Article 14, 31(2)

Citation : AIR 1970 AP 318

Hon'ble Judges : Kumaraayya, C.J.;Gopal Rao, J;Ekbote, J;Chinnappa Reddy, J

Bench : Full Bench

Advocate : M. Jagammadha Rao, C.V. Narasimharao, G.V.L. Narasimharao, S. Ramlingeswara Rao and T. Ramachandra Rao, for the Appellant; A.G. and Principal Govt. Pleader, for the Respondent

Judgement

Gopal Rao Ekbote, J.—These petitions filed under Article 226 of the Constitution of India question the validity of the notifications issued under S. 3 of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act. 1956, hereinafter called "the Act". The main attack in all these petitions is on the validity of the Act itself under which the impugned notifications were issued. These petitions raise common questions of law. They can therefore conveniently be disposed of by a common judgment.

2. A Bench of this Court thought that important questions involving far-reaching consequences both to the State as well as to the citizens are involved in the petitions which challenge the constitutional validity of the Act and has referred these cases to a Full Bench. That is how the matter has come before us. The attack on the validity of the Act is twofold; (1) under Article 14 and (2) under Article 31(2) of the Constitution.

3. The first contention of the learned Advocates appearing for the petitioners is

that the Act is offensive of Article 14 inasmuch as it gives different treatment to the lands situated in the slum area and the lands situated outside such area without any reasonable basis for such discrimination. The classification, it is argued is unreasonable and has very little nexus with the object it seeks to achieve.

4. It is not in doubt that the Land Acquisition Act, 1984 is a general law on the topic of acquisition for public purpose. The law is general because its provisions embrace the whole subject of acquisition of immovable property, the object of such acquisition being for public purpose. It is applicable to the whole of India.

5. On the other hand, the impugned Act is a special Act. Its object is to acquire land for the purpose of slum improvement which purpose although a public purpose is given a special treatment in the Act. From the point of view of object, therefore, it is special in its nature. The subject-matter of the Act also deals with acquisition of land situated only in slum areas. Thus from both the points of view of subject matter as well as object, the Act is a special Act.

6. The question which falls for out determination therefore is whether the impugned Act is ultra vires of Art. 14 of the Constitution. The contention was that under the general law of acquisition when land in slum areas also can be acquired for the purpose of improving the slums, by enacting the impugned Act which provides comparatively a lesser compensation and deprives the land owners of solatium it gives a discrimination treatment to the land owners of the slum area and land owners outside it. It was also contended that the Act leaves an uncontrolled and unregulated discretion with the Government to acquire lands either under the general law of acquisition or under the impugned Act. It is therefore violative of Article 14.

7. It is now not in dispute that when an Act is assailed as class or special legislation, the attack is usually based on the claim that there are persons or things similarly situated to those embraced in the Act, and which by the terms of the Act are excluded from its operation. the present contention also is based on such a claim.

8. The question then is whether the persons or things embraced by the impugned Act form by themselves a proper and legitimate class with reference to the object and purpose of the Act. Constitution forbids class legislation. But, it does not forbid a reasonable and proper classification of the object of legislation. There is no prohibition in the Constitution to enact a special law in a case where the general law of the same subject exists. Although thus the Land Acquisition Act is a general Act, its existence does not forbid the State Legislature from enacting a special legislation operating within a restricted field. There is, however, a restriction that such a law should not be discriminatory so as to attract the wrath of Article 14. Article 14 provides that a law shall have uniform operation so that an equal protection of the laws shall not be denied to any person. This Article naturally has given rise to problems of classification.

9. A valid classification must include all who "naturally" belong to the class, all who possess common disability, attribute, or classification and there must be some natural and substantial differentiation between those included in the class and those it leaves untouched. Such a classification moreover must have nexus with the object sought to be achieved.

10. Every classification selects from the totality of the object that the which has significance for the particular legislation the classifier has in mind. Time with its tides brings new conditions which must be cared and met for by new and special laws. And it is not unnatural that sometimes the new conditions affect comparatively a smaller or a bigger section of the population. If so, the special statute which intends to correct the situation may be as large or as narrow as the mischief Article 14 permits such special laws when there are special evils with which existing general law is found incompetent to cope. The special public purpose must therefore necessarily sustain the special statute. The problem in ultimate analysis is one of the legislative policy, with a wide margin of discretion always conceded to the legislatures.

11. It is of course true that in the case of plain abuse in regard to the classifications, the Courts will intervene. If the evil sought to be removed is merely fanciful, the injustice or wrong illusory, the High Court may interfere and strike the special statute down. What must follow is that if special circumstances have developed of such a nature as to call for a special law much a special Act will stand the test of Article 14. In other words, if the classification which the special Act makes it reasonable and founded on necessity or that it is based on health, morals and welfare, such a classification would not be violative of Article 14. If the Special law is uniform in operation and it applies equally to all the classes to which it relates and it has necessary nexus which the Act keeps in view, we fail to see how such a special law would be hit by Article 14 merely because a general law which once used to take in its fold the subject-matter of the special law continues to exist. As long as the special law operates within its limited field and so far as it is operative, its burdens and benefits bear alike upon all persons and things on which it operates, it would be complying with Article 14 of the Constitution.

12. Let us then examine whether the classification of slum area with an object of its improvement is without any reasonable basis and does not apply alike to all those belonging to the class who have land or building in the slum area.

13. The problem of slums is worrying all the growing towns and cities all over. In spite of some efforts on the normal lines it has remained one of the most baffling and complicated problems of the modern times. Its enormous magnitude and bewildering complicity in underdeveloped and haphazardly growing towns and cities in the State makes the task of tackling it really Herculean. It does not need much argument to conclude that a considerable population is living in slums which are totally unfit for human habitation. The overcrowded figures in the congested areas of towns and cities are simply appalling. Their eradication

involves huge sums and enormous efforts. If they are not tackled devising special methods no one can doubt that they will continue to crop up like cancerous growth notwithstanding the surgery that is performed on one or two units in the traditional and normal course. What is alarming is that with growth and expansion of industries in the cities the conditions of these slums are fast deteriorating.

In these circumstances, it is not at all surprising if the Legislature has come to the conclusion that the existing Land Acquisition Act has been found inadequate and incompetent to cope with this special evil. The slums are hovels of their wretched lives of physical misery and normal degeneration, places of dirt and turmoil, filth and squalor; where people live deprived even of fresh air, in darkness even in the broad day light leave alone of the basic amenities. Who can consider it as an undesirable classification if the Legislature has selected slum areas for a special treatment with an object of eradication these fast developing slums and relieve the large number of people living in most unhygienic conditions? Nor one can doubt that the public policy which found expression in the impugned Act is ill-conceived. It is a reasonable classification rationally related to the object which it seeks to achieve.

14. The object of the Act as it clear from the preamble is to improve slums. It states that there are a number of slum areas in almost every town in the State which ate a source of denture to public health and sanitation. It categorically mentions that under the existing law it has not been possible to provide for the basic needs of sewage, waster supply and road and side drains in slum area, without causing excessive financial strain on the owners of the lands affected. It is to obviate this difficulty that the special Act is made.

15. Act XXXIII of 1956 was passed originally by the Andhra Legislature and it received the assent of the President of India 7th November, 1956. This Act has been extended to the whole of the State of Andhra Pradesh by Act XL of 1961 which came into force on 13th November, 1961.

16. The Act defines slum area to mean any area declared to be a slum area u/s 3 (1). Section 3 (1) enjoins that were the Government are satisfied that any area is or may be a source of danger to the public health, safety or convenience of it neighbourhood by reason of the area being low lying in sanitary, squalid or otherwise, it may be notification in the Andhra Pradesh Gazette declare such area to be a slum area.

17. It is to such slum areas so declared that the provisions of the Act apply. The Act empowers the Government to acquire the land in the manner it provides for the purpose of improving the slum area.

18. If the general rules of valid classification as discussed above are applied to the Act, we have no manner of doubt that on g rounds of public health, convenience and necessity, which lie at the bottom of the Act, the classification slum area cannot be said to be an unreasonable classification. The impugned Act

applies beneficially to a particular class of people who are living in unhealthy and unhygienic conditions. It operates uniformly on all members who are the owners of the lands and buildings occupied by persons living in uncongenial atmosphere in the slum area. The classification, therefore, is germane to the subject of legislation and is not an arbitrary classification without regard to its just relation to the thing to be affected. There is no unreasonable discrimination towards members of the class covered by the impugned Act. The Act therefore, in our view, cannot be said to be violative of Art. 14.

19. The contention that the Government has been conferred with unregulated discretion to acquire land under the general law or under the impugned Act cannot prevail.

20. In this connection, it is worthwhile to remember that the Legislature in the exercise of its legislative capacity can extend, modify, vary or repeal Acts passed previously. It can also enact special enactments covering a special ground although there may exist a general Act embracing the special field also. It is true that this Court will consider the exact effect of the later Act upon the earlier one in order to see whether those Acts can wholly or in part stand together. There can be little doubt that the provisions or the scope of the earlier Act may be revoked or limited or abrogated in particular type of cases by a subsequent Act either from the express language used being addressed to the particular point or subject or from implication or inference from the language used. It is of course necessary to consider the impugned enactment with reference to the state of the law when it came into operation. Every Act is made for the purposes of either making change in the law or to make a special law its operation being limited to a well defined field. The operation of any such law is not to be impeded by the fact that its provisions wholly or in part are inconsistent with the earlier law as is argued in this case. Merely because the impugned Act provides lesser compensation or does not provide for solatium, it cannot be argued that no special enactment can be effected by the Legislature, unless of course there is legislative incompetency or it is violative of any fundamental right guaranteed by the Constitution.

21. It is not always necessary to hold that if the new Act is enacted in affirmative language but if it can well stand with the previous general law on the subject, the previous law is repealed. It depends upon the terms of the new statute as to how far as and to what extent the Special Act overrides the general law or makes it inapplicable. There is the principle of "curtailment without repeal, if the subsequent statute merely creates an exemption or exception from the operation of a previous statute or modifies its operation by the annexation, of the condition" the previous statute is not necessarily repealed, and prior enactment may be rendered inoperative without being actually repealed. See Caries on Statute Law page 373. In other words the general enactment is pro tanto avoided by an express enactment entirely or substantially applicable to a restricted purpose. The impugned Act therefore merely in specified cases and

fields intercepts the operation of the Land Acquisition Act, which a previous general law in regard to the acquisition of land and which remains in existence and unrepealed notwithstanding for all other purposes and in all other respects. What is clear is that the conflict between these two statutes although apparent because their objects are different, yet the language of each, in these circumstances would be restricted to their own object or subject.

If that is once realised, then it will be evident that these two enactments run in parallel lines without meeting and therefore any comparison of these Acts would be improper unless of course it is made for the purpose of finding out whether there is any violation of constitutional provision. Since these two Acts do not cover the same field, the question of attracting Article 14 cannot arise. We have therefore no doubt that while the general Act will continue to operate for general public purposes and the lands may be continued to be acquired under it, the impugned Act will operate only in regard to the slum area and land in such an area can be acquired only under this Act. Thus seen, the validity of the impugned Act cannot be left in doubt. The two enactments do not cover the same territory and consequently the question under Article 14 cannot arise in such a case.

22. It is also relevant to note that Article 14 would not be violated by two laws dealing with the same subject matter but in two different fields, if the sources of the two laws are different. In *The State of Madhya Pradesh Vs. G.C. Mandawar*, the Supreme Court observed:

"Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of authority for the two Statutes being different, Article 14 can have no application".

The same view is expressed in *Narottamdas Harjiwandas Vs. State of Madhya Pradesh and Others*. In that case, the High Court upheld the provisions of Madhya Pradesh Minimum Wages Fixation Act, 1962 which fixed minimum rates of wages only in respect of some of the employments enumerated in the schedule to the Central Minimum Wages Act which continued to apply to the remaining employments.

23. In *Than Singh v. Union of India*, AIR 1955 Punj 55 it was contended that the impugned law contravened Article 14 in so far as it provided for a lesser amount as compensation than that provided by the Land Acquisition Act, 1894, which was the general law of the land relating to acquisition. The High Court negated this contention on the ground that the impugned law was made for a specified and distinct object and that there was a reasonable classification.

24. It was, however, contended that the Government has discretion to choose between the two Acts in their application to a given acquisition, and since such

discretion is uncontrolled, section 3 of the impugned Act is bad in law. We do not think that the argument is effective. Once the Government declares under the impugned Act that a particular area is a slum area, then there is no choice left with the Government. It has necessarily to proceed under the impugned Act and it cannot and would not proceed under the general law of acquisition.

25. Distinction between the validity of Section 3 on the alleged ground and the possibility of abuse in its application to any case must be kept in view. The possibility of abuse cannot be taken into account in determining the ambit of power or the validity of any provision. The word "may" appearing in section 3 does not, in our view, warrant any argument that it enables or empowers the Government to either proceed under the impugned Act or under the general law of acquisition. That word merely vests a discretion in the Government to either proceed under the impugned Act or under the general law of acquisition. That word merely vests a discretion in the Government to declare a particular area as a slum area. The vesting of such enabling power is quite understandable because there are large number of slums all or majority of which cannot immediately be declared as slum areas. Each case again has to be considered, whether it satisfies the requirements of S. 3, and if it satisfies, it is only then that it can be declared as slum area. Such a provision in the circumstances could not have been couched in a mandatory language. It would have created a legal obligation on the Government perhaps enforceable in a court of law. That is not practically possible.

Slums present a special problem and involve huge finances and various administrative problems and it is because of these conditions that the wording is used thus making the provision an enabling one. If it is not a slum area, it is obvious that section 3 will not apply. On the other hand, if it is a slum area, then it will attract section 3. We are therefore satisfied that section itself vests no discretion in the Government to acquire the land in a slum area either under the impugned Act or under the Land Acquisition Act. In these circumstances the apprehension voiced by the learned Advocates for the petitioners has no basis whatsoever.

26. It is true that the Government is left with the discretion to declare whether a particular area is a slum area within the meaning Act. But to say that such a discretion is unregulated or uncontrolled would not be correct. Section 3 itself provides sufficient guidance apart from what is provided in the preamble and purview of the Act in regard to the exercise of such discretion. The Government has to collect the necessary material. It may, however, collect the material from any quarter in order to satisfy itself whether the requirements of section 3 are satisfied and that whether a particular area is a slum area or not and then only in a case where it is satisfied that it is a slum area that section 3 empowers the Government to declare it as such. We do not therefore experience any difficulty in rejecting the contention that section 3 is in conflict with Article 14 on the ground that it confers on the Government uncontrolled and unregulated powers

without providing any standard in the exercise of such a wide discretion.

27. The only provision which, however, in our view offends Article 14 is clause 2 (2) of the Schedule to the Act. Section 6 of the Act provides for the basis of the determination of the compensation. It says that the amount payable as compensation for any land acquired shall be an amount equal to twelve times the net average annual income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notice u/s 3 (2). Sub-section (2) enjoins that the net average annual income referred to in sub-section (1) shall be calculated in the manner and in accordance with the principles set out in the Schedule.

28. The Schedule has in all four clauses. The first clause lays down that the net average annual income shall be one-fifth of the gross rent actually derived by the owner from the land acquired and the huts and the buildings, if any, thereon during the relevant period. It authorises the deduction of municipal taxes, revenues charges and cost of repairs for the said period from such gross rent.

29. Clause 2 (1) directs that the gross rent shall be determined by the prescribed authority by local inquiry, and if necessary, by obtaining certified copies of extracts from assessment books showing the rental values of lands, huts or buildings. It further directs that the costs of repairs shall be calculated at the rate of one month's rent per year in each case.

30. We then come to sub-clause (2).

It reads as follows:

"For the purpose of determining the gross rent actually derived by the owner from the huts, if any, on the land, every acre of the land shall be deemed to contain only such number of huts as may be prescribed and no more or less, irrespective of the actual number of huts on the land; and different numbers may be prescribed for different classes of lands or for different local areas".

Clauses 3 permits the income from the tress of the land acquired to be taken into consideration.

31. Clause 4 provides for a situation where the land, huts or buildings thereon remain unoccupied or the owner has not been in receipt of any rent during the whole or any part of the crucial period. The gross rent in such a case will be determined by taking into account the income actually derived from similar lands, huts or buildings situated in the vicinity.

32. A careful reading of these clauses would reveal that while the actual income is taken into account in the case of a building or a land situated in slum area, in cases of huts artificial mode of calculating the income arising from the land and the huts built thereon is employed without having regarded to the actualities. Either the land is occupied by the huts partly or wholly or it is not occupied by huts at all. While in cases of vacant lands actual income is taken into account,

although in some cases where the land was not yielding rent during the crucial time, it is permitted to be calculated on certain basis, in cases of lands occupied by huts partly or wholly, the number of huts as may be prescribed alone shall be taken into account for the purpose of determining the gross rent.

Thus in some cases at least where there are more number of huts from which the owner is getting income, the whole of such income shall not be taken into account although it is actually realised, but only that notional income is derived to be taken into account as is deemed to have been covered from the prescribed number of huts. In case of a land which is partly occupied by huts and partly vacant, the actual rent of the land which is vacant will be worked out in the manner otherwise provided. The gross rent of the land occupied by huts, however, will be worked out on the basis of the prescribed number of huts. What is manifest is that although the land covered by huts is situated in the same slum area where other lands and buildings are situated such a land is selected arbitrarily for a different treatment. The classification is arbitrary because no reasonable basis is shown for such a discriminatory treatment. The contention is that compensation is paid less to the land owner because large number of people occupy or more number of huts were existing on the land than was reasonable.

What is ignored in advancing this argument is that it is the land owner who is discriminated by such hostile treatment. He could not build a building which may have fetched him more rent obviously because he had no capital to invest. It is he who is given a different treatment and for no reason. The argument that he was earning more rent is fallacious because in cases of building and perhaps even in cases of vacant lands the owners are or may be getting more rents in view of the nature of the buildings. When the lands, buildings and lands occupied by huts are all situated in the slum area, there is no reason to make an arbitrary distinction between them with a view to provide more or less compensation. We are therefore satisfied that neither there is any reasonable basis for giving a separate treatment to a land covered by huts nor other is any relationship with the object which it seeks to achieve for the purpose of determining the compensation. Sub-clause (2) of clause 2 therefore is inconsistent with Article 14 and has therefore to be struck down.

33. The question then is whether this invalid provision is separable. We have no doubt that it is. We have to look to two things in this respect. Firstly, the Legislature must have intended that the provision be separable and secondly that the provision must be capable of separation fact. From the clauses of the schedule itself, it is manifest and the intention of the legislature seems apparent that it was dealing with the other clauses irrespective of clause 2 (2). There is no material to believe that the Legislature would not have passed the other clauses without the invalid sub-clause. All the clauses together with this objectionable sub-clause cannot be said to be connected in subject matter or dependant on each other or operating together so as to presume that the Legislature would not have legislated the other clauses without the impugned sub-clause. The invalid

sub-clause is in our view independent of the other clauses and can safely be departed without affecting in any manner the validity of the other clauses as they are quite independent in their own way. They cover also case of land occupied by huts. In this connection, it is well to remember that the courts have not been slow to recognise the utility of the doctrine of severability and have put it to an increasing use and with increasing liberality.

34. Let us then turn to the cases cited at the bar in regard to Article 14.

35. P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, cannot be said to be inconsistent with what we have decided. In that case, on a comparative study of the principal Act and the amending Act it was found that if a land is acquired for a housing scheme under the amending Act the claimant gets a lesser value than he would get for the same or similar land if it is acquired for a public purpose like hospital under the Act. The question was whether this classification between persons whose lands are acquired for housing schemes and persons whose lands are acquired for public purposes has reasonable relation to the object sought to be achieved. The object of the Amending Act was to acquire lands for housing schemes. The following observation is relevant for our purposes:

"It may be as the learned counsel contends the Amending Act was passed to meet an urgent demand and to find a way out to clear up slums, a problem which has been baffling the City authorities for a long number of years, because of want of funds. But the Act as finally evolved is not confined to any such problem. Under the Amending Act lands can be acquired for housing schemes whether the object is to clear slums or to improve housing facilities in the City for rich or poor".

36. It will thus be clear that if the Amending Act had confined itself only to the problem of slum clearance their Lordships perhaps were inclined to take the view which we have taken in this case. As the Amending Act was not so restricted but was applicable to housing schemes in general, the Supreme Court held that discrimination was writ large on the Amending Act and found that it could not be sustained on the principle of reasonable classification.

37. Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma, has to be considered in the light of the facts of that case. In that case while the Land Acquisition Act, 1894 was in force the State Legislature passed Act VI of 1955 providing for speedy acquisition of land for the public purpose of carrying out works or other development measures in connection with flood control or prevention of erosion on payment of compensation on the basis of a multiple of the annual land revenue. The Supreme Court struck it down as violative of Article 14 on the ground that the General Act provides for speedy acquisition and therefore the special Act could not be said to be devised to meet existing evil and secondly that the purpose or the object of the Act was equally broad and not confined to any acute problem like slum clearance; and thirdly

that since the assessment of land revenue in Assam was made many years ago, the market value of lands had increased by leaps and bounds. It was perhaps also doubtful whether on the basis of land revenue by adopting the method of multiplication, market value can be determined

Following, *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, it was observed:

"It is not possible to hold that the differential treatment of the lands acquired under the Land Acquisition act, 1894 and those acquired under Assam Act No. 6 of 1955 has any reasonable relation to the object of acquisition by the State".

It further observed:

"In our opinion, the classification of land required for works and other measures in connection with flood control and prevention of erosion and land required for other public purposes has no reasonable relation to the object sought to be achieved viz., acquisition of the land by the State. In either case, the owner loses his land and in his place the owner loses his land and in his place the State becomes the owner. There is unjust discrimination between owners of land similarly situated by the mere accident of some land being required for purposes mentioned Assam Act No. 6 of 1955 and some land being required for other purposes. We hold that Assam Act No. 6 of 1955 is violative of Article 14".

The questions with which we are concerned in these cases were not before the Supreme Court. The nature of the enactments with which we are concerned are substantially different and consequently pose different problems. It also has to be noted that the several features pointed out above were responsible for the conclusion at which the Supreme Court reached.

38. *Balaji Industries (Bhimavaram) Vs. Special Deputy Collector for Land Acquisition, Andhra Pradesh and Others*, does not help the petitioners. In that case, the validity of section 40-B of the Hyderabad Housing Board Act (XLVI of 1956) as amended by Act XV of 1962 was questioned. Following, *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, but without comparatively examining the provisions of the Land Acquisition Act and the Housing Board Act, the learned Judges observed:

"From this it is clear that this provides for a quite different basis of assessing compensation to be given to the owner of the property acquired under the Housing Board Act. 1956 from that provided u/s 23 of the Land Acquisition Act".

They further observed:

"On principle it is not possible to distinguish that case from the case before the Hyderabad Housing Board Act (XLVI of 1956) as amended by A. P. Act (XV of 1962 offends Article 14 of the Constitution of India and is hence void".

If the learned Judges intended to lay down that a provision would be bad merely because it provides quite a different basis for assessing compensation from that

provided u/s 23 of the Land Acquisition Act, then with due respect we find ourselves unable to agree with such a proposition so widely stated. P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, is not decided on any such basis. If on a comparative study of Section 40-B and the provisions of the Land Acquisition Act as was done by the Supreme Court in P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, the learned judges had reached the conclusion that Section 40-B offends Article 14, we would have had nothing to say about it because we are not concerned in these cases with the validity of S. 40-B of the Housing Board Act. It is also not clear as to whether the learned Judges were drawing the conclusion in reference to Article 14 or Article 31(2) of the Constitution.

39. In *Balammal and Others Vs. State of Madras and Others*, Clause 6 sub-clause (2) of the Schedule read with S. 73 of the Madras City Improvement Trust Act (XXXVII of 1950) was challenged. Madras City Improvement Trust Act (XVI of 1945) was enacted for the purpose of improvement and expansion of the Madras City. The Board under S. 71 was authorised to acquire land under the Land Acquisition Act, 1894. Section 73 made the Land Acquisition Act subject to the modification made in the Act and as enacted in the Schedule. By clause 6 (2) of the Schedule the acquiring authority was not liable to 15% solatium when the land is situated in an area declared to be congested or slum area and is not in actual possession of the owner. The lands in those cases were not in the slum area. Therefore, solatium was payable under Act XVI of 1945. This Act, however, was replaced by Act XXXVII of 1950. Although substantially the scheme was the same, under its schedule, section 23 (2) of the Land Acquisition Act was omitted and it was substituted by other provision. By this provision, persons whose lands were acquired under the said Act were not entitled to get 15% solatium.

The Supreme Court observed:

"It is true that by Cl. 6 of the Schedule to Act 16 of 1945 solatium was awardable to the owners of the lands acquired for the Improvement Trusts but since by S. 173 (2) of Act 37 of 1950 all the proceedings which were commenced under the Act of 1945 were to be deemed to be taken under Act 37 of 1950 the compensation awardable by virtue of Cl. 6 of the schedule to the New Act read with Section 173 (2) of that Act could not include the statutory solatium. The Legislature has thereby deprived the owners of the lands of a right to compensation even in proceedings for acquisition commenced before Act 37 of 1950". It is in this background that it was held:

"But, in our judgment, counsel for the owners are right in contending that Sub-cl. (2) of Cl. 6 of the Schedule to Act 37 of 1950, in so far as it deprived the owners of the lands of the statutory addition to the value of the lands u/s 23 (2) of the Land Acquisition Act is violative of the equality clause of the Constitution, and is on that account void. If the State had acquired the lands for improvement of the town under the Land Acquisition Act the acquiring authority was bound towards in addition to the market value 15 per cent solatium u/s 23 (2) of the

Land Acquisition as modified by the Schedule to Madras City Improvement Trust Act 37 of 1950 for the Improvement Trust which also is a public purpose the owners are it is claimed deprived of the right to the statutory addition. An owner of land is ordinarily entitled to receive the solatium in addition to the market value, for compulsory acquisition of his land, if it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act. A clear case of discrimination which in figures the guarantee of equal protection of the law arises and the provision which is more prejudicial to the owners of the lands which are compulsorily acquired must on the decision of this Court be deemed invalid".

This case is easily distinguishable on the facts and the enactments considered in that case which bear, in our view, no similarity with the present case.

40. It was then argued that the notifications declaring the respective areas as slum areas is an abuse of power and therefore bad. The contention has very little substance. It is true that it is common to empower administrative authorities like Govt. to follow a given course of action when they were "satisfied" that a prescribed state of affairs existed. Section 3 is worded on the same lines conferring on the Government what is called an exercise of discretion based on a subjective formula. At one time, the Courts were usually inclined to interpret such grant of power literally and in general refused to go behind the assertion of the competent authority that it was in fact honestly satisfied as to the existence of the conditions precedent to the exercise of the powers. The balance now has definitely shifted and the Courts now are less ready to accept the conclusiveness of the Government's opinion on a question of law or fact. The task of the Court becomes easier if the statute grants power in subjective terms by reference to certain definite standards.

The crucial question, however, always has been as to in what circumstances and to what extent will the High Court review the merits of the exercise of a statutory discretion, particularly when it is couched in subjective formula. One thing, however, is clear that the Court will not substitute its own discretion for that of the Government in which the discretion has been confined. Nor will it direct as to in what direction the authority should exercise its discretion, while it may be directed to exercise its discretion one way or the other. It is now fairly settled that apart from the cases of mala fide the Court can intervene wherever it is found that where there was no material whatsoever before the Government to arrive at the conclusion or that it lacks in any evidentiary support or is perverse. The Court can also interfere when it finds that the Government has not made the relevant matter mentioned in Section 3 into consideration or has considered matters which are not germane or are irrelevant or has exercised the discretion for a purpose not warranted by the Act, or has committed any error in taking any essential procedural step as is required by the law. In all such cases it will hold the exercise of power ultra vires because the Government or the competent authority would not be deemed to have been genuinely satisfied that it was

appropriate for the purpose sanctioned by the Legislature.

41. Thus if on some such ground it can be established that the Government could not have been so satisfied, this Court will be entitled to hold the decision to be invalid unless the Government itself persuades the Court that it did in fact genuinely form the opinion which it claims to have held. If, on the other hand, the exercise of the power is free of any such blemish, then it is obvious that the Court cannot consider the merits of the decision of the Government. It is only in this context it has to be held that the law is not powerless when Legislature gives even an unfettered discretion to a Government. In theory every discretion is capable of unlawful abuse. In fact the Courts have been usually astute to detect implied limits in the vague or wide subjective expression such as used in section 3.

42. It is in this background that we have to examine the arguments advanced before us.

43. In W. P. No. 364 of 1964, Mr. Jagannadha Rao, the learned counsel for the petitioner contended that previously part of the plot in question as measuring 3 acres and 50 cents was acquired by the Government under the Land Acquisition Act for providing house sites to Harijans,. The present plot, although resurveyed as T. S. No. 1050/1, is sought to be acquired under the impugned Act. This, in his submission shows the arbitrariness of the Government and therefore mala fide. He further contended that the petitioner had submitted a lay out and was himself willing to improve the area. Therefore, the Government cannot properly notify the area as slum area. This notification, according to him, is merely intended to deprive the petitioner of the market price which is very high because of the situation of the plot.

44. These assertions, however, are denied by the Government in its counter. According to it, T. S. No. 1050/2 does not belong to the petitioner and it was not acquired by the Government. That belongs to Sri A. V. Bhanoji Rao who has gifted a portion of it to the Municipality. The rest of it is also notified as slum area under the impugned Act only.

45. In view of this denial it is not possible to decide disputed questions of fact. The petitioner has not also filed any material to satisfactorily prove his allegation. In these circumstances it will not be correct to charge the Government of acting arbitrarily and not bona fide. If the petitioner is the owner of the land he can claim the compensation and if the land is yielding more rent, he will get adequate compensation under the Act and if he does not so get, he has remedies open to him. We do not therefore think that on this ground the impugned notification can be said to be bad in law.

46. The fact that the petitioner himself was willing to improve his land does not alter the position of law. Moreover the purpose of the petitioner in improving the land is entirely different than the purpose with which the Government is improving it. This Court is not competent to decide on the merits of the case. It

is left to the satisfaction of the Government to determine whether a particular area is a slum area or not. It has to be decided by the Government. In the absence of any vice as pointed out above in the exercise of such power, it is not possible for this Court to sit in judgment over the merits of that decision and substitute its own opinion to that of the Government.

47. In Writ Petition No. 734 of 1965, the only contention raised was that the Town Municipality had offered to purchase privately but then backed out. That is denied. Even otherwise, in our opinion, it does not affect the validity of the notification issued.

48. There is also no substance in the contention that the area is not a slum area. That is a question which has to be decided by this Court. As observed above, the quantum of compensation has to be determined in accordance with the provisions of the Act. It is premature to say that the petitioner will not be paid adequate compensation under the Act. It is premature to say that the petitioner will not be paid adequate compensation under the Act. The contention that the declaration is intended to grab very valuable house sites under the cloak of the impugned Act for political ends has not been substantiated by any acceptable evidence. This allegation is denied in the counter.

49. No other contention in that behalf was raised before us by any other petitioner. We are therefore satisfied that the impugned notifications cannot be said to suffer from any such infirmity. The notifications were issued by the competent authorities and no vice was pointed out in the exercise of their discretion which would permit this court to interfere.

50. The next contention was that Section 6 read with the schedule is ultra vires of Article 31(2).

51. Now, under Article 31(2) as it stands now, no property shall be acquired save by authority of a law which provides for compensation for the property and either fixes the amount of the compensation for the property and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined and given. It provides that no such law shall be called in question in any court on the ground that compensation provided by such law is not adequate.

52. Whatever may have been the position prior to 27-4-1955, thereafter, because of the Constitution (4th amendment) Act of 1955 amending clause 2 in Art. 31 the question of adequacy of compensation is made non-justifiable leaving it to the final judgment of the Legislature.

53. A law coming under Article 31(2) is longer open to attack in a court of law on the ground that the compensation provided by the Legislature is not adequate, that is to say, being less than the market value of the property or being less than the money equivalent of what the owner had been deprived of. Thus, as soon as the Legislature fixes the amount of compensation or specifies the

principles on which the compensation is to be determined, it has discharged its duty and the aggrieved owner is not now entitled to challenge the constitutionality of the law on the ground that the compensation provided for is not adequate. In other words, that it does not give him the full monetary equivalent of the property taken from him. It will thus be seen that the scope of judicial intervention in matters relating to compensation for the property acquired is now very limited having regard to Article 31(2).

54. The only question, which continues to be justifiable, is when the law under which the acquisition or requisition is made does not provide for compensation at all or lays down principles which in effect provide for payment of no compensation or in either case provide only illusory compensation. Thus though the form and manner in which the compensation is payable are matters for the determination provides (sic) merely a cloak for confiscatory legislation or constitutes a fraud on the Constitution by providing illusory compensation, or where the compensations based on something which is unrelated to facts because unrelativity of compensation may in particular circumstances result in more than mere inadequacy of compensation.

55. But if the Legislature has either fixed the amount of compensation which cannot be said to be illusory or it has specified principles on which and the manner in which the compensation is to be determined and given and as a result some compensation is payable which is real there cannot be any challenge to the provision for compensation in such an enactment either under Article 31(2) or under the general doctrine of colorable legislation.

56. It is our view, unnecessary to discuss the decisions on this question cited at the Bar. It is enough if we refer to the latest decision of the Supreme Court in *State of Gujarat Vs. Shantilal Mangaldas and Others*, . In that case all the previous decisions have been considered. Their Lordships observed:

"The amendment made in Cl. (2) of Art 31 by the Constitution (Fourth Amendment) Act, 1955 makes it clear that adequacy of compensation fixed by the Legislature or awarded according to the principles specified by the legislature for determination is not justifiable. It clearly follows from the terms of Article 31(2) as amended that the amount of compensation payable, if fixed by the legislature, is not justiciable because the challenge in such a case apart from a plea of abuse of legislative power would be only a challenge to the adequacy of compensation".

Their Lordships further observed:

"If the quantum of compensation fixed by the Legislature is not liable to be canvassed before the court on the ground that it is not just equivalent, the principles specified for determination of compensation will also not be open to challenge on the plea that the compensation determined by the application of those principles is not a just equivalent".

Their Lordships also said:

"Principles may be challenged on the ground that they are irrelevant to the determination of compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation. A challenge to a statute that the principles specified but it do not award a just equivalent will be in clear violation of the constitutional declaration that inadequacy of compensation provided is not justiciable".

57. It is relevant to note that P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, was also considered in detail in that case. The Supreme Court after referring to some of the passages in that case observed:

"These observations were, however, not necessary for the purpose of the decision in that case".

58. It is true that the line dividing "illusory" from "inadequacy" of compensation is not very easy to draw. It has however to be decided in the light of the facts and circumstances of each case as to whether the compensation is illusory. In any event compensation ranging from 30 to 50 per cent of the value of the property acquired could not be called as illusory without an abuse of the language. It is a question to be determined in each case and no hard and fast rule can in that behalf be laid down.

59. Let us then examine in this limited field the arguments with a view to find out whether the provisions of the Act regarding compensation contravene Art. 31 (2).

60. It is already noticed that S. 6 provides the basis of determination of compensation. The net average annual income is to be calculated in the manner and in accordance with the principle set out in the schedule to the Act. We have already referred to the various clauses of the schedule while considering their validity.

61. From a reading of these provisions which relate to compensation, it is not doubted that Act specifies the principles on which and the manner in which the compensation is to be determined and given. Capitalisation of the values of the land acquired by multiplying the rental income from the property acquired is one of the recognised modes of determining the compensation of the property acquired. It cannot therefore be validly contended that the basis on which and the manner in which the compensation is to be determined is non-existence or unrelated to the facts and consequently cannot have a conceivable bearing on any principle of compensation. It cannot also be in doubt that the compensation determined on such principle would be something real. It may not be adequate or may not be equal to the market value. But that question is not justiciable. It is presumed that a land owner would not give his land or building on rent which does not fetch him a reasonable return on the capital which he invested in acquiring that property. If it is so, then the compensation determined on such

capitalization of the rent can in no case be said to be illusory. Nor can it be legitimately contended that the provisions relating to compensation are colorable piece of legislation.

62. It is relevant to point out that the petitioners gave not produced before us sufficient or satisfactory material on the basis of which if compensation in the manner prescribed is worked out, it will be found as illusory amounting to no compensation at all. In these circumstances the contention that section 6 read with the schedule offends Article 31(2) cannot be accepted as correct. We therefore feel no difficulty in rejecting this contention also.

63. The only contention which survives for our consideration is raised by Sri T. Ramachandrarao, in his case. In W. P. 1771 of 1966 a separate question arises and has to be considered separately. What happen in that case is that in 1962 proceedings under the Land Acquisition Act for acquiring a portion of the petitioner's land of an extent of 11. 524 square yards excluding the temple and its appurtenant site were commenced. The petitioners objected to the acquisition and also claimed compensation at a particular rate. The case was being adjourned from time to time. It is the case of the petitioner that no orders in that case have been passed. The petitioner therefore were under the impression that the matters is still pending.

64. While so the petitioners saw a board put up on the site indicating that the land was taken over by the Municipal Commissioner Hyderabad Corporation. The petitioners issued a notice on 5-10-1966 to which no reply was received.

65. A notification u/s 3 (1) of the Act was issued by the 2nd respondent declaring the land as slum area. The petitioners contend that no notice was given to them before the State Government applied Section 15 of the impugned Act to the pending proceedings under the Land Acquisition Act. Nor a notice was given to the petitioner u/s 3 of the Act with the result that they have been deprived of an opportunity of objecting to the declaration u/s 3 (1) that the land is in a slum area. It is not denied by the 2nd respondent that any notice was given to the petitioners. The question therefore is what is the effect of not giving the notice to the petitioners on the impugned notification issued u/s 3 (1).

66. Now, u/s 3 (1) where the Government are satisfied that any area is or may be a source of danger to the public health, safety or convenience of its neighbourhood by reason of the area being low lying, unsanitary, squalid or otherwise they may by notification in the gazette declare such area to be a slum area.

67. This sub-section does not speak of any prior notice to the owners of the land affected by any such notification, or it requires them to be heard before any such notification is published.

68. Section 3 (2) then states that where the Government are satisfied that it is necessary to acquire any land in a slum area for the purpose of clearing or

improving the areas they may acquire the land by publishing in the gazette a notice to the effect that they have decided to acquire it in pursuance of the section.

69. There is a proviso attached to the Sub-section. According to it, before publishing such notice that is to say the notice referred to in Sub-section (2) the Government shall call upon the owner of or any person interested in the land to show cause why it should not be so acquired. The Government after considering the case if any may pass such order as it thinks fit.

70. The explanation entitles the person interested in the land to show cause (1) against the declaration of the area as a slum area u/s 3 (1) as well as (2) against the necessity to acquire the land for the purpose of clearing or improving the area.

71. It is true that while proviso to sub-section (2) speaks both of the owner as well as of the person interested in the land, but the explanation speaks only of persons interested in the land. We have however no doubt that the expression "the person interested" would include even the owner of the land. There appears to be no reason as to why the owner should be deprived of an opportunity of objecting both to the declaration u/s 3 (1) as well as the intention to acquire the land u/s 3 (2) just as a person interested in the land can object. This is just a case of accidental omission but the intention of the Legislature is clear from the proviso itself.

72. A close reading of sub-section (2) makes it abundantly plain that before a notice u/s 3 (2) is published it is the statutory duty of the Government to call upon the owner and the person interested in the land to show cause. Such a cause shall be shown both in regard to the notification u/s 3 (1) as well as the necessity to acquire the land. It thus provides opportunity to the owner and the person interested in the land to object to the declaration that it is a slum area, although such opportunity is given only after the declaration.

73. What all section 15 does is to apply the Act to certain pending cases of acquisition. According to the section, if the Government so direct the provisions of the Act shall apply to a pending case of acquisition under the Land Acquisition Act, 1894 in which award is not made.

74. The section does not require any notice to be given to the parties in the pending cases before or even after the Government has so directed that the provisions of the Act shall apply to their case.

75. The effect of such a direction according to section 15 is that notice under the Land Acquisition Act, whether it is given Section 4, 6, or 9 will be deemed to be a notice "served by the Government" under the proviso to sub-section (2) of section 3 of the impugned Act.

76. Thus any notice under any of the said sections of the Land Acquisition Act is considered as a notice under the proviso to Section 3 (2) of the Act. If that is so,

then the Government could not have issued a notice u/s 3 (2) without hearing the petitioners as was done in the present case. It is true that section 15 after equating the notice under the Land Acquisition Act to that of a notice under the proviso to section 3 (2) does not speak of any notice of the action taken by the Government to the parties in the pending case. But the question is how are the parties to the pending cases to know that the Government has directed that the provisions of the Act are made applicable to the pending cases? In such a case, natural justice requires that the persons liable to be affected by the Government's directions are given adequate notice of at least what is directed by the Government under S. 15 in their pending cases if not before the Government proposes to apply the provisions of the Act to their case, so that they can raise objections both in regard to declaration of their land as slum area and about the necessity of acquiring their land as is visualised by acquire their land as is visualised by the explanation to the proviso to S. 3 (2).

It is recognised right that "no man is to be deprived of his property without his having an opportunity of being heard".

It is laid down in the oft quoted judgment of Byes L. in *Cooper v. Wandsworth Board of Works* (1863) 14 C. B. (N. S.) 180 at p. 194 that

"although there maybe no positive words in a statute requiring that a party shall be heard, yet a long course of decisions beginning with *Dr. Bentley's case*, (1723) 1 Str. 557 established that the question of the common law will supply the omission of the legislature".

77. Although thus there are no positive words in section 15 to that effect, the inevitable result which flows from section 154 read with section 4 (2) is that a notice ought to be given to the parties in the pending cases at least after the decision is taken by the Government u/s 15 to direct the application of the provisions of the Act to their pending cases so that they can avail themselves of the opportunity which the Legislature has provided in Section 3 (2). It is conceded before us that no notice of such a kind was given. The notice published by the government u/s 3 (2) therefore is bad in law and has to be struck down because it offends the principles of unnatural justice. It is open to the Government or the competent authority to issue notice to the parties in the pending case and after hearing them u/s 3 (2) decide the matter in accordance with law.

78. The result of the foregoing is that W. P. No. 1771 of 1966 is allowed and the impugned notification under S. 3 (2) is quashed. The petitioners will get their costs. Advocate's fee Rs.100/-

79. Clause 2 (2) of the Schedule of the impugned Act is struck down as ultra vires of Article 14 of the Constitution. Subject to this, the other writ petitions are dismissed with costs. Advocate's fee Rs. 50/- in each case.

Chinnappa Reddy, J.

80. I agreed with the conclusions of my learned brother Gopal Ekbote J., but I would like to add a few words of my own.

81. On the question of vires of Clause 2 (2) of the Schedule I would prefer to rest my conclusion on the ground that it confers on the Government an arbitrary and unguided power to prescribe the "deemed" number of hut without prescribing or indicating the principles on which the "deemed" number may be arrived at I am not convinced that because compensation is awarded on the basis of actual income in the case of buildings and land, the legislature is bound to adopter the same basis for huts also. I see no impediment in the way of the legislature adopting a different basis in the case of huts. It is open to the legislature to adopt hut or standard huts per acre and so much shall be paid for each hut or standard hut.

82. On the question whether S. 6 the Act offends the provision of Article 31(2) of the Constitution. I would content myself by saying that S. 6 adopts a well known principle of capitalisation on the basis of rentals, a principle which cannot be said to be irrelevant for the purpose of assessing compensation. That is sufficient to hold Section 6 valid. I would guard myself against any general observation regarding the grounds on which "compensation may still be questioned".

83. Order accordingly.