

(1971) 02 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 232 of 1969

Thandrala Narsaiah and Others

APPELLANT

Vs

Pastapurapu Bhadraiah and Others

RESPONDENT

Date of Decision : 25-02-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 5

Citation : AIR 1973 AP 75 : (1973) 1 APLJ 146 : (1973) 1 APLJ 139

Hon'ble Judges : N. Kumarayya, C.J.; Sambasiva Rao, J.; Gopal Rao Ekbote, J

Bench : Full Bench

Advocate : G. Haridatha Reddy and K.L. Ramana Rao, for the Appellant; P. Babul Reddy, for A. Ananda Reddy and Govt. Pleader, for the Respondent

Judgement

Gopal Rao Ekbote, J.—The following question has been referred to the Full Bench by our learned brothers Narasimham and Parthasarathi, JJ., by their order of reference dated 26th October, 1970.

"Whether a notification made u/s 17(4) of the Land Acquisition act dispensing with enquiry u/s 5-A on the ground of urgency is subject to review under article 226 on grounds other than mala fides or the arbitrary nature of the notification or that it was not made by the appropriate or competent authority ?"

2. The facts which are said to give rise to the said question may be briefly stated.

Respondents 1 to 6 filed W.P.No. 1223 of 1966 for the issue of a writ of Certiorari to quash the Memo No. 317-R-1/66-3, Education, dated 11th April, 1966. It was alleged inter alia that petitioners 1 and 2 are the pattadars of S. Nos. 2/A admeasuring 0.22 guntas and 2/B admeasuring Ac. 1.20 guntas respectively. Petitioners 3 to 6 are alienees from petitioners 1 and 2 claiming themselves to be occupants as well as tenants.

3. The Government , they allege, intended to acquire S. No. 8 admeasuring Ac. 4-20 guntas, which is contiguous to Harijan locality and which satisfied the

requirements of the needy Harijans. Sri P.Krishna Rao, Patwari, Pattadar of S. No. 8 by dint of his influence swerved the acquisition proceedings from S.No. 8 to S.No. 5, S.No. 5 because of effective steps taken by its pattadars could not be acquired. Consequently S. Nos. 2/A and 2/B are being acquired.

4. The Government issued notifications under sections 4 and 6 of the Land Acquisition act, hereinafter called " the act" and dispensed with the enquiry u/s 5-A in view of emergency on 17.5.1965. Before any notice u/s 9 was issued, the petitioners objected to the notification dispensing with the enquiry u/s 5-A and the acquisition of the land on two grounds. Firstly it was contended that the suspension u/s 17(4), of the enquiry u/s 5-A is colourable exercise of authority; and secondly that since the payment of compensation is not from the public funds, the acquisition is vitiated.

5. In their counter the State Government and the Land Acquisition Officer, who were respondents 1 and 2 in the Writ petition, stated that the District Social Welfare Officer, Karimnagar in his letter dated 2.3.1965 proposed acquisition of 2.14 acres out of S. No. 2 i.e., 22 guntas from S.No. 2/1 Ac. 1.20 guntas from S.No. 2/B and 0.12 guntas from 2/C for providing house sites for 40 Harijan families. The standing Committee of Zilla Parishad Karimnagar at its meeting held on 15.3.1963 selected S.No. 2 for construction of such houses.

6. Four Survey Nos. 711, 45, 2 and 8 were proposed for acquisition. The site, however, was to be approved by the District Health Officer. He issued a certificate of suitability only in respect of S. No. 2 It is because of this that the standing committee of Zilla Parishad approved acquisition of S. No. 2.

7. The collector in his letter dated 17.5.1965 proposed to dispense with the enquiry u/s 5-A read with Section 17(4) of the Act in view of the emergency. The government after considering the relevant facts approved in their Memo datd : 11.4.1966. G. O. Dated 21.7.1966 published in the Gazettee dated 5.5.1966 and 11.8.1966 respectively, the acquisition of the land in question. Enquiry u/s 5-A also was dispensed with. It is further averred that the entire amount of compensation was being paid by the Government.

8. Our learned brother Krishna Rao, J., by his judgment dated 3.1.1969 considered the only point urged before him by the petitioners. The contention was that the exercise of power u/s 17(4) of the Act was not proper and was only a colourable exercise of the said power as it was not a case of urgency at all. The other point raised in the petition was not pressed before him. The learned single Judge after observing that no material was placed before him to show under what circumstances the Government formed the opinion that the acquisition was a case of urgency, that the Panchayat Samithi in its Resolution did not indicate any urgency whatsoever, and that the proceedings of the District Social Welfare Officer in the opinion of the learned Judge did not constitute any material on which the Government could form its opinion, reached the conclusion that the instant case was a case of ordinary acquisition and not an emergent case and it

was not open to the Government to invoke the urgency clause, and consequently the power under Sec. 17 (4) has been improperly exercised. The impugned order therefore was quashed.

9. The State Government and the Land acquisition Officer, respondents I and 2 in the writ petition, did not prefer any appeal. It is the other respondents s 3 to 8 who preferred the appeal. The Bench thought that there is a clear divergence of opinion between the two Bench decisions of this court in Writ Appeal No. 236 of 1966 (Obul Reddy and Madhava Reddy, JJ), and W.A.No. 97 of 1967 (Gopal rao Ekbote and Ramchandra Raju,JJ), on the one hand and Writ No. 109 of 1969 (Jagan Mohan Reddy, C.J., and Parthasarathi, J.) on the other in as much as in the opinion of the Bench, the first two decisions took the view that " the soundness or the property of the opinion as to urgency is justiciable", whereas in Writ Appeal No. 109 of 1969 it was held that although normally the opinion of the Government cannot be reviewed by the court, it could be subjected to judicial review " among other things if the Court finds that the opinion of the Government was based on irrelevant or extraneous facts." It is because of the said difference of opinion between the said judgments that the Bench referred the question extracted at the outset of the judgment for the consideration of the Full Bench.

10. The question implies that a notification made u/s 17(4) of the act dispensing with the enquiry u/s 5-A because of urgency can be successfully attacked on the three grounds referred to the question, viz., (1) malf fides; (2) arbitrary nature; and (3) not made by a competent authority. It is therefore unnecessary to consider these grounds on the basis of which such a notification can validly be challenged. There was no controversy at the bar about this aspect of the question. The question therefore is; Are there other grounds on the basis of which such a notification can be challenged in a proceeding under Article 226 of the Constitution? If so, what are those grounds.

11. In order to find out an answer to the said question, it is unnecessary first to read section 17(4):

"In the case of any land to which in the opinion of the appropriate Government, the provisions of sub-section (1) of sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A will not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after publication of the notification u/s 4, Sub-Section (1)".

12. Even a casual reading of this provision would indicate that if the government is of the opinion that in the case of any land to which sub-section (1) of sub-section (2) is applicable, the Government may direct that Section 5-A shall not apply.. It is evident that in order to form the opinion as to whether sub-section (1) applies to a given case, it has to consider first whether the land in question is a waste or arable land and secondly whether the case is of urgent character. It is only after the existence of these two facts that the Government can form the

opinion that sub-section (1) applies to the case and it is only on the formation of such an opinion that the Government may direct under sub-section (4) that Section 5-5 shall not apply to the case. What is plain in that although the phrase " in the opinion of the appropriate Government" is a subjective formula such an opinion has to be formed about the existence of the above said two facts. That state of affairs must exist for the formation of the opinion.

13. It is indisputable that the purpose of Sub-section (1) is entirely different than the purpose of sub-section (4). While sub-section (1) relates to taking of possession of any waste or arable land in a case of urgency even before an award is made, sub-section (4) concerns itself with the direction that Section 5-A shall not apply to a case where the land in question is waste or arable land and it is a case of urgency.

14. It must be noted that the subjective formula appears only in sub-section (4) and not in sub-section (1). That is the main reason why it is now thoroughly well settled that the decision of the Government as to whether a land is a waste or arable land and whether there is an urgency for the purpose of sub-section (1) is a jurisdictional fact which must exist before the appropriate Government exercises the power under sub-section (1). In other words, these primary facts must be shown to exist before the appropriate Government can ask the Collector to take possession of the land even before the award is made. And it is now established that on collateral facts such as above the appropriate Government cannot give to itself, by a wrong decision on any one of the two factors,, Competence to direct taking of possession. It is a general rule that no court or authority of limited jurisdiction can give to itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends. Any such decision depends. Any such decision of Government under sub-section (1) is open to judicial review and it is open to this court to review even the questions of the collateral facts in order to find out whether the appropriate Government has assumed the competence correctly. It is well known that in such cases this court is not only entitled to review preliminary facts constituting jurisdictional facts as were before the appropriate Government but can even admit additional relevant evidence in order to decide the jurisdictional facts.

15. Such a case comes within the first part of the observation made by Lord Esher in a well known case of the Queen v. Commissioners for Special purpose of Income - Tax. (1888) 21 QBD 313 at p. 319. We do not think that it would be correct to hold that the question whether the land in question is a waste or arable land alone is a jurisdictional fact which comes under the first part of the said observation of Lord Esher and not the question whether the case is of an emergent nature. That is also a condition precedent for the exercise of the power under sub-section (1). That question also therefore comes under the first part of the observation and can in no case come under its second part. While considering a case purely under sub-section (1) it should not be confused with

sub-section (4) or vice versa.

16. The position has been accepted by the Supreme Court of India in several cases to which reference, in our opinion, is unnecessary because in the present case there is no dispute regarding the exercise of power under sub-section (1). The position of law as stated above in regard to sub-section (1) that any decision of an appropriate Government in that behalf can be objectively tested as it constitutes a collateral fact was not and could not be doubted.

17. In regard to sub-section (4) then, since the subjective formula is empowered in the formation of the opinion by an appropriate Government regarding the existence of the said two factors referred to in sub-section (1) it is obvious that such a subjective opinion cannot be tested by any objective consideration. It is not a question relating to collateral facts. Any attack on such an opinion subjectively formed by the Government in regard to either of the two factors must necessarily lie within a narrow compass.

18. It must be remembered that sub-section (4) when it refers to sub-section (1) it refers to it only for a limited purpose. It is a piece of legislation by reference. It is only attracted to find out whether sub-section (1) applies to the case before Section 5-A enquiry is dispensed with. And it is already seen that for that purpose two factors enumerated in sub-section (1) if exist then alone sub-section (1) can be said to apply. For any purpose other than that the two provisions need not be mixed up and confused as they are meant to meet altogether two different situations. In regard to the existence of the two factors for the purpose of sub-section (4) the appropriate Government has to specifically form an opinion.

19. What then are the grounds on which such an attack on a subjectively determined question is permissible under Article 226 of the Constitution. ?.

20. We have already noticed that sub-section (4) leaves the formation of opinion to the appropriate Government. It is the subjective opinion that is involved. It is plainly intended however that the enquiry u/s 5-A has to be dispensed with only when some particular state of affairs exist in the opinion of the appropriate Government. It is equally plain that the judgment of the facts that there are circumstances and material to form the opinion that the case is urgent and is related to arable or waste land is left to subjective decision of the government concerned and not to the Court of law. The provision of sub-section (4) is so expressed that what it requires is not an objective state of fact, but a mere state of mind on the part of the appropriate Government. The plenary power of the Parliament when it wishes to use it, is well illustrated by provisions of this kind, which tie in a way the hands of the courts.

21. This form of power, it is true, is regarded as an abnormally wide power but is certainly not a case of restriction of remedies. Whatever that may be, it is obvious that the formation of opinion is subjective and its correctness or otherwise cannot be determined by an objective test. It is not normally permissible to examine the authority to which the subjective power is entrusted

to find out as to by what mental process it has arrived at the conclusion. It has repeatedly been held that if the Government opined that the matter was urgent, the decision cannot be reviewed as in appeal. Nor can the court interfere on the ground that there were no sufficient grounds to form the opinion. In other words, the court cannot review the opinion on its merits. The propriety and soundness of the opinion of the Government therefore is outside the purview of the judicial review.

22. There is no scope for probing the mental processes of the Government concerned. A reviewing court cannot probe the mental process of a Minister any more than it can those of a trial court. The proceeding before the Government has a quality resembling that of judicial tribunal. As such examination of a Judge would be destructive of a judicial responsibility. Just and a Judge cannot be subjected to a judicial scrutiny so the integrity of the administrative process in this behalf must be equally respected. In this connection it must be borne in the mind that although the administrative process has had and is having a different ways from those of courts, they are to be deemed collaborative instrumentalities of justice and the appropriate independence of each should be respected by the other. The courts function is limited. According to an early English Judge, " the evil himself knoweth not the mind of man, and a modern reviewing court is not much better equipped to lay bare unexposed mental processes". It is in this context that it is said that the subjective satisfaction is not justiciable.

23. This does not, however, mean that this court is no case has jurisdiction to consider whether the order passed on such subjective formula is valid or not. No doubt the functions that can be performed by judicial review in such cases are fairly limited. Broadly speaking the role of the courts in this field is to serve as a check against excess of power and abuse of the exercise of power in derogation of private right. The judicial function is thus one of control. The province of the court is to confine the administrator within the bounds of legality, not to determine for itself the wisdom of challenged administrative action. At the same time, it must be remembered that the limitation imposed on the scope of enquiry of the reviewing court must not go so far as to prevent full judicial scrutiny of the question of legality. If that question cannot be properly explored by this court then the right to judicial review would become an empty form. It would reduce the judicial processes in such cases to a mere feint. To hold otherwise would mean that an administrative order is final and not reviewable by any court even though entered arbitrarily, or is made in excess or abuse of power or made with no regard to the correct interpretation or application of the constitutional or statutory term or made in defiance of law. Such a sweeping contention for administrative finality is out of harmony with the general legislative pattern of administrative and judicial relationship. If the judiciary has no power in such a matters, the only practical restraint would be the self restraint of the executive branch. Such a result is foreign to our concept of judicial review of an administrative action.

24. It cannot be in doubt that whenever a power is conferred on any one under the Constitution or a statute, it has always limitations and never an absolute power is conferred. The government under the rules of law demands proper legal limits on the exercise of powers. Two principles of statutory interpretation have to be carefully balanced in such cases which often come into conflict. First, it has to be presumed that powers, even though widely defined, have some ascertainable limits, and that the Constituent Assembly or Parliament is unlikely to intend the executive to be the judge of the extent of its own powers. Therefore, if it can fairly be implied that the powers were given to be exercised if certain circumstances exist and for some particular purpose, the exercise of power in the absence of particular circumstances or for any other purpose will be illegal. The courts shall never abrogate their duty to ensure that those entrusted with the power shall observe the condition which parliament imposed on them. Secondly, however, the court must not usurp the discretion given to some other body. It is thus plain that in spite of the language which denotes subjective opinion or satisfaction, it is perfectly clear that the administrative decision is not final in the sense that the courts cannot do anything about it.

25. The constituent Assembly or the Parliament must be presumed to have intended that power vested in any authority albeit in wide terms shall only be exercised legally and it would require stronger words than the words used in subjective formula to displace the presumption that illegality should be controlled in the usual way. This construction is fairly established, even though it leaves such subjective clauses with very little positive meaning. In this sense judicial review of such action is possible in spite of any prohibition or subjective formula. The courts would refuse to be daunted by this kind of formula if there are valid and permissible grounds to interfere. It is, however, plain that the court will not substitute its own opinion or satisfaction with that of the government.

26. It is true that at one time in England it was a common practice to use formulae purporting directly to exclude judicial review of certain types of orders and decisions; but some of those formulae were given a restrictive juridical interpretation, while others gave rise to public criticism. The practice to employ the subjective formula was therefore modified, and it became more usual simply to empower administrative authorities to follow a given course of action when they were "satisfied" or they could form an "opinion" when a prescribed state of affairs existed. The courts tended to interpret such grants of power literally, and in general refused to go behind the assertion of the competent authority that it was in fact honestly satisfied or had formed the opinion as to the existence of the circumstances which led to the exercise of its power.

27. S.A. de Smith in his Book "Judicial review of Administrative action" Second Edition, at Page 26, states.

"In the 1950s judicial self-restraint appeared to have won a decisive victory over judicial activism in a field where the contest might well have been an even one. By 1967 the balance has shifted, and the courts seemed less ready to

accept the conclusiveness of even a minister's opinion on a question of law or fact. Moreover, it was less common for statute to grant powers in subjective terms or by reference to very vague standards. Nevertheless, the powers granted to ministers were still generous enough for an established excess of power to be a rarity."

28. At Page 274, the learned author pointed out the judicial trend which prevailed during the immediately after the war and also brought out the change which has prominently occurred in Judicial approach to cases where subjective formula is used.

"War time and immediate post-war decisions ought not to be treated with an excess of reverence. The emergency legislation of the second World War gave the executive vast powers over persons and property. The wording of the grants or power was sufficient, on a literal interpretation to support the validity of almost any act purporting to be done in pursuance of them. Not only did the courts give a strictly literal interpretation to subjectively worded , formulae; in their anxiety not to impede the war effort they declined to give a literal interpretation to a formula which prima facie enabled them to review the reasonableness of the grounds for exercising a discretionary power authorising summary deprivation of personal liberty. Such a measure of judicial self-restraint is unlikely to be repeated except in conditions of grave emergency. But a literal construction of the subjective type of formula was to reappear in a number of immediate post-war cases having only a remote connection with national emergency."

29. In regard to the present trend, the learned author brought out the same at page 274 in the following words:

"But the post war climate of emergency has dispersed; judicial apprehensiveness about the consequences of appearing to encroach on the private domain of politicians has diminished. Of late, moreover, parliament has been somewhat less generous in conferring upon public authorities powers concluded in subjective terms exercisable when they are " satisfied" or when " it appears to" them or when " in their opinion , in a certain state of affairs exists, or powers enabling public authorities to take " such an action as they think fit" in relation to a subject-matter. Even where powers are conferred in such terms today, the courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated. Nor will they so regularly confine themselves to the enunciation or perfunctory dicta about the duty to act in good faith when they are called upon to scrutinise the way in which the discretion itself has been exercised."

30. Since we have quoted from the latest edition of the Book of the learned author S.A. de Smith where the learned author referred to cases showing the tendency of the courts during the immediately after the second World War and

also referred to cases indicating that pendulums have now swung and emphasis shifted and to the fact that the Courts nowadays would not be deterred by a subjectively worded formula from making enquiry in to the legality of the exercise of the power asserting its broader supervisory jurisdiction, subjective formulae notwithstanding, we feel it unnecessary to burden this judgment by considering various English cases relating to this change in the judicial outlook in England.

31. Turning then to the Indian decisions, we find that even in India till recently the courts were often content to give a literal interpretation to words conferring powers in subjective terms on authorities. There is however of late a beneficial shift in this judicial attitude and now even in the face of subjective formula or formulae that appear to have been devised for the express purpose of ousting the court's supervisory jurisdiction, they have clung tenaciously to their powers of review. There is potentially significant shift in emphasis which has recently occurred and the courts are no longer so ready to defer to a Minister's or other authority's assertion that he or it is satisfied or is the opinion about the existence of certain state of affairs.

32. Although in India are appears to be no perceptible change in the Legislative attitude in granting powers in subjective terms as one sees in England, nevertheless there is as stated above a perceptible shift in the emphasis of judicial approach to such a question. The latest trend is well reflected, if we may say so with respect, in the decision of the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, . In that case, all the important previous decisions have been considered and it is clearly brought out as to in what circumstances and to what extent judicial review is permissible even in a case where subjective formula such as " in the opinion of" or " is satisfied" is employed. Their Lordships observed at page 323: -

"Though an order passed in exercise of power under a statute cannot be challenged on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of that legislation its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction require under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

33. This view has been approved in *Rohtas Industries Vs. S.D. Agarwal and Others*, .

34. What must follow from the above said discussion is that any extreme contention that as Section 17(4) leaves the matter to the opinion of the

Government the question whether circumstances or material exist on the basis of which the Government has formed the opinion that there exists emergency in regard to a waste or arable land is not at all justiciable cannot be accepted as wholly correct. Even where terms such as "is satisfied" or "is of the opinion" formula is employed, judicial review is permissible albeit in a narrow and limited field.

35. What then is the limited field in which this court can examine the legality of such order in spite of the subjective formulae ?

36. The executive action based on subjective opinion or satisfaction, in our opinion, can judicially be reviewed firstly to find out the existence of facts or circumstances on the basis of which the government is alleged to have formed the opinion,. It is true that the court will not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist. The court will not readily defer to the conclusiveness of the executive authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated.

37. In *Maradana Mosque Trustees v. Mahmud*, (1967) 1 AC 13 at p. 25, it was held that where there was no ground on which a Minister could be "satisfied" at the time of making the order, he had no jurisdiction to make the order, he would be deemed to have failed to consider the right question.

38. The doctrine of reasonableness thus may be invoked. Where there are no reasonable grounds for the formation of the Government's opinion, judicial review in such a case is permissible. See *Director of Public Prosecutions v. Head*, 1959 AC 83. (Lord Denning).

39. When we say that where circumstances or material or state of affairs does not at all exist to form an opinion and the action based on such opinion can be quashed by the courts, we mean that in effect there is no evidence whatsoever to form or support the opinion. Although at one time in England except in cases of jurisdictional fact, the executive action was not permitted to be attacked on the ground of no evidence, but change has already come in the wind. The courts there are now ready to assert control over findings of facts based on no evidence just and they have done over mistakes of law apparent on the face of the record. The distinction between insufficiency or inadequacy of evidence and no evidence must of course be borne in mind. A finding based on no evidence as opposed to a finding which is merely against the weight of the evidence is an abuse of the power which courts naturally are loath to tolerate. Whether or not there is evidence to support a particular decision has always been considered as a question of law. See. *Reg. V. Governor of Brixton Prison, Armah, Ex Parte*, (1966) 3 WLR 828 at p. 841.

40. It is in such a case that it is said that the Government would be deemed to have not applied its mind or it did not honestly form its opinion. The same conclusion was drawn when opinion is based on irrelevant matter. See *Rashbihari Panda etc. Vs. State of Orissa*, .

41. In *Rohtas Industries Vs. S.D. Agarwal and Others*, it was held that the existence of circumstances is a condition precedent to form an opinion by the Government. The same view was earlier expressed in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, .

42. Secondly the Court can inquire whether the facts and circumstances found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In other words, if an inference from facts does not logically accord with and flow from them, the Courts can interfere treating them as an error of law. See *Bean v. Doncaster Amalgamated Collieries*, (1944) 2 All ER 279 at p. 284. Thus this Court can see whether on the basis of the facts and circumstances found, any reasonable man can say that an opinion as is formed can be formed by a reasonable man. That would be a question of law to be determined by the Court. See *Farmer v. Cotton's Trustees*, 1915 AC 922. Their Lordships observed :

"..... in my humble judgment where all the material facts are fully found, and the only question is whether the facts are such as to bring the case within the provisions properly construed of some statutory enactment, the question is one of law only"

43. See also *Muthu Gounder v. Government of Madras*, (1969) 82 Mad LW 1.

44. Thirdly, this court can interfere if the constitutional or statutory term essential for the exercise of the power has either been misapplied or misinterpreted. The courts have always equated jurisdictional review with review for error of law and have shown their readiness to quash an order of the meaning of the constitutional or statutory term has been misconstrued or misapplied. See *Iveagh (Earl of) v. Minister of Housing and Local Govt.* (1962) 2 QB 147; *Iveagh (Earl of) v. Minister of Housing and Local Govt.* (1964) 1 QB 395; *Fulham etc., v. Rent Tribunal*, (1950) 2 All ER 211 at p. 215; *Regina v. Lewes Justices*, (1960) 1 SLR 700 and *Ashbridge Investments Ltd., v. Minister of Housing and Local Govt.*, (1965) 1 WLR 1320 at p. 1326.

45. For example, if the term " waste land" or " arable land" is misconstrued or misapplied, the court can interfere. It can hardly be doubted that a finding involving the application of statutory term such as the said two terms referred to above the undisputed or proved facts of the case is one which is more legal than factual in nature and hence one which can be examined fully by the reviewing court. This view was well expressed by Lord Parker in 1915 AC 922 at p. 932 to which a reference has already been made. In exercising adjudicatory authority, the administrator gives that finding which is most important. For it is by its application of the statutory language to particular fact patterns that the administrator concerned gives specific form and content to the enabling

legislation. Where an authority misapplies the statute upon which its power rests, it may be well be acting beyond its authority. Proper administration of any statutory scheme presupposed proper application of the terms and concepts employed in their relevant legislation. Misapplication of a key statutory term may well enable the administrator to act in excess of his jurisdiction. Indeed it is difficult not to conclude that the statutory jurisdiction of an administrative agency is always dependent upon the proper application of the terms and concepts contained in the enabling legislation. A statutory term can have meaning only in its application to the particular facts of a particular case. Meaning derives vitality from application. Meaning is easily thwarted or distorted by misapplication. To limit review of such application by the authority concerned, is, in effect, to limit judicial review on really the jurisdictional question.

46. Fourthly it is permissible to interfere in a case where the power is exercised for improper purpose. If a power granted for one purpose is exercised for a different purpose, then it will be deemed that the power has not been validly exercised. If the power in this case is found to have not been exercised for dispensing with the enquiry in a case of real urgency but has been used only to avoid embarrassment or inconvenience which may be caused in an enquiry, then the power will be deemed to have been exercised improperly. See *A. Natesa Asari Vs. State of Madras and Another*, .

46-A. Fifthly grounds which are relevant for the purpose for which the power can be exercised have not been considered or grounds which are not relevant and yet are considered and an order is based on such grounds, then the order can be attacked as invalid and illegal. In this connection reference may be made to *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, ; *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, and *Motilal Jain Vs. State of Bihar and Others*, . On the same principle the administrative action will be invalidated if it can be established that the authority was satisfied on the wrong question ; See (1967) 1 AC 13.

47. In this connection it should be borne in mind that it is in cases where opinion is formed on no material or is formed on irrelevant material or the power is used for extraneous purposes that it is stated that the power is exercised arbitrarily, and was feel that the term " arbitrary " is used in this sense in the question and that is why we said that in regard to those grounds which fall under the head arbitrary it was disputed. And it is plain that such an exercise of power is invalid. See *Periathambi Mudaliar Vs. Special Tahsildar (L.A.) Planning Scheme, Coimbatore and Another*, .

48. Let us then consider the cases cited at the bar and referred to in the order of reference.

49. In Writ Appeal No. 109 of 1969 (Andh Pra) (Jaganmohan Reddy, C. J. and Parthasarathi, J.) decided on 18th July, 1969, the Bench was concerned with one of the questions as to whether the decision of the State Government u/s 17(4)

read with sub-section (1) i.e. vitiated by arbitrary or unreasonable exercise of the power. The Bench held that " the mere existence of relevant grounds is sufficient and the propriety and soundness of the opinion cannot be the test of the judicial review ". There can be little difficulty in agreeing with this proposition. It was also held that " it cannot therefore be laid down that the decision of the Government regarding the existence of the urgency is not subject to judicial review except in cases where the process is vitiated by mala fides, or it is shown that, in fact, the decision taken was not that of the appropriate authority . "

50. If the said observation means that apart from the two grounds, the subjective opinion formed by the Government cannot be attacked by another permissible ground, then we must say, with respect, that we cannot agree with this proposition. But we feel that the learned Judges did not want to limit the judicial review only to these two grounds, because earlier the learned Judges did not feel any hesitation in endorsing the conclusion of Krishna Rao, J., in W. P. No. 1223 of 1966 that the opinion must be related to relevant data. This observation implies that there must be some data on which an opinion can be formed and that such data must be a relevant data which can be related to the opinion. This understanding of the said judgment is further supported by the later observation of the learned Judges : "..... the subjective satisfaction of the Government is not open to attack in these proceedings except on well defined and specific grounds like mala fides which vitiate or nullify an administrative action. "

51. In Writ Appeal No. 236 of 1966 D /- 3-10-1969, (Andh Pra.) (Obul Reddi and Madhava Reddy, JJ.) held that while it can be disputed that it is for the Government to decide the question whether there was urgency or not for invoking Section 17(4) of the Act for dispensing with the operation of Section 5-A, it cannot be doubted that the High Court has power if it could be shown that the Government never applied its mind to the question of urgency or that the section is mala fide " to examine the basis on which the opinion as to urgency was formed ". In our opinion the last sentence just now quoted does not mean review on merits because earlier the learned Judges clearly ruled it out from the purview of the High Court.

52. In Writ Appeal No. 97 of 1967, D /- 14-10-1969 (Andh Pra.) Ekbote and Ramachandra Raju, JJ., said that although the formation of opinion is left to the State Government, it is not totally free from judicial enquiry. If the opinion is formed in a case where there is no material at all or the material has no bearing on urgency, then it cannot be said that the Government has applied its mind or has properly formed the opinion. We think that the dicta of the judgment do not limit the scope of the judicial review only to the proof of the existence of the relevant material nor do we consider that it enlarges the scope of the judicial review beyond what is stated above.

53. In W. P. No. 3276 of 1966 and batch D /-30-12-1969 (Andh Pra), Kumarayya, C. J. and Sambasiva Rao, J., after exhaustively considering the decisions of the

Supreme Court, Andhra Pradesh and Madras High Courts held that the subjective opinion formed can be challenged if it could be shown that the Government never applied its mind to the matter or its action is mala fide. If the Court finds that no opinion at all was formed or it was not based on any facts at all or was based on irrelevant or extraneous facts, the High Court can quash the opinion.

54. Since the last decision just now referred to considered the cases which also were cited before us we think we need not consider the same over again as we are in entire agreement about their appreciation and the conclusions drawn therefrom. We do not think that there is any divergence of opinion as is sought to be made out in the decisions of this Court to which we have made a detailed reference. We are clear that the approach to the question under examination in Writ Appeal No. 236 of 1966 and Writ Appeal No. 97 of 1967 manifestly recognises the distinction and consequently does conflict with the ratio in Writ Appeal No. 109 of 1969. While appreciating them, it must be remembered that they were not exhaustively laying down the law as it now stands on the reviewability of subjectively worded formula. They were concerned with one or two aspects of the said question and naturally their consideration was confined to them. In no case, however, we feel that it is laid down that the propriety and soundness of the opinion or sufficiency of relevant grounds can also be the basis for judicial review. In fact they rule out expressly or by necessary implication any proposition that like an Appellate Court the High Court can review the opinion based on subjective formula on its merits. They recognise the limitations placed on the judicial review. They categorically make distinction between an enquiry to find out whether there was any material at all to form the opinion or if it was there, was it relevant to the purpose or could any reasonable person on such a material form the opinion or the opinion formed is perverse on the one hand and the enquiry into the propriety, soundness, sufficiency or weight of the material on the basis of which opinion is formed on the other. The distinction is real and substantial and there is very little scope to mix them or confuse them with each other. All the cases of this Court thus have very much kept this distinction in view and we do not find any divergence of opinion between them. They all point to the same direction.

55. It is, however, conceived that if prima facie grounds are established for the proposition that the authority could not have been so satisfied or held the opinion, a Court will be entitled to hold the act or decision to be invalid unless the authority itself persuades the Court that it did not in fact genuinely form the opinion which it claims to have held. See *Regina v. Governor of Brixton Prison Ex Parte Soblen*, (1963) 2 QB 243 at pp. 302, 307 and 308, where it is laid down :

" It is open to these courts to enquire whether the purpose of the Home Secretary was a lawful or unlawful purpose. Was there a misuse of the power or not ? The Courts can always go behind the face of the deportation order in order to see whether the powers entrusted by Parliament have been exercised lawfully or not ".

56. Thus apart from mala fides or lack of jurisdiction, the order based on a subjective formula can be attacked on any one or more of the grounds mentioned above. It is of course plain that some of the grounds mentioned above legitimately fall under the category of arbitrary exercise of power.

57. Our answer to the question therefore is that apart from the allegation of mala fides and lack of jurisdiction or competence, the notification u/s 17(4) dispensing with the enquiry under Sec. 5-A can in proper cases be attacked on any one or more of the grounds mentioned supra and the High Court in the exercise of its supervisory jurisdiction under Art.226 of the Constitution of India can entertain such grounds of attack.

58. It was sought to be argued that u/s 17(2) of the Act as amended by the Madras Act XXI of 1948, since in the opinion of the Collector it had become necessary to acquire the immediate possession of the land for the purpose of dwelling house for the poor, the urgency can be said to have been decided by the Government. The learned Government Pleader however soon realised that the Collector had not taken any proceedings under sub-section (2). Neither any opinion of the Collector which he had formed could be produced before us, nor any previous sanction of the State Government could be brought to our notice. Once it is realised that no proceedings under sub-section (2) in the present case were in fact taken, then reliance on sub-section (2) would be incorrect. Moreover as we are considering the scope of sub-section (4) in order to find out whether sub-section (1) or sub-section (@) applies to a given case, the Government before it formulates its opinion has to consider the necessary material in relation to the state of affairs mentioned in sub-section (1) or sub-section (2) as the case may be. This point need not be further laboured because the question referred to us and the facts out of which the question arises do not admittedly relate to sub-section (2) but relate only to sub-section (1). We do not therefore feel that such an argument is permissible at this stage.

59. Reference answered accordingly.