therefore, I set aside the order of the Magistrate directing payment of the money deposited to the counter-petitioner. The money will be kept in deposit in Court till one or other of the parties produces a decree of a civil Court to show his right to that money, and, on the production of such a decree, the money will be paid to the party entitled to it.

With this variation the petition must be dismissed.

D.A.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss.

VEERARAGHAVACHARIAR (PLAINTIFF), APPELLANT,

1924, October 8.

v.

THE SECRETARY OF STATE FOR INDIA (DEFENDANT), RESPONDENT.*

Sec. 3 (*f*) *and sec.* 6 (3) *of the Land Acquisition Act* (*I of* 1894)—*Declaration of acquisition of village-sites—Conclusive evidence of public purpose—Right of suit not taken away—Sec.* 6 (3) *not* ultra vires—"*Village sites,*" *meaning of.*

In accordance with section 3, clause (*f*) of the Land Acquisition Act (I of 1894) the Government of Madras declared, by a notification in 1895, in favour of acquisition of village-sites in the Tanjore district.

Held, (1) that acquisition of house sites for Panchamas is a public purpose within the meaning of section 3 (*f*) of the Act,

(2) that a declaration under section 6, clause (3) of the Act is only conclusive evidence that the land is needed for a public purpose, and it does not deprive the subject of his right of suit; *Ezra* v. *Secretary of State for India* (1905) I.L.R., 32 Calc., 605 (P.C.) and *Secretary of State for India* v. *Moment* (1913) I.L R., 40 Calc., 391 (P.C.), distinguished,

(3) that section 6, clause (3) is therefore not *ultra vires* of the Indian legislature, and

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* Second Appeal No. 688 of 1921.

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(4) that it is not open to Municipal Courts to question the correctness of a declaration by Government that a particular land is needed for a public purpose; *Hamabai Framjee* v. *Secretary of State for India* (1915) I.L.R., 39 Bom., 279 (P.C.), distinguished.

SECOND APPEAL against the decree of R. NARAYANA AYYAR, District Judge of Tanjore, in Appeal Suit No. 398 of 1919 preferred against the decree of R. V. Krishna Ayyar, District Munsif of Negapatam, in Original Suit No. 389 of 1919.

The facts and arguments appear sufficiently from the judgment.

S. Muthiah Mudaliyar (with *K. Subrahmanyam*) for appellant.

Government Pleader (*C. V. Anantakrishna Ayyar*) for respondent.

JUDGMENT.

The first point raised in this second appeal is that the acquisition of house-sites for Panchamas is not a public purpose and the Court can go into the question whether it is a public purpose or not notwithstanding the notification by the Government that the acquisition was for a public purpose. The second point raised is that section 6, clause (3) of the Land Acquisition Act of 1894 is *ultra vires* of Indian legislature inasmuch as the clause states that the said declaration, meaning the declaration by the Government, shall be conclusive evidence that the land is needed for public purposes or for a company as the case may be. It is convenient to consider the first two points together.

The argument of Mr. Muthiah Mudaliyar, for the appellant, is that by enacting the provision in clause (3) of section 6, that the declaration shall be conclusive evidence that the land is needed for public purposes or for a company, the Indian legislature has taken away the right of suit by the party and that Courts are not

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precluded from considering whether the purpose for which the lands are acquired under the Land Acquisition Act is a public purpose or not and if it is not a public purpose the mere declaration by the Government that it is a public purpose would not make the acquisition legal. It is not contended on behalf of the respondent that the right of suit has been taken away by clause (3) of section 6. All that section 6, clause (3) declares is that if the Government declares that a certain purpose for which it wants to acquire the lands is a public purpose, it shall be conclusive evidence of the fact.

The provision in section 6, clause (3) that the declaration shall be conclusive evidence is not a new provision enacted in 1894. In Act XX of 1852, section 1, there is a provision similar to this. Section 1 is in these terms:

> "Whenever it shall appear to the Governor of Fort Saint George in Council that any land is needed for a public purpose, he shall make a declaration to that effect in a Minute of Council and such a declaration shall be conclusive evidence that the purpose for which the land is needed is a public purpose."

A similar provision was enacted in Act VI of 1857, section 2,

> "The Government may take any land on a simple declaration under the signature of a Secretary that it is required for public purposes."

This power the Legislature had before the Government of India Act of 1858 and it cannot be said that the Indian Legislature enacted a provision it had no power to enact before the Government of India Act of 1858. The Government of India Act conferred upon the Indian Legislature the powers which it had when the Government was under the East India Company. That being so, it cannot be said, that the provision in section 6, clause 3, is *ultra vires* of the Indian Legislature.

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Before discussing the cases quoted on either side, it is best to consider what has been done by the Government. The Panchamas, the farm labourers of the Tanjore District have been living on lands belonging to the Mirasidars or owners of the lands. They had no rights to the sites on which they built their houses and they were liable to be evicted or turned out at the will and pleasure of the landlord. In order to improve the condition of the Panchamas, the Government proposed to acquire the sites and parcel them out to those, who were willing to build houses on the sites. With this object the Government appointed a Deputy Collector to acquire sites in the Tanjore District. He acquired land under the provisions of the Land Acquisition Act and the plaintiff is one of those persons whose land has been acquired for house-sites for the Panchamas. He has brought this suit for a declaration that the acquisition is illegal. Clause (*f*) of section 3 of the Land Acquisition Act defines "a public purpose" as

> "including the provision of village-sites in districts in which the Local Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision."

Under this clause the Government published a notification No. 317, dated 22nd May 1895 and the District of Tanjore is one of the Districts covered by the notification. I may remark in passing, that the appellant contended that there was no such notification and such a notification, if it existed, should have been filed. I thought it best to have the notification on record and I directed the Government Pleader to produce the notification. He has filed a copy of the original notification (marked as Exhibit III)*. From this notification, it is clear, that it is customary in certain

* Proceedings, dated 17th June 1895, No. 196.

districts for the Government to provide house-sites. Under that notification the acquisition of land now in dispute was made, as is clear from Exhibit II. The acquisition having been made for a purpose, which the Legislature declared to be a public purpose, it is not open to the Court to go into the question whether it is public purpose or not. Where the Legislature has acted within its powers, it is not open to a Municipal Court to question the legality of the provisions of the enactment passed by the Legislature. If an enactment or any provision thereof is *ultra vires* of the Legislature, it would be open to the Court to question the legality of the enactment or the provision.

The Indian Legislature is a subordinate Legislature, subordinate to the Imperial Legislature composed of the Crown, the House of Lords and the House of Commons. The Indian Legislature is governed by the provisions of the Acts of Parliament. The Government of India Act of 1858, 21 & 22 Vict., Chapter VI, gives power to the Indian Legislature to frame laws. Under the Act of 1833 (III and IV William IV), section 43, the Governor-General in Council was given power to make laws and regulations and to repeal, amend or alter any laws or regulations whether then in force or thereafter to be enacted. The Government is entitled to acquire lands for public purposes, for every sovereign authority has power to acquire private land for public purposes and has the power to frame laws for the acquisition of land. When it acts within such powers, as are given to it by the Legislature, a Municipal Court cannot question the validity of the provisions of any law which regulates the acquisition of land. In *Empress* v. *Burah*(1) their Lordships of the Privy Council observed at page 180,

(1) (1879) I.L.R., 4 Calc., 172 (P.C.).

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"The Indian Legislature has powers expressly limited by the Act of Imperial Parliament which created it, and it can, of course do nothing beyond the limits which circumscribe these powers; but, when acting within these limits, it is not in any sense as an agent or delegate of Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as that of Parliament itself."

If it is granted that the Indian Legislature has power to frame laws for the acquisition of private lands, it must be conceded that it has power to frame provisions in the Act for the purpose of carrying out the object of the enactment. One of such provisions is that contained in clause (*f*) of section 3. According to that provision the doing of a certain act is declared to be a public purpose. It is not open to a Court to go behind it and say that it is not a public purpose.

Mr. Muthiah Mudaliyar laid stress upon a decision in *Damodar Gordhan* v. *Deoram Kanji*(1). In that case, the Privy Council held that section 113 of the Evidence Act was *ultrá vires* of the Indian Legislature. Lord SELBOURNE at page 461 in delivering the judgment of their Lordships said with regard to section 113 of the Evidence Act,

"The Governor-General in Council being precluded by the Act, 24 & 25 Vict., chapter 67, section XXII from legislating directly as to the sovereignty or dominion of the Crown over any part of its territories in India, or as to the allegiance of British subjects, could not, by any Legislative Act purporting to make a notification in a Government Gazette conclusive evidence of a cession of territory, exclude enquiry as to the nature and lawfulness of that occasion."

In that case, their Lordships held that under the Act of Parliament the Indian Government could not by a notification hold that a portion of the territory was ceded to the native princes. There is nothing in the Government of India Act or in any other Act of Parliament

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(1) (1876) I.L.R., 1 Bom., 367 (P.C.).

which in any way limits the power of the Indian Legislature to frame laws for the acquisition of land and so the enactment called the Land Acquisition Act is *intra vires* of the Indian Legislature.

It is argued that the right of suit of party has been taken away by section 6, clause (3). That clause does not take away the right of suit of any subject. What it declares is that when the Government declares a purpose to be a public purpose it shall be conclusive evidence of that. In *Secretary of State for India* v. *Moment*(1) the Privy Council held that a certain enactment, which took away the right of a subject to file a suit to question the act of the Government was *ultra vires*. The Burma Government passed Act IV of 1898 and section 41 provided that no civil court is to have jurisdiction to determine any claim or any right over land as against Government. This provision was held to be *ultra vires* of the Burma Legislature. Their Lordships held that the right of suit of a subject against the Government was preserved to him by the Act of 1858 and it was not open to the Legislature to take away that right. In this case, the right of suit is not taken away by the Legislature but clause (3) of section 6 provides that a declaration that the acquisition is intended for public purposes shall be conclusive evidence of that fact. No doubt in *Hamabai Framjee* v. *Secretary of State for India*(2) their Lordships of the Privy Council held that it is open to the Court to consider whether a purpose which was declared to be a public purpose by the Government was a public purpose or not. In that case, the Government proposed to acquire certain lands for building houses for Government servants and wanted to resume

(1) (1913) I.L.R., 40 Calc., 391 (P.C.).
(2) (1915) I.L.R., 39 Bom., 279 (P.C.).

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the land which was granted under the Sanad to the plaintiff's predecessor in title. The question turned upon the provisions of the Sanad and in the course of the judgment Lord DUNEDIN observes at page 295,

"*prima facie* the Government are good judges of that. They are not absolute Judges; they cannot say *sic volo sic jubeo* but at least a Court would not easily hold them to be wrong."

That observation cannot apply to the present case for the Legislature has declared that the acquisition of lands for village sites in certain districts is a public purpose if the Government by notification in the Official Gazette declares that it is customary for the Government to make such provision. The case in *Ezra* v. *The Secretary of State*(1) which went on appeal to the Privy Council in *Ezra* v. *Secretry of State for India*(2) has no application to the present case. In that case, the acquisition was under Part VII of the Land Acquisition Act. Under section 40 the Government before giving consent shall be satisfied by an enquiry held under that section, of the need and public utility of the proposed work. The question there was whether the provisions of section 40 were satisfied. It was held that the provisions of section 40 were satisfied and that the plaintiff could not complain of the act of the Government. Here the acquisition is not under Part VII but under sections 6, 7, 8 and 9 of the Land Acquisition Act.

It is next urged that the purpose for which the acquisition is made is not a public purpose. Reliance is placed upon *Attorney General* v. *Terry*(3) and *Mersey Docks* v. *Cameron*, *Jones* v. *Mersey Docks*(4). Granting for arguments' sake that it is open to consider whether the purpose for which the acquisition is made is a public purpose or not, I do not think that these cases help the appellant much.

(1) (1903) I.L.R., 30 Calc., 36.
(2) (1905) I.L.R., 32 Calc., 605 (P.C.).
(3) (1874) 9 Ch. App., 423.
(4) (1865) 11 H.L.C., 443.

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In both cases it was held that the mere fact that the public was likely to be remotely benefited would not make the purpose a public purpose. Where the primary object is personal gain whether that be of a private individual or of a company, the public benefit resulting from the action of such a person or company is too remote and the purpose cannot be said to be a public purpose. Every merchant and every dealer can say that he benefits the public because he is catering or providing to the wants of the public. The merchant's first object is to make a gain for himself. The benefit that he may confer upon his constituents or patrons is very remote. Such purposes are not public purposes. In *Liskeard Union* v. *Liskeard Waterworks Co.*(1), the decision turned upon the wording of the enactment. A workhouse although a charitable institution was held to be a dwelling house within the meaning of the special enactment. It is not possible to define what a public purpose is. There can be no doubt that provision of house sites for poor people is a public purpose for it benefits a large class of people and not one or two individuals. In *Hamabai* v. *Secretary of State* (2), CHANDAVARKAR, J., observed

"There is no definition of public purpose in any of our legislative enactments to afford us a clue to the meaning of the term save that in the Land Acquisition Act but that it is a partially inclusive and not an exhaustive definition."

The definition given indicates what a public purpose is and the provision of house sites for people is a public purpose. The Government is the proper authority for deciding what a public purpose is. When the Government declare that a certain purpose is a public purpose, it must be presumed that the Government is in possession

(1) (1881) 7 Q.B.D., 505. (2) (1911) 13 Bom., L.R., 1097.

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of facts which induce the Government to declare that the purpose is a public purpose. The Government are the best judges in the circumstances, of what a public purpose is. In *Wijeyesekera* v. *Festing*(1) their Lordships of the Privy Council observed that the decision of the Governor of Ceylon on the question whether land is needed or not for public purpose was final. Though the case was from Ceylon and in the Land Acquisition Ordinance there was no section corresponding to section 6, clause 3 of the Land Acquisition Act of 1894 yet the Privy Council held that the decision of the Governor was final. This shows that the Government are the proper judges of what a public purpose is. If the Government acts within the powers conferred on it by the Legislature, it is not open to a Municipal Court to question the act. I hold that the purpose for which the acquisition was made was for public purposes within the meaning of section 6 of the Land Acquisition Act and that the provision in clause 3 of section 6 that the declaration shall be conclusive evidence if the land is needed for public purposes is *intra vires* of the Indian Legislature.

It was next argued that under section 6 of the Land Acquisition Act the cost of acquisition should come out of the public revenues or some fund controlled or managed by a local authority, otherwise the acquisition is not for a public purpose. In this case, there is no evidence that the cost of acquisition was met from the funds collected by the Land Acquisition Officer from the panchamas. The Land Acquisition Officer P.W. 1 stated that he collected some money from some of the panchamas and that he deposited it with various banks and that his intention was to form co-operative societies to convey the lands to the persons who would pay for the

(1) [1919] A.C., 646.

sites. The cost of acquisition was met by the Government out of public revenue and therefore there is no substance in this contention.

It is feebly urged that there has been a contravention of the instructions of Government by the Land Acquisition Officer and therefore the acquisition of the land of the plaintiff is bad. I have not been shown any act or illegal omission which would constitute a contravention of the instruction of Government on this point.

It is argued on behalf of the appellant that what was contemplated by the notification of 1895 was village sites. Mr. Muthiah Mudaliyar contends that village sites mean lands reserved for communal purposes. He has referred to no authority for this position nor has he referred me to any Government Order or Standing Order of the Board of Revenue for the position that village sites mean communal lands. A village site ordinarily means the site on which the houses in a village are built. The word used in the Standing Order is Gramanattam. The Government reserve a portion of the land fit for building purposes as Gramanattam or village sites for the purpose of enabling people to settle on such sites and build houses, and grants a portion of that site to people on application (vide Standing Order 21 of the Board of Revenue). There is a reference to Gramanattam or village site in *Madathapu Ramaya* v. *The Secretary of State for India*(1). There is also reference in *Mahammad Meera Mohiden* v. *The Secretary of State for India*(2). From the reference it is quite clear that what is spoken of as village site is not land reserved in a village for communal purposes but land which is reserved for being parcelled out as house-sites and also all the lands on which houses have been built.

(1) (1904) I.L.R., 27 Mad., 386 at 393. (2) (1903) 13 M.L.J., 269 at 270.

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It is further contended that granting that the Government have power to acquire lands for village sites, it is not competent for the Government to acquire particular sites of houses for the benefit of individuals. The Government instructed the Land Acquisition Officer to acquire the sites on which the houses of the panchamas stand. It is not to benefit any particular individual that the Government have chosen to acquire sites and therefore the contention that the sites were acquired only for the benefit of individuals is not tenable.

In the result the appeal fails and is dismissed with costs. This judgment will govern the connected Second Appeals.

N.R.