

J.W. Benon Vs. State

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Court : Delhi

Decided On : Nov-08-1967

Reported in : 5(1969)DLT483

Judge : T.V.R. Tatachari, J.

Acts : [Constitution of India](#) - Articles 166 and 226; [Land Acquisition Act, 1894](#) - Sections 4 and 17

Appeal No. : Civil Writ Petition Appeal No. 538 of 1967

Appellant : J.W. Benon

Respondent : State

Advocate for Pet/Ap. : M.L. Sethi,; Chabildas and; S. Malhtora, Advs

Judgement :

T.V.R. Tatachari, J.

(1) The petitioners are five in number, namely, (1) J. W. Benon, (2) Smt. Prito, (3) Dharam Chand, (4) Kuljas Rai, and (5) Jagdish Chander. The said petitioners owned buildings including shops and business cum-residential flats, situate in the area of Ktohi Manali, Pahti Nasogi, in Tehsil and District Kulu. The said properties are located in a central and prized commercial area, being part of and adjacent to Manali Bazar, and were stated to be a choice piece of estate from the commercial

point of view.

(2) On 1st June, 1965, the Punjab Government notified by a Notification No. 1119-2UE-65/16501, dated 1st June, 1965 under 'Section 4 of the [Land Acquisition Act, 1894](#) , that it appeared to the Governor of Punjab that land was likely to be required to be taken by the Government for a public purpose, namely, for planned development of the area of village Ktohi Manali Pahti Nasogi, Tehsil and District Kulu, and that it was, therefore, notified by the said Notification that the land in the locality specified in the Notification was likely to be required for the said public purpose. It was also stated in the said Notification that in exercise of the powers conferred by Section 4 of the Land Acquisition Act, the Governor of Punjab was pleased to authorise the officers, for the time being engaged in the undertaking with their servants and workmen, to enter upon and survey any land in the locality and do all other acts required or permitted by that Section. It was further stated in the Notification that in exercise of the powers under the said Act, the Governor of Punjab was pleased to direct that action under Section 17(1) of the said Act should be taken in the case on the ground of urgency, and that the provisions of Section 5A shall not apply in regard to the acquisition in question. The said direction that the provisions of Section 5A shall not apply to the acquisition was obviously made under Section 17(4) of the Land Acquisition Act, though it was not so stated expressly. Various Khasra Numbers were specified at the end of the Notification as being the plots in the locality sought to be acquired.

(3) On the same date, the Government of Punjab issued another Modification No. 1171-2UE-65/16504 under Section 6 of the Land Acquisition Act, by which it was declared that the Governor of Punjab was satisfied that the land comprising the various Khasra numbers specified at the end of the Notification was needed by the Government for a public purpose, namely, for the planned development of the area of Ktohi Manali, Pahti Masogi, Tehsil and District Kulu, and that the said land was required for the aforesaid purpose. It was further directed that under the provisions of Section 7 of the Land Acquisition Act, the Land Acquisition Collector, Directorate of Urban Estates, Chandigarh, should take order for the acquisition of the said land. It was further stated in the said Notification that in view of the urgency of the acquisition, the Governor of Punjab, in exercise of the powers

under section 17(1) of the said Act, was pleased to direct that the Land Acquisition Collector, Directorate of Urban Estates, Chandigarh, should proceed to take possession of the land specified in the Ntoification in accordance with the provisions of Section 17(1).

(4) The various Khasra numbers mentioned in the aforesaid Ntoification? were admittedly owned by the petitioners, and by the two aforesaid Ntoifications which purported to have been issued under Sections 4, 6, 17 and 17 of the Act, the land comprised in the said Khasra numbers was declared as required for the public purpose mentioned in the Ntoifications, the procedure under Section 5A was made in applicable, and the Collector was directed to proceed to take possession of the land.

(5) On 21st March, 1966, the Collector made an award under section 11 of the Act. It was stated at the end of the award that possession was taken on that date. It may, however, be ntoed that in the written statement filed on behalf of the respondents in answer to the writ petition, it was stated that possession was taken by the Land Acquisition Officer on 31st March, 1966. Whichever might be the correct date, it is clear that though the aforesaid Ntoifications under Sections 4, 6, 17(1) and 17(4) of the Act were issued on 1st June, 1965, possession was nto taken till 21st March, IP66 or 31st March, 1966. Thereupon, the petitioners filed the present writ petition on 12th April, 1966, praying that the aforesaid two ntoifications and the acquisition proceedings which resulted in the award, dated 21st March, 1966, may be quashed, and that appropriate directories may he issued to the respondents nto to interfore with the possession of the petitioners over their lands, buildings, etc , in pursuance of the aforesaid Ntoifications and the award.

(6) The respondents, namely, (1) State of Punjab through Secretary, Town and Country Planning Punjab, Chandigarh, (2) the Director, Town and Country Planning, Punjab, Chandigarh. (3) Land Acquisition Collector, Directorate of Urban Estates, Punjab, Chandigarh, and (4) the Collector and Deputy Commissioner, Kulu District, filed a common written statement contesting the writ petition. In the said written statement, they raised 4 preliminary objections, and submitted on the

merits that the notifications and the award and all the other acquisition proceedings were quite valid and in accordance with law. However, it may be stated here that before me, the learned counsel for the respondents urged only one preliminary objection, namely, that the interests of the various petitioners in the Khasra numbers, which were the subject matter of the acquisition, were separate and individual, and not joint, and that, therefore a joint writ petition by all of them was not maintainable under Article 226 of the [Constitution of India](#). The said preliminary objection has, therefore, to be considered in the first instance before the various contentions of the parties on the merits are taken up for consideration.

(7) As already stated, the five petitioners owned buildings including shops and business-cum-residential flats, which were comprised in the various Khasra numbers specified in the two Notifications issued by the Government of Punjab. The first petitioner and his mother, the 2nd petitioner, jointly owned Khasra numbers 740, 2980/739, 2981/741, and 2958/2803, consisting of a total area of 1 Bigha, 2 bids was and 14 Biswansis. The 3rd petitioner owned 4 bids was situated in Khasra numbers 747 and 748/1. The 4th and 5th petitioners jointly owned 5 bids was in Khasra numbers 727 and 728. Thus, the petitioners Nos. 1 and 2 together, petitioner No. 3, and petitioners Nos. 4 and 5 together, had individual and separate interests in the respective Khasra numbers mentioned above. Yet, they all jointly filed one writ petition praying that the notifications and the award, which affected all of them, should be quashed and that appropriate directions be given that their possession should not be interfered with by the respondents. The preliminary objection by the respondents was that the petitioners who had individual and separate interests in the various Khasra numbers should have filed separate writ petitions under Article 226 of the Constitution, and that the joint writ petition filed by them was not maintainable in law. The learned counsel for the respondents, however, submitted that the writ petition may be confined to the 1st two petitioners and the names of the other petitioners struck off or that the petitioners may be required to file separate petitions.

(8) The question as to whether several persons having individual and separate interests in a property or properties could file a joint writ petition under Article 226

has been considered by various High Courts. Before referring to the said decisions, it is necessary to notice that there was a divergence of opinion between some of the High Courts on the question whether writ proceedings for the enforcement of civil rights' were civil proceedings, and whether under Section 141 of the Code of Civil Procedure, the provisions of the Code of Civil Procedure applied to writ petitions under Article 226 of the Constitution. However, it is now settled by the decisions of the Supreme Court in *S. A. L. Narayan Row etc. v. Ishwarlal Bhagwandas etc.* and in *Ramesh and another v. Jendalal and others* wherein it was held that a proceeding under Article 226 for a writ to bring up a proceeding for consideration is a civil proceeding if the original proceeding concerned civil rights. In the present case, the proceedings under the Land Acquisition Act, which are sought to be challenged in the writ petition, concern civil rights, and therefore, the proceeding in the present writ petition must be regarded as a civil proceeding.

(9) Coming now to the decisions of the various High Courts referred to above, in *Nadhmil v. Commissioners, Civil Supplies, Rajasthan* two merchants were informed by the Sub-Divisional Officer that their stocks of Bajra were frozen by him under orders of the Deputy Commissioner, Civil Supplies, Jodhpur, and later they were informed by the Tehsildar of Jaswantpura that their stocks of Bajra were requisitioned by the Government and they were ordered to sell the same at a particular rate. The two merchants thereupon filed a single writ petition challenging, inter alia, that the action taken under the foodgrains Control Order was void in view of Articles 14, 19(1)(f), 19(1)(g), and 31 of the Constitution, read with Article 13. A preliminary objection was raised that the two persons on whom two different orders were passed should not have filed one single writ petition. Wanchoo, C. J. and Bapna, J. rejected the objection by observing- 'we see no objection to this course when the case of these two persons is exactly the same.'

10. In *United Motors (India) Limited v. State of Bombay*, 7 petitioners had joined in one petition for a writ under Article 226 of the Constitution claiming that the Sales-Tax Act was invalid and should not be enforced against them. Chagla, C. J. held- 'Here there are not several claims made by several petitioners. Even assuming that the Advocate-General was right, at the highest the joining of more than one petitioner would be a surplusage and that surplusage would be cured by six of the

petitioners being struck off the record. The petition could easily be maintained by one out of the 7 petitioners.' The case went up, on appeals to the Supreme Court, but this particular question was not raised before the Supreme Court vide *State of Bombay v. United Motors*.

(10) In *Inder Singh v. State of Rajasthan*, 23 separate applications for revision were disposed of by a common judgment by the Revenue Board and a single writ petition was filed against the said common judgment. It was held by Sharma, J. that such a single writ petition was not maintainable. Apparently, the High Court took the view that the common judgment of the Revenue Board really tantamounted to 23 separate judgments in the 23 applications, and, therefore, held that separate writ petitions should have been filed against the separate orders in the 23 applications.

(11) In *Mandir Thakar Dawara v. State of Pepsu*, Mehar Singh and Chopra, JJ. held, as summarised in the headnote (b) to the said Report,-

'THERE must be separate applications for separate writs. Where in an application under Article 226, 14 different occupancy tenants, who have nothing to do with each other, will become respondents to the application, and if successful, the application will result in interference with 14 separate and independent mutation orders, one application to question the legality of the orders of the Revenue Officers in 14 separate cases and seeking writ to quash those orders is not proper and competent. The applicant should have filed 14 separate applications questioning the legality of each separate mutation order and making the particular occupancy tenant concerned a party respondent in a particular application or at least disclosing his particulars in his affidavit to enable the court to serve rule nisi upon him. Even if the Code of Civil Procedure applies to such applications, still it cannot be taken to override a general rule applicable to such applications that there should be separate applications for separate writs '

It will be noticed that the case was one where the challenge in the writ application was as regards the legality of separate orders of the Revenue Officers in 14 separate cases, The orders sought to be challenged were separate and the claim or relief sought against the several respondents was also separate in respect of

each of the respondents. It was in such a case that the learned Judges held that separate writ applications had to be filed.

(12) In *Manindra v. Municipal Commissioners, Baranagore Municipality* it was observed that it will be sufficient for the petitioners in a writ proceeding to follow analogously the provisions of order I of the Code of Civil Procedure. This observation, however, appears to be an obiter dictum in view of the subsequent observation of the learned Judge- 'However, this is a point upon which it is unnecessary to say more because it finally appears that only one petitioner has any possible ground to put forward in this application.'

(13) In *Mohd. Ibrahim v. Deputy Commercial Tax Officer Rajgopala Iyengar, J.* held that a single petition by several petitioners affected by similar orders was not tenable in law, and that the principle of order I, rule 8 of the Code of Civil Procedure could not be extended to such petitions. The view taken in this case regarding the applicability of order 1, rule 8 of the Code of Civil Procedure is not to be regarded as negated by the recent decisions of the Supreme Court referred to above.

(14) In *Re : Atmakuri Gopalakrishna Rao's case* separate owners of rice mills applied by separate petitions to the Collector for licenses for their mills. The Collector, on each of those separate applications, passed separate but similar orders to the effect that a further security deposit of Rs. 300.00 had to be made by each of the petitioners. Aggrieved by the said similar but separate orders, the owners of the rice mills filed a joint petition for a writ of mandamus. Kumarayya, J. held that two or more persons could not join in a single petition for a writ of mandamus to enforce separate claims, and that the principles embodied in order I of the Code of Civil Procedure could not be extended to such a case. This view cannot be regarded as correct in view of the recent decisions of the Supreme Court referred to above.

(15) In *Shanmuga Rajeshwar Sethupathi v. State of Madras* estates owned by several Devasthanams were nationalized and taken over by the Government on different dates under separate notifications. The petitioner, who was the hereditary trustee of these Devasthanams, filed a single writ petition under Article 226 for

appropriate writs claiming that the compensation payable to the several institutions had not been calculated according to law. Rajgopala Iyengar, J. held that a single petition was not maintainable, and that the petitioners should have filed as many petitions as there were institutions whose rights they sought to assert. The learned Judge observed as follows :- 'What the petitioner-trustee is asserting is not any individual right of his own but a right in right of the trust. therefore, there are as many complaints voiced in this petition as there are trusts or institutions, and the mere fact that there is a common manager or a single individual who is entitled to act on behalf of the trusts cannot be used to blur the legal position, that it is the right of the institutions which is sought to be asserted or protected in this petition. I do not see any difference between the present case and the one where the managers of several institutions authorised by a power of attorney appoint one common individual to take action on their behalf. The fact that the authorisation here is by law and not by the act of parties does not, in my opinion, make any difference. It is, no doubt, true that the points that arise in regard to each institution are identical in all the cases. The identity of the points to be decided, however, cannot impart unity to the right, the alleged violation of which gives rise to this writ petition.' Thus, it appears that in that case the claims or rights of the several institutions regarding the compensation payable to the several institutions were separate and, therefore, it was held that separate writ petitions should have been filed.

(16) In *M. S. Ganabathi Nadar v. State of Madras* the Government of Madras, by a single notification referred disputes between 7 establishments and their workmen to the Industrial Tribunal. The said 7 establishments filed a single application for a writ of prohibition against the Tribunal and the Government. Rajgopala Iyengar, J. held as follows:- 'Notwithstanding that the reference was one, what is sought to be ventilated in the petition is the right of each petitioner to carry on its business without the interference by the State Government or the Tribunal acting under the provisions of the Industrial Disputes Act. That the right whose violation is alleged is an individual right which inheres in each petitioner cannot be disputed, and merely because similar rights possessed by the other persons are also violated, it does not follow that their grievances have had a unity' Thus, as the rights or claims of and the reliefs sought for by the 7 establishments though similar, were separate, it

was held that separate writ petitions should have been filed.

(17) In *Bankimchandra Chakravarty v. Regional Provident Fund Commissioner* 15 prosecutions were lodged against the petitioners, but they filed only one application for quashing all those 15 prosecutions. Following two earlier unreported decisions of the same High Court, and also the decisions reported in : AIR1957 Mad570 , V. Ramaswamy, C. J. and R. K. Choudhury, J. held that the joint application for quashing the several prosecutions was not maintainable. 19. In *Bishwaranjan Bose and others v The Honorary Secretary. Rama Krishna Mission, Vivekanand Society, Jameshedpur and others teachers of a school*, whose services were terminated by orders, dated 12th January, 1950, by the Managing Committee of the Ramakrishna Mission, Vivekanand Society, filed a single writ petition challenging the said orders. An objection was taken that the 4 petitioners were served with 4 different orders terminating their services, and that, therefore, they should have made 4 separate applications for separate writs. V. Ramaswamy, C. J. and R.K.Choudhury, J. held that separate applications must be made for issue of separate writs to quash separate orders, as otherwise, on one application, if it succeeds, several separate writs will have to be issued, and that it will lead to an absurd position. Here again, it may be noticed that the orders sought to be challenged were separate and the claims or reliefs sought for by the petitioners were separate and, therefore, it was held that separate writ petitions should have been filed by the 4 petitioners.

(18) In *Annum Adinarayana and another v. State of Andhra Pradesh* two supervisors of a Market Committee were discharged from their services by a single order of the Collector, and they jointly filed a single petition under Article 226 for quashing the order. Subha Rao, C, J. and Srinivaschari, J. held that the petitioners were aggrieved by a single act of the Collector, and a common question of law and fact arose, and, therefore, a single application was maintainable, In that case, the learned Judges, declining to follow a Full Bench decision of the High Court of Patna in *Collector of Monghyr v. Paratap Singh* took the view, that an application under Article 226 of the [Constitution of India](#) is a proceeding in a court of civil jurisdiction, and that, therefore, Section 141 of the Code of Civil Procedure is directly attracted and the provisions of orders I and 2 of

the Code can be invoked as far as they can be made applicable to the proceeding in a writ application under Article 226. The view of the Division Bench of the Andhra Pradesh High Court on this aspect is to be taken as the correct view in view of the recent decisions of the Supreme Court already referred to above. The learned Judges of the Division Bench summarised the legal position as follows :-

'An application under Article 226 of the [Constitution of India](#) is a proceeding in a court of civil jurisdiction. The provisions of orders I and 2 can be invoked as far as they can be made applicable to the proceedings in a writ application under Article 226. Ordinarily, 2 or more persons cannot join in a single petition to enforce separate claims. But, where the right to relief arises from the same act or transaction and there is a common question of law or fact or where, though the right to relief claimed does not arise from the same act or transaction, the petitioners are jointly interested in the causes of action, one petition is maintainable at their instance.'

(19) In *Management of Rainbow Dyeing Factory v. Industrial Tribunal* on a reference by the Government for adjudication of various issues relating to wages, dearness allowance, bonus and holidays with pay arising between 30 industrial establishments or concerns and the persons working in those establishments, the Industrial Tribunal considering the case of each unit passed an award directing payment by become and exonerating tohers. Rajgopalan and Balakrishna Ayyar, JJ. held that the interests of the 30 concerns, although similar, were separate and distinct and, therefore, each one of them must file a separate writ of certiorari and pay the court fee, and that a joint petition by all of them was incompetent. It was noticed that the Industrial Tribunal passed an award considering the case of each unit. And thus the award was virtually a series of awards in respect of each of the 30 concerns. As pointed out by the learned Judges, the interests of the 30 concerns, although similar, were several and distinct. Thus, the awards sought to be challenged were separate and distinct, and the relief sought was also separate and distinct in respect of each of the concerns. It was in such a case that the learned Judges held that separate writ petitions should have been filed. The learned Judges also held that the provisions of order I of the Civil Procedure Code cannot be applied to writ proceedings on the strength of the rule laid down by

section 141 of that Code inasmuch as a writ proceeding cannot be held to be in the nature of a civil suit. This part of the said decision cannot be regarded as good law in view of the recent decision of the Supreme Court referred to above by me.

(20) In *Uma Shankar Rai and others v. Divisional Superintendent, Northern Railway, Lucknow and others* V.D.Bhargava and R.A.Misra, JJ. after referring to the decision reported in Air 1906 Calcutta 291 at page 295, observed as follows :- 'In the opinion of Mr. Justice Sinha in that case, it was held that this rule was a highly technical one of procedure, and should not be introduced in our law. In our view, writ jurisdiction is a special jurisdiction and is for the enforcement of an individual right and there can be no question of the application of order 1 of the Code of Civil Procedure to such proceedings. The learned Judge seems to have been influenced by the fact that this country is a poor country to bear litigants' expenses. That is a matter for the legislatures to consider in fixing the amount of court fees, but we do not see any reason to allow joint applications on that ground. If one wants a redress by way of a writ petition, he comes in his individual right and stands on it, not jointly with others.' In that view, the learned Judges held, that in the case of a common right (not a joint right) it is not open to the persons who are affected by a common order to file a joint writ application. It has to be noticed that the view of the learned Judges as regards the applicability of the provisions of order I of the Code of Civil Procedure does not accord with the recent decisions of the Supreme Court referred to above, and this decision cannot, therefore, be regarded as good law in view of the aforesaid decisions of the Supreme Court.

(21) In *Qurbali v. Government of Rajasthan*, a writ application was filed by 3 persons praying that about 16 respondents who were elected as members of the Pali Municipality and two respondents who were nominated by the Government thereto be restrained from functioning as members of the said Municipality and that fresh elections be ordered to be held in accordance with law. Out of the 3 petitioners, the 1st two were defeated candidates, and the 3rd petitioner was a voter on the election rolls of the Municipality. A preliminary objection was raised joint petition by more than one petitioner was not maintainable. I.N.Modi and D. M. Bhandari, JJ. held as follows :- 'This objection seems to me to have no force whatsoever. It is not disputed that the petitioners have a locus standi to file this

petition for obviously, two of the candidates were defeated at the election and the 3rd one is a voter in this very Municipality. The objection merely relates to the form of the petition and has no substance in it. I may also point out that under order I, rule I C. P. C., all persons may be joined in one suit as plaintiffs where the right to relief arises out of the same act or transaction or series of acts or transactions, and, Secondly, the matter is such that if the plaintiffs brought separate actions, common questions of fact or law would arise. The principle is that even in cases where the plaintiffs seek individual reliefs where the investigation would to a large extent be identical in each of the cases, they may unite as co-plaintiffs and avoid useless expenditure. On the analogy of this principle, I overrule this contention.' It will be noticed that the learned Judges applied the analogy of the principle which underlies order I, rule I of the Code of Civil Procedure. It will also be noticed that it was a case in which a single transaction, namely, the election, gave rise to one cause of action, and the relief sought for by all the petitioners was the same

(22) In *Balak and others v. State of Uttar Pradesh*, three impugned Government Notifications covered two separate parcels of land. Two Notifications related to one parcel (of 113.78 acres) and the third Notification related to the second parcel of land. Sixty petitioners filed a single writ petition impugning the said Notifications. All of them were not interested in both the parcels of land. But, petitioners Nos. 1 to 53 were tenants in respect of one parcel of land, and petitioners Nos. 34, 37, 48, 52 and 54 to 60 were tenants in respect of the second parcel of land. V. G. Oak J. observed as follows :-

'THE petition is defective on account of multifariousness. There is, however, reason to believe that 53 petitioners are interested in challenging the acquisition proceedings relating to the area of 113.78 acres (the aforesaid 1st parcel of land).'

The counsel for the petitioners elected to press the petition with respect to the said area of 113.78 acres and the learned Judge entertained the petition and confined the discussion in the case to the said area only. Thus, though the interests of the 53 tenants were not joint, but separate, a single writ petition by them was entertained as they were all affected alike by two out of the three Notifications.

(23) In *Revenue Palwaris Union v State of Punjab*, a single writ petition was filed challenging the validity of the taxes imposed by various District Boards on professions, trades, callings, etc. The said petition was filed by the Revenue Patwaris Union, Punjab, on behalf of all the Patwaris of the State, and the authority and jurisdiction of the District Boards in the entire State to impose profession tax on the petitioners was challenged. An objection was taken that such an omnibus petition did not lie and could not be entertained. Following the decisions reported in A. I. R. 1956 Mad 626, and 1957 Mad 616 K. L. Gosain and A. N. Grover, JJ. upheld the objection. In fact it appears from the Judgment that the non-maintainability of such a joint petition was conceded by the learned counsel for the petitioners in that case, and he requested the Court to allow him to withdraw the petition so that he could file again separate petitions on behalf of individual petitioners. The Court allowed him to do so.

(24) In *Ramchand Nihalchand Advani v. Anandlal Bapalal, V. B. Raju and R. B. Mehta*, JJ. held- 'The High Court has also made special rules relating to the procedure, which are to be found in Chapter XVII of the Bombay High Court Appellate Side Rules, 1960. These rules are framed under Article 225 of the Constitution. The rule making power of the High Court in regard to matters of procedure in civil proceedings is also to be found in other provisions already quoted earlier. The rules framed by the High Court would, therefore, supersede the rules under the Civil Procedure Code. Rules of procedure in the matter of writs would, therefore, be governed by the special rules relating to writ petitions framed by the Bombay High Court and not by order 1, rule 1 of the Code of Civil Procedure.' In that view, the learned Judges held, relying upon the decision reported in A. I. R. 1956 Mad 626 and A. I. R. 1957 A. P. 88, that there must be separate application by every applicant for every right or claim sought to be enforced in a writ petition, and that two or more persons cannot join in a single application to enforce separate rights or claims by way of writs.

(25) In *M/s. Mount Corporation and others v. Director of Industries*, each one of the petitioners was an applicant for a license and his application was rejected by the third respondent. In a single writ petition filed by them, the question arose as to whether the several petitioners who had their individual grievance and separate

causes of action, were entitled to join together and maintain a single joint writ petition under Article 226 of the Constitution on the ground that common questions of law and fact were involved in the case. K. G. Hegde and G. K. Govinda. Bhutt, JJ. held firstly that in the High Court of Mysore Rules, 1959, there was a rule providing for institution of joint writ petitions when common questions of law and fact were involved, but that the fact that the reason or the basis for grievance of several persons may be the same, does not convert the grievances of the several individuals into a common grievance of a class so as to entitle them to maintain a joint writ petition. The learned Judges also held that the jurisdiction vested in the High Court under Article 226 of the Constitution is a special original jurisdiction, and that in the absence of special rules made by the High Court in exercise of its powers under Article 225 of the Constitution, in the very nature of the proceedings under Article 226 of the Constitution, the provisions of order I, rule I of the Code of Civil Procedure were not applicable to writ petitions. It will be noticed that in the first part of the decision noted above, the emphasis was on the rejection of the application for license made by each of the petitioners and each of the petitioners having his own separate grievance by reason of the said rejection. Thus, the act or transaction, which gave rise to the cause of action was separate in the case of each petitioner, and the relief sought by each of the petitioners was also separate and distinct. It was in such a case that the learned Judges held that separate writ applications should have been filed. The second part of the decision noted above cannot be regarded as good law in view of the recent decisions of the Supreme Court referred to above.

(26) In *N. C. Upadhaya v. State of U P.*, a writ petition was filed by 50 petitioners. The first 49 petitioners were living in bungalows Nos. 9 and 11, Bank Road, Allahabad, and other out-houses, and the petitioner No. 50 was the Registered Co-operative Housing Society. Some of the petitioners were members of the Co-operative Housing Society. Land Acquisition Proceedings were started in respect of the said bungalows. The land Acquisition Officer issued notices under Section 9 of the Land Acquisition Act to the petitioners. The petitioners appeared before him and made their representations. The Land Acquisition Officer had not given his final award and yet steps were being taken to evict the petitioners. Thereupon, the petitioners jointly filed a writ petition praying that the land acquisition proceedings

may be quashed, and the Land Acquisition Officer may be commanded not to proceed further with the said proceedings. Dealing with the objection by the respondents as to the maintainability of such a joint writ petition, D. D. Seth, J. held as follows :- 'In my opinion, there is no merit in the preliminary objection raised by Shri N.D. Pant. Shri Pant conceded that the petition will be maintainable in so far as one petitioner is concerned but not on behalf of the others as each one of the petitioners had a separate and individual right to file a petition. In this connection, he relied on *Uma Shanker Rai v. Divisional Superintendent, Northern Railway, Lucknow*. In the instant case, however, the right of the petitioners is joint, common and inseparable. All the 50 petitioners are tenants of the bungalows sought to be acquired and, therefore, have a common cause of action, they are jointly interested in resisting the acquisition of the land. This joint right is inseparable. Each relief claimed by the petitioners is directed to an assertion of a common claim that the acquisition proceedings are bad.' Thus, the learned Judge laid emphasis on the right of the petitioners being joint, common, and inseparable, and the petitioners having a common cause of action and a joint interest in resisting the acquisition of the land.

(27) In *Khurjawala Buckles Manufacturing Co. v. Commissioner, Sales tax, U.P. Lucknow*, M.C. Desai, C.J. and R.S. Pathak, J. took the view that a High Court, when exercising jurisdiction under Article 226, cannot be said to be a court of civil jurisdiction, and in that view held that the provisions of the Civil Procedure Code do not govern a proceeding under Article 226 of the Constitution, and that, therefore, a petition for certiorari for the quashing of 2 assessment orders pertaining to two assessment years or one petition for the quashing of two assessment orders under two different taxing statutes, namely, U.P. Sales-tax Act and the Central Sales-tax Act, even though the assessed and the assessing authority is the same, cannot be entertained. The view expressed in this decision regarding the nature of the jurisdiction of the High Court under Article 226 of the Constitution cannot be regarded as correct in view of the decisions of the Supreme Court referred to above. But, the final decision in the case, viz., that a single writ petition could not be entertained, can be regarded as correct on the facts of the case, as the assessment orders sought to be quashed were separate and distinct orders, and the claims or reliefs sought for by the petitioners regarding the said

assessment orders were also separate and distinct.

(28) In *Khemkaran v. State of Uttar Pradesh*, the petitioners were the tenure holders of various plots of land which were sought to be acquired under the Land Acquisition Act, and were in actual cultivatory possession. The Government of Uttar Pradesh issued a Notification under Section 4 in respect of the aforesaid plots, and by the same Notification, the provisions of section 5A of the Act were excluded in exercise of the power conferred by section 17(4) of the said Acquisition Act. Subsequently, the Notification under section 6 of the Land Acquisition Act was also issued. The validity of the proceedings initiated on the basis of the aforesaid Notifications was challenged in the High Court by several petitions under Article 226 of the [Constitution of India](#). While those writ petitions were pending disposal in the High Court, the State Government passed a Notification on 23rd February, 1961, by which the earlier two Notifications under sections 4 and 6 were cancelled. By another fresh Notification issued on the same date under section 4(1) of the Land Acquisition Act, the same plots of land were declared as needed for a public purpose which was the same as the previous public purpose mentioned in the cancelled Notifications. On February, 24th 1961, a fresh Notification under section 6 of the Land Acquisition Act was made. Thereupon, the various petitioners filed the writ petitions in question challenging the validity of the proceedings initiated by the second set of Notifications issued on 23rd and 24th February, 1961. The respondents raised a preliminary objection that each of the writ petitions was filed by more than one individual, and that a joint petition by more than one person was not maintainable. Dealing with the said objection, *Satish Chandra J.* distinguishing the decision reported in : AIR 1960 All 366 and following the decision reported in A.I.R. 62 All 203, held that- 'in a single proceeding culminating in a single order, effecting a large number of persons (e.g. tenure holders of land in a village in respect of which there is a single Notification under section 4 and a single Notification under section 6, Land Acquisition Act), all such persons can raise a single complaint to the High Court under Article 22 to canvass the validity of such action. It will be to the convenience of all concerned and would serve the interests of justice.' It has to be noticed that the learned Judge laid emphasis on the proceeding and the order under the Land Acquisition Act being a single one though affecting a large number of persons.

(29) Thus, in view of the recent decisions of the Supreme Court in *S.A.L. Naryan Row etc. v. Ishwarlal Bhagwandas etc.* and *Ramesh and tohers v. Jendalal and tohers* (supra) , the legal position set out in the decision of the High Court of Andhra Pradesh in *Annum Adinarayan and antoher v. State of Andhra Pradesh*, must be regarded as correct. As stated therein, an application under Article 226 concerning a proceeding affecting civil rights is a proceeding in a court of civil jurisdiction. By virtue of the provision in section 141 of the Code of Civil Procedure orders 1 and 2 of the Civil Procedure Code can be invoked as far as they can be made applicable to the proceedings in a writ application under Article 226. 'Ordinarily, two or more persons cannot join in a single petition to enforce separate claims. But, where the right to relief arises from the same act or transaction, and there is a common question of law or fact, or where, though the right to relief or claim does not arise from the same act or transaction, the petitioners are jointly interested in the cause of action, one petition is maintainable at their instance.'

(30) Even toherwise, i.e. even apart from the proceeding under Article 220 being a civil proceeding, and the applicability of the provisions of orders 1 and 2 of the Code of Civil Procedure, it has to be noticed that the preponderance of opinion is in favor of the view that where a single proceeding or an act or a transaction or an order affects the interests or rights of a number of persons, and their claim or the relief which they seek against the said proceeding, act or transaction or order is the same, they may join in filing a single writ petition under Article 226 of the Constitution, though their interests or rights are individual and separate.

(31) In the present case, the 5 petitioners were affected by the proceedings under the Land Acquisition Act. The Notifications under sections 4 and 6 of the Act are integrally connected as held by the Supreme Court in *State of Madhya Pradesh v. Vishnu Prasad*. The two impugned Notifications, dated 1st June, 1965, constitute a single proceeding of acquisition under the Land Acquisition Act. The claim or the relief sought for by the petitioners is the same, namely, the quashing of the said notifications or the proceeding of acquisition. The petitioners could, therefore, file a single writ petition claiming the said relief, though their interests or rights in the respective Khasra numbers were individual and separate.

(32) Shri S. Malhthora, the learned counsel for the respondents referred to the rules, dated 1st February, 1967, substituted by the Delhi High Court for the Rules contained in Chapter IV-F(B) of the Rules and Orders of Punjab High Court. Volume V. The said Rules which are seven in number, provide the procedure to be followed in the filing of every petition for the issue of any direction, order or writ in the nature of mandamus prohibition, co-warranto or certiorari, mentioned in Article 226 of the [Constitution of India](#). I do not find any provision therein which has a bearing upon the question under consideration in the present case. It is, therefore, not necessary to refer to the said Rules in detail.

(33) For the above reasons, I overrule the preliminary objection.

(34) Now, coming to the merits, Shri M.L. Sethi, the learned counsel for the petitioners, urged the following contentions :- (1) That the land in question is not a waste or arable land within the meaning of section 17 of the Land Acquisition Act, and that, therefore, the Notifications applying the provisions in section 10(1) of the Act were illegal, and that for the same reason the exclusion of the procedure under section 5A by invoking the provision in section 17(4) of the Act was also illegal : (2) that the provisions under sections 17(1) and 17(4) could be invoked only in the case of emergency, that the said emergency was not established in the present case, and that it was not also established as to in whose opinion it was that the case was one of emergency, and that consequently the Notifications applying the provisions of sections 17(1) and 17(4) were illegal for the said reasons also ; (3) that the Notification under section 6 was void because of the wrong and illegal exclusion of the procedure under section 5A of the Act; (4) that the Notifications under sections 4, 6 and 17 were all inseparable and integrally connected and that, therefore, the said notifications as well as the award and the other proceedings in pursuance of the said Notifications should all be quashed ; and (5) that the Notifications issued under sections 4 and 6 of the Act were illegal, as they were not shown to have been signed by the Secretary to the Government or any other officer duly authorised to sign the Notifications, as they were not shown to have been issued by the State Government as required under the Rules of Allocation of business made by the Governor under Article 166 of the [Constitution of India](#), and as the Notifications were not shown to have been issued

with the authority and the satisfaction of the State Government i.e. of the Minister authorised, according to the Rules of Allocation of Business; and (6) that the respondent should be directed to hand over possession which they purported to have taken from the petitioners. As regards the first contention, the question for consideration is as to whether the land in question is waste or arable land within the meaning of section 17(1) and 17(4) of the Act. As pointed out by the Supreme Court in *Nandeshwar Prasad v. U. P. Government*, an order under section 17(1) of section 17(4) can only be passed with respect to waste or arable land, and it cannot be passed with respect to land which is not waste or arable land on which buildings stand. The petitioners alleged in paragraphs 1 and 4 of the writ petition, that they owned buildings including shops and business cum residential flats, situate in the land sought to be acquired by the impugned Notifications that they were located in, what is in the town, a central and prized commercial area, being part of and adjacent to Manali Bazar and a choice piece of estate from the commercial point of view. They stated further in paragraph 5 of the writ petition that in October, 1964, as a result of accidental fire, some of the buildings got burnt, some got partially demolished, and others were totally demolished. They also stated that some of the buildings, such as restaurant buildings and tea stalls, survived and escaped damage. They also stated that in view of the ever-increasing tourist traffic and profitable business conditions, the petitioners had desired to re-build and renovate the buildings, wherever necessary, and also to modernise the same, and for that purpose, they had stored the building material (Malba) and were arranging finance and making necessary arrangements to commence building operations, and that in the meantime the impugned Notifications were issued.

(35) That it was a choice piece of estate from the commercial point of view was also stated in the award given by the Collector under section 11 of the Act. He stated that the area under acquisition has 'a central location in and near Manali Bazar, and is a choice piece of real estate from commercial point of view.' The respondents, however, chose to deny the said allegation in the writ petition. The said denial was obviously baseless in view of the statement of the Collector himself in his award. The respondents did not deny in their written statement the allegation in the writ petition that originally buildings, shops, etc. stood on the land

in question. They, however, stated in the written statement that 'in October, 1964 devastating fire broke out in Manali Bazar and as a result thereof 'Khokhas' etc. which were standing on the sites under reference were razed to the ground', and that 'in August, 1965, there existed only dirty 'Dhaba' and two ordinary tea shops which were being run under high sounding names'. The said statements in the written statement clearly show that the allegations in the writ petitions were sought to be denied in a half-hearted manner, and they practically admit that buildings stood on the land prior to October, 1964, and that some of them have survived. It has, therefore, to be taken that the area in question was a site with buildings thereon situated in a central area and adjacent to the Manali Bazar, and that some of the buildings fell down due to a fire in October, 1964 and some of them still exist on the site. The question for consideration is as to whether such a land can be regarded as waste or arable land within the meaning of section 17(1) and section 17(4) of the Land Acquisition Act. As pointed out by the Supreme Court in *Raja Anand Brahma Shah v. State of Uttar Pradesh* - "Waste land" means land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation thereon, and 'Arable land' is land which is capable of being ploughed or fit for tillage.'

(36) It was also pointed out by the Supreme Court in *Nandeshwar Prasad v. U.P. Government*, that an order under section 17(1) or section 17(4) cannot be passed with respect to land which is not waste or arable land on which buildings stand, obviously because a land on which buildings stand, or a building site cannot be regarded as a waste or arable land within the meaning of the aforesaid provisions in the Act.

(37) In *Sadaruddin Sadaruddin Suleman v. J. A. Patwardhan*, a Division Bench of the Bombay High Court, relying on an earlier decision of a Division Bench of the same court in *Namit Lal v. State of Bombay*, held that land which is a building-site within municipal limits and situated in the developed part of the city cannot be regarded as arable land much less as waste land, and that a building site which is quite suitable to be built upon cannot be regarded as waste land simply because it is not put to any present use. The learned Judges pointed out that it is unfitness for use and not the mere fact that it is not put to any present use, that must determine

whether the land is waste or not.

(38) In view of the decisions referred to above, it is clear that the land in question in the present case cannot be regarded as waste or arable land within the meaning of section 17(1) or section 17(4) of the Land Acquisition Act, even though some of the buildings which originally stood fell down and only the materials existed on a portion of the land in question. It is not the case of the respondents that the land in question was partly a waste and arable land and partly a building site. Even if it were so, as held by the Supreme Court in *Sarjoo Parsad v. State of U.P.*- 'if only a part of the land is waste or arable and the rest is not, a Notification under section 17(4) dispensing with compliance with the requirements of section 5A would be invalid', and that 'it would not be open to the court to regard the Notification as partially good and partially bad, for if the State had no power to dispense with the enquiry in respect of any part of the land notified under section 4(1), an enquiry must be held under section 5A giving an opportunity to persons interested in the land notified to raise their objections to the proposed acquisition and in that enquiry the persons interested cannot be restricted to raising objections in respect of land other than waste or arable land.'

(39) I, therefore, hold that the Government had no jurisdiction to apply the provisions of sections 17(1) and 17(4) of the Act to the land in dispute, and that the two impugned Notifications applying the said provisions of sections 17(1) and 17(4) of the Act are illegal and invalid.

(40) In this view, it is not necessary to consider the second contention of Shri Sethi to the effect that the provisions in section 17(1) and 17(4) could be invoked only in the case of emergency, that the said emergency had not been established in the present case, that it was not also established as to in whose opinion it was that the case was one of emergency, and that consequently the impugned Notifications applying the provisions of sections 17(1) and 17(4) were illegal for the said reasons also.

(41) In the view taken above, it also follows that the third contention of Shri Sethi to the effect that the Notification under section 6 was void because of the wrong and illegal exclusion of the procedure under section 5A of the Act, has also to be

accepted. If the Government had no jurisdiction to exclude the procedure under section 5A of the Act as held above, the Notification under section 6, without following the procedure prescribed under section 5A of the Act, which was obligatory, would be without jurisdiction and invalid as pointed out by the Supreme Court in *Sarjoo Prasad v. State of U. P.* (supra).

(42) As regards the 4th contention of Shri Sethi, it has to be noticed that in the present case, the two impugned Notifications were passed on the same date under sections 4, 6, 17(1) and 17(4) of the Act. As pointed out by the Supreme Court in *State of Madhya Pradesh v. Vishnu Prasad* sections 4, 5A and 6 are integrally connected. The impugned Notifications themselves purported to have been issued under sections 4 and 6 together at the same time. They are, therefore, in my opinion, inseparable, and when I am quashing the two impugned Notifications in so far as they were issued under sections, b 17(1) and 17(4) of the Act, the said two Notifications should also be quashed in so far as they were issued under section 4.

(43) The Notifications in so far as they were issued under section 4 should be quashed for another reason also. As held by the Supreme Court in *State of Madhya Pradesh v. Vishnu Prasad* once the declaration under section 6 is made, the Notification under section 4(1) is exhausted, for it has served its purpose. The Supreme Court observed that there is nothing in sections 4, 5A and 6 to suggest that section 4(1) is a kind of reservoir from which the Government may, from time to time, draw out land and make declarations with respect to it successively. therefore, it follows that when the Notifications, in the present case, issued under section 6, are being set aside or quashed for the reasons given above, the said Notifications in so far as they were issued under section 4, must be regarded to have exhausted themselves, or at any rate cannot be regarded to be subsisting. For this reason also. therefore, the Notifications in so far as they were issued under section 4, should also be quashed.

(44) The 5th contention of Shri Sethi was that the Notifications issued under sections 4 and 6 of the Act were illegal, as they were not shown to have been signed by the Secretary to the Government or any other officer, duly authorised to

sign the Ntoifications, as they were nto shown to have been issued by the State Government as required under the rules of Allocation of business made by the Governor under Article 166 of the [Constitution of India](#), and as the Ntoifications were nto shown to have been issued with the authority and the satisfaction of the State Government i. e. of the Minister authorized under the Rules of Allocation of Business. Section 4(1) of the Act provides, inter alia, that- 'Whenever it appears to the appropriate Government that land in any locality is needed or is likely to he needed for any public purpose, a Ntoification to that effect shall be published in the official gazette.' The impugned Ntoifications in the present case were published in the Punjab Government Gazette of June 11, 1965. It was stated at the top of the Ntoifications as follows :- 'Punjab Government Gazette June II. 1965, Town and Country Planning Department, the 1st of June 1965' both the Ntoifications commenced with the words- 'Whereas it appears to the Governor of Punjab that land is likely to be required to be taken..' But, the Ntoifications, as published, did nto contain any signature of any officer who was responsible for the said publication. It is true that official acts should be presumed to have been done in accordance with the provisions of Law and in the manner prescribed by law. But, the act-the publication in this case-should purport to have been clone by an authorised officer, before such a presumption can be made. As already pointed out, section 4 requires that it should 'appear to the appropriate Government' that land in a locality is needed or is likely to be needed for any public purpose. It thus contemplates an executive act of the Government of the State. Under Article 166(1) of the [Constitution of India](#), all executive actions of the Government of a State should be expressed to be taken in the name of the Governor, and under Article 166(2), orders and toher instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor. It is, thereforee, necessary in my opinion that the Ntoification under section 4 of the Land Acquisition Act, though the section does nto expressly so require, should be expressed or should purport to have been issued in the name of the Governor, and it should purport to have been authenticated in such manner as may be specified in the rules made by the Governor of the State. The petitioners clearly pointed out this defect in the Ntoificationsin paragraph 9 of the writ petition, and pleaded that the Ntoifications

were illegal for those reasons. But respondents, in paragraph 9 of their written statement, merely denied the allegations in paragraph 9 of the writ petition and asserted that the Ntoifications were issued in accordance with law and rules. They did nto choose even to state to which officer, according to the rules framed by the Governor, it appeared that the land in the locality in question was likely to be needed for a public purpose, and which officer was to authenticate the Ntoifications under the said rules frame I by the Governor, Even at the time of the hearing of the writ petition, the learnd counsel for the respondent was nto in a position to give the said particulars. It is true that the Ntoification, as already stated, commenced with the words 'Whereas it appears to the Governor of Punjab that land is likely to be required', and the Ntoifications were published in the Official Gazette, yet the fa(r)t remains that the Ntoifications were nto expressed and did nto purport to have been made in the name of the Governor, and authenticated in a duly authorised manner as required by Article 166 of the Constitution The Ntoifications thereforee, in so far as they were issued under section 4 of the Land Acquisition Act, cannto be said to have been issued in accordance with the provisions in the said section. Section 6(1) of the Act expressly provides that- 'When the appropriate Government is satisfied, under section 5A. subsection (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders.' The requirement of this section also, viz. that the declaration should be made under the signature of a Secretary to the Government or of some officer, duly authorised to certify the orders of the Government, which is obligatory, has nto been shown to have been emplied with or satisfied in the case of the two impugned Ntoifications, and the said Ntoifications cannto be regarded to have been issued in accordance with the provisions in section 6(1) of the Act The impugned Ntoifications, in so far as they were issued under section 14 and 6 of the Act, have thereforee to be held to be illegal for these reasons also.

(45) For the above reasons, I issue a writ in the nature of certionari quashing the two impugned Ntoifications Nos. 1119-2UE-65/16501, and 1171-2UE-65/16504, dated 1st June, 1965, as well as the award, dated 21st, March, 1966 made by the Collector, and also all toher acquisition proceedings taken by the respondents in

pursuance of the said Ntoifications.

(46) It was stated in paragraph 6 of the written statement filed by the respondents that the land Acquisition Officer took possession of the area in question on 31st March, 1966. that the petitioners have even moved the Court of the District Judge and were claiming enhanced compensation in respect of the property acquired by the Government. and that the petitioners, as such. accepted the legality and validity of the acquisition and cannto, thereforee, immigne the action of the authorities. The learned counsel for the petitioners admitted that the petitioners filed an application under section 18 of the Land Acquisition Act (Annexure R-4), before the Court of the District Judge. But he also pointed out that it was specifically stated in the said petition that the petition was presented without prejudice to the averments in the writ petition that the acquisition proceedings and the award were illegal and void. Obviously, the petitioners cannto be regarded to have precluded themselves from challenging the validity of the Ntoifications and the award by reason of their filing the application under section 18 of the Act. All the said proceedings taken in pursuance of the Ntoifications, which have now been quashed, fall with the said Ntoifications.

(47) As regards the possession of the land in question, it was stated in the written statement of the respondents that possession was taken by the Land Acquisition Officer on 31st March: 1966. Now that the Ntoifications and the award and all subsequent proceedings have been quashed, the continuance of the respondents in possession would be illegal, and it is open to this Court to give necessary consequential directions regarding the same under Article 226 of the Constitution as held by the Supreme Court in State of Madhya Pradesh v. Bhailal Bhai and in State of Kerala v. Aluminium Industries' judgment, dated 21st April, 1965, in Civil Appeal No. 720 of 1963 In my opinion, such a direction should be given in the circumstances of the present case. I accordingly direct the respondents to restore to the respective petitioners, such possession of the land in question (the various Khasra numbers specified in the two impugned Ntoifications) as they purported to have taken from the petitioners.

(48) The petitioners are entitled to the costs in this writ petition which are fixed at Rs. 250.00 from the respondents.

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