GUNASEKERA, J.

On the application of Mr. H. W. Jayewardene, Counsel appearing for the petitioners, in application Nos. APN/GEN/6 & 7/74; and Mr. M. Tiruchelvam, Counsel appearing for the petitioners in application No. APN/GEN/7/74, and the Acting Solicitor-General consenting, the Acting Chief Justice, A.C.A. Alles, in terms of section 14(3) of the Administration of Justice Law No. 44 of 1973, made order referring these eleven applications for decision by a Bench of nine Judges.

In all these applications either a High Court or a District Court has issued an 'interim injunction' restraining the Minister of Agriculture and Lands from taking steps for the acquisition of some land or premises for a public purpose, in terms of the Land Acquisition Ordinance, until, in the case of the High Courts, a declaratory action was filed in the appropriate District Court after due notice in terms of section 461 of the Civil Procedure Code had been given to the Minister, and in the case of District Courts, until, a final determination of the declaratory actions pending in those Courts.

In all these cases, this Court had on the order of Mr. Justice Pathirana, Mr. Justice Udalagama and Mr. Justice Wijesundera, acting in terms of section 354 of the Administration of Justice Law issued Notice on the petitioners, in these cases, to show cause why the orders of injunction issued against the Miniser should not be set aside and the question that now arises for determination by this Court of nine Judges, is whether, in law, such injunctions could have issued or can remain in force against the Minister, in these several cases, in view of the provisions of section 24 of the Interpretation Ordinance, introduced by Interpretation (Amendment) Act No. 18 of 1972.

Section 23 & 24 of that Act are in these terms:

"23. Subject to the provisions of section 24, where a Court of original civil jurisdiction is empowered by any enactment, whether passed or made before or after the commencement of this Ordinance, to declare a right or status, such enactment shall not be construed to empower such Court to entertain or to enter decree or make any order in any action for a declaration of a right or status **upon any ground whatsoever,** arising out of or in respect of or in derogation of any order, decision, determination, direction or finding which any person, authority or tribunal is **empowered to make or issue under any written law.**

Provided, however, that the provisions of this section shall not be deemed to affect the power of such court to make an order or decree relating to the payment of damages."

"24. (1) Nothing in any enactment, whether passed or made before or after the commencement of this Ordinance, shall be construed to confer on any action or other civil proceedings, the power to grant an injunction or make an order for specific performance against the Crown, a Minister, a Parliamentary Secretary, the Judicial Service Commission, the Public Service Commission or any member or officer of such Commission, in respect of any act done or intended or about to be done by any such person or authority in the exercise of **any power or authority vested by** law in any such person or authority.

Provided, however, that the preceding provisions of this subsection shall not be deemed to affect the power of such court to make, in **lieu thereof,** an order declaratory of rights of parties.

(2) No Court shall in any civil proceeding grant any injunction or make an order against an officer of the Crown if the granting of the injunction or the making of the order would be to give relief against the Crown which could not have been obtained against the Crown."

The proper approach to interpreting any statute has been stated thus:

"The literal construction then, has, in general but *prima facie* preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act, to consider, according to Lord Coke (Heydon's case (supra)),

(i) what was the law before the Act was passed;

(ii) what was the 'mischief' or defect for which the Law had not provided;

(iii) what remedy the Parliament has appointed; and

(iv) the reason for the remedy.

(Maxwell's Interpretation of Statutes. 9th Edition: Page 22).

The "Old Law" and the "Mischief" in this instance are best illustrated by reference to the facts of one of the above cases, No. APN/GEN/8. The Minister's affidavit, filed in this case reveals that for the purpose of village expansion, as far back as 21st March, 1971, notices were published to acquire Bowalana estate in Hewaheta electorate, in extent 1253 acres, 1 rood, and 34 perches, and that the necessary steps were being taken for this purpose without any objection by the owners of the Estate, till on 22.9.74, one Muthiah Pillai of Kumara Stores, Bowalana Group, filed this application No. APN/GEN/8/74, in the High Court of Kandy for an 'interim injunction' restraining the Minister from proceeding further with the acquisition until he filed an action in the District Court for declaration that the acquisition was a nullity on the ground of *mala fides* on the part of the Minister of Agriculture and Lands. Muthiah Pillai states that he is the owner of an extent of one acre together with the building thereon called 'Kumara Stores' situated in Royal Division, Bowalana Group, and that he had been residing there running a business for 27 years. He had himself applied for an allotment of land in the proposed scheme of village expansion but had not received one, and thereafter alleging that the Minister "is motivated by malice" as he is hostile to the Tamil population of the area who supported the United National Party at the general election in 1970, he avers that the whole scheme of village expansion is a fraud and nullity.

The Minister filed affidavit stating, *inter alia:*

(d) this respondent denies the allegation that the said acquisition has been motivated by malice or illwill and states that the acquisition has been effected solely for a public purpose, namely, village expansion in furtherance of the land policy of the government.

(e) in view of the provisions of section 24 of the Interpretation Ordinance as amended by Act No. 18 of 1972 this Court has no jurisdiction to grant any injunction against the respondent restraining him from proceeding with the said acquisition.

The High Court granted an injunction on 22.2.74 to be effective till 5.4.74 and thereafter in District Court, Kandy case No. L/10570(APN/GEN/11/74), on these same averments on 22.4.74 the District Court of Kandy, issued a further "interim injunction" against the Minister to be effective "until the final determination of the action."

The entire scheme of village expansion in that locality has thus been effectively stalled, and whatever the urgency of the scheme or, however pressing the need of the people, and whatever the chances of proving

mala fides of the Minister on these averments, further proceedings will be stayed until the end of a long drawn out District Court trial which has not yet begun, and a decision on appeal by this Court. The learned acting Solicitor-General mentioned in the argument that there were over 35 cases of land acquisition for public purposes held up by pending actions filed on the ground of *mala fides*.

The 'mischief' is also not of recent times. During the regime of the previous Government of the United National Party the government sought to widen a "one way" diversion road to ease traffic on the very narrow part of the trunk road from Colombo to Badulla going through Balangoda town and on the allegation of political revenge and malice on the part of the then Minister this Court issued an 'interim injunction' restraining the Minister from acquiring a few perches of land necessary to effect the much needed widening of the diversion. (See *Ratwatte v. Minister of Lands* (supra)). Whether the proposed declaratory action was filed or not or whether the proposed acquisition was abandoned we do not know, but this road remains the same even today and if the present Government of the United Front decided to abandon the diversion and widen the trunk road, the owners of the land on either side of the trunk road, who belong to the opposite political party, will allege political revenge and malice in the same way and obtain (unless the amending law prevents it) a similar injunction and the congestion on the trunk road will remain for ever.

It was submitted at the argument by Mr. Jayewardene himself that the previous Government had many of its land acquisitions stayed in this same manner and that a Draft Bill was presented to Parliament to amend the Land Acquisition Ordinance so that disputes of this nature would have been referred to the Supreme Court for a quick and early decision within a period of three months, but that owing to opposition in Parliament the proposed legislation was abandoned and ultimately only amending Act No. 20 of 1969 was passed to introduce the Land Acquisition Ordinance.

> "Section 51A(1): Where any decision, declaration or Order to which this section applies, and any act or thing done under or in consequence of such decision, declaration or Order is called in question in any court whether by way of action, appeal, application in revision or any mandate in the nature of a writ referred to in Section 42 of the Courts Ordinance, such court shall give the highest priority to the hearing and disposal of such action, appeal application or mandate, and for that purpose shall ordinarily hear and dispose of such action, appeal, application or mandate before all other business or cases pending or being heard or disposed of by such Court.
>
> (2) This section shall apply to any decision made under section 4, any declaration made under section 5, and any Order made under section 38."

This shows that the 'mischief' was common ground at the argument and this makes it unnecessary for this Court to refer to the speech of the Minister of Justice, in the Hansard, introducing the Bill of the amending Act, in the National State Assembly, as the learned acting Solicitor-General invited us to do. He also submitted that not one of the many declaratory actions filed in this manner throughout the years had succeeded in proving *mala fides* on the part of the Minister. Counsel for the petitioner claimed that there had, in fact, been one case where the District Judge held that there was *mala fides* but even in that case the Acting Solicitor-General says the finding was not one of actual malice but "statutory malice."

It is in this context and, mainly, with the intention of remedying this "mischief" of holding up acquisitions of lands for essential public purposes on the mere allegation of malice on the part of the Minister, that the Legislature enacted the above sections 23 & 24.

"A statute is the 'will' of the Legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of them that made it. If the words of the statute are in themselves precise and unambiguous no more is necessary than to expound these words in their natural and ordinary sense, the words themselves in such a case best declaring the intention of the Legislature." (Maxwell, ibid, Page 1)

Our section 24, it was common ground, was modelled on section 21 of the Crown Proceedings Act of 1974 of England and it was also conceded that if our section had been identical with section 21 of the England Statute (see its reproduction in 59 N.L.R. at 332), the High Courts and the District Courts could not have issued these "interim injunctions," for in the law of England today, as deliberately enacted in that Act, no injunction can issue against a Minister, even if, as in these instant cases, it is alleged that the Minister acted *mala fide* and *"in fraus legis."* Considering the "mischief" it is also apparent that the intention of the National State Assembly was to equate our law to that prevailing in England since 1947 and it is our function to decide whether the Legislature has achieved this in section 24, or whether owing to the difference in language in our section the "old law" and the "mischief" remained just the same as before the enactment of section 24.

The Acting Solicitor-General has explained that the difference in language became necessary because in England a Minister is included in the definition "Officer of the Crown" and so it was sufficient to absolutely bar the issue of injunctions against the Crown in Section 21(1), and in Section 21(2) to bar the issue of injunctions against an officer of the Crown, only if the effect of issuing an injunction against him would be to give the relief of injunction against the Crown. As in our country a Minister (and at the time of this enactment, members of the Public Service Commission and the Judicial

Service Commission) were not "Officers of the Crown," they had to be specially mentioned in section 24(1). But in the order to bar the issue of interim injunction against them, not absolutely, but only in respect of their "official acts" the legislature added these words:

> "in respect of any act done or intended or about to be done by any such person or authority in the exercise of any power or authority vested by law in any such person or authority" (hereafter referred to as "those words").

He contended that the Minister of Agriculture and Lands had in all the instant cases acted in the exercise of his power or authority given to him by the Land Acquisition Ordinance and that therefore on a plain reading of the section 24(1) no injunction could have issued against him.

Mr. Jayewardene, however, contended that the introduction of these words in section 24(1) has the result of leaving the law as it was prior to its enactment. Firstly, he argued that whenever the law referred in a statute to "any act done in the exercise of a power," the Legislature necessarily intends and refers only to"a *bona fide*" or "lawful" "exercise of power," and that we must read the words "*bona fide* or lawful" into these words and that the result would then be that this prohibition does not apply in the instant case," because *mala fides* are alleged, and the injunctions could have issued and can remain in these cases. He supports this argument by reference to section 88 of the Police Ordinance which limits the time within which an action may be brought against a police officer "for anything done or intended to be done under the provisions" of that Ordinance and the cases where it has been held that a police officer who is found to have acted maliciously and not in the *bona fide* exercise of his official duties was not entitled to rely on this limitation of actions *Perera v. Hansard* (supra) page 1, *Van Haught v. Keegal,*[133] *Ismalanne Lokka v. Haramanis* (supra) and *Punchi Banda v. Ibrahim* (supra). He relies also on the cases, *Appu Singho v. Don Aron* (supra), *Abaran v. Banda* (supra) and *Saranankara v. Kapurala* (supra) which have decided that the requirement of notice of action in sections 461, Civil Procedure Code "in respect of an act purported to be done by a public officer in his official capacity" applied only to *bona fide* acts and that if it was proved that the official had acted *mala fide* he could not rely on this statutory requirement.

Mr. Jayewardene next argued on the basis that the main part of section 21(1) contains a "preclusion provision" and he relied on several decisions of the Courts of England, Australia, Canada, South Africa, and India and our two cases of, *Hirdaramani v. Ratnavale* (supra) and *Gunasekera v. Ratnavale* (supra), all of which affirmed the fundamental rule of interpretation accepted by these Courts, that where a statute contained, in respect of a decision of a tribunal or other authority, an ouster clause, with words in the nature of "shall

[133] (1917) 4 C.W.R. 258.

not be called in question in any Court," an allegation that the tribunal or authority had acted *mala fide* would give the Courts jurisdiction to examine such decision despite such clause. He relied also on the dicta in these cases which said that *mala fides* reduces an act or decision of a person or authority to a nullity.

I think these submissions are unacceptable because they are based, on an examination of the main part only of section 24(1), separately, and torn out of its context, and apart from and ignoring, the proviso. For a proper adjudication of the question involved in these cases section 23 and section 24(1) in its entirety, must be considered as a whole and proper meaning and due emphasis must be given to the proviso (see *Jayasekera v. Ceylon Insurance Company Limited*[134]) and specially to the words 'in lieu thereof' therein.

Such an examination of these sections shows quite clearly as far as a Minister of State is concerned,

(1) Section 23 (except as allowed in section 24) has now abolished or taken away from the courts its jurisdiction to entertain and from the citizen the right he had (*Ladamuttu Pillai v. Attorney-General* (1957) 59 N.L.R. at 333) to bring a declaratory action to question on any ground whatsoever any order, decision or direction made by a Minister acting under any **written law.**

(2) Far from containing an ouster or preclusion clause, the proviso to section 24(1) expressly and as an exception, restores that jurisdiction, and right, taken away by section 23, and permits the filing of such a declaratory action, but,

   (a) only in cases where an interim injunction (or specific performance) would be the normal remedy, and so in actions such as the instant cases, and,

   (b) only "in lieu of" such injunction; as section 24(1) bars the Courts from issuing an injunction in respect of any "act" done by the Minister in the exercise of any power or authority vested by law in him.

From these statutory provisions it follows that, as far as the instant cases are concerned,

(1) as section 23 has abolished the declaratory actions against a Minister acting under a written law, on any ground whatsoever, these instant cases brought against the Minister of Agriculture and Lands acting in

[134] (1966) 69 N.L.R 505.

terms of the Land Acquisition Ordinance, could only have been filed in terms of the proviso in section 24(1) and that therefore these cases are completely governed and limited by the provisions of section 24(1).

(2) the words "in lieu thereof" in the proviso necessarily mean that the declaratory action in the proviso and the barred injunction, in lieu of which it is given, relate to one and the same.

"Act done or intended or about to be done by any such person or authority in the exercise of any power or authority vested by law in any such person or authority."

These words are not repeated in the proviso as that would be inelegant drafting, but for a proper understanding of the section, the words "in lieu thereof" compels us to read the proviso,

"provided, however, that the preceding provisions of this subsection shall not be deemed to affect the power of such court to make, 'in lieu thereof' an order declaratory of rights of parties in respect of **such act done or intended or about to be done by any such person or authority in the exercise of any power or authority vested by law in any such person or authority.**"

It follows logically from this that we cannot introduce the words "*bona fide*" into these words in the main part of the section because, owing to the words 'in lieu thereof' automatically we have to add them to these same words, present by implication, in the proviso, and we cannot do so specially in these cases where *mala fides* is alleged without making nonsense of the section. The rules of interpretation will not permit us to add anything to these words in this context, as they only make sense without the addition of any unauthorised words. However in these cases, if any words are to be added at all to the main part, the allegation in the section under the proviso being that the acts are *mala fide*, only the word "*mala fide*" may be added where Mr. Jayewardene has suggested "*bona fide.*"

I therefore hold that no injunction can ever issue in any declaratory action brought under the proviso because the section in plain and unambiguous words gives the action and bars the injunction in respect of the same "cause of action," if I may use those words analogously. I also hold that these words only refer in the context to a state of fact, and not a state of mind and that in this context the existence of this state of fact has to be found by a court by an objective test looking only at the act complained of and the empowering law, and not looking into, if that is possible at all, the mind of the Minister. The question whether an interim injunction should issue arises for decision at the beginning of the declaratory action, and *mala fides* can only be established at the end of such case.

I need, further, only say that the fear expressed at the argument that if we do not hold with the petitioners in this case, tomorrow the Minister of Cultural Affairs or the Inspector-General of Police can start land acquisition proceedings and the courts shall be powerless to stop these proceedings is absolutely groundless and based on a misreading, or rather non-reading, of the plain words of the section. Section 23 bars declaratory actions only in respect of a Minister's decision authorised by **written law** and section 24 bars injunctions in respect of a Minister's acts done under a power or authority **vested by law** in him and today no law authorises either the Cultural Affairs Minister or the Police Chief to acquire lands and the courts will be quite free, on account of the very words of these two sections, to entertain declaratory actions and issue injunctions against these persons so acting.

Mr. Tiruchelvam argued, that section 24 only took away, if at all, the courts' power of granting injunctions, where such powers had been granted by "enactment" and that inherent right of Courts to issue injunctions still remains unaffected by section 24. However, our Courts were created by the Courts Ordinance and their power to grant injunctions was conferred only by the Courts Ordinance and Civil Procedure Code, and they have no further inherent powers with regard to injunctions, and this was so stated as far back as 1895 in the case of *Mohamadu v. Ibrahim* (supra). He next argued that the words "in lieu thereof" meant that only 'permanent injunctions' were barred and Courts can still issue 'interim injunctions.' The Courts Ordinance and the Civil Procedure Code speak only of "injunctions" and section 24 bars "injunctions" and an injunction whether it is limited in point of time or not, always remains an injunction. Besides, the purposes of an 'interim injunction' is only to maintain the *status quo* until at the end of the action, a permanent injunction can be issued, but if the permanent injunction itself cannot issue in law, there is no purpose in issuing an interim injunction until the end of that action.

Mr. Jayewardene also submitted that there was no purpose in giving the citizen a declaratory action if the courts could not make the litigation worthwhile to him by maintaining the status quo, *pendente lite,* and securing to him the fruits of his victory by a permanent injunction. But in a similar situation where the Court had no power to give effect to its declaration against the Crown, Gratien J., observed, "But courts of Justice have always assumed, so far without disillusionment, that the declaratory decree against the Crown will be respected" (*Attorney-General v. Sabaratnam* (supra)). Besides, we have by this amendment only brought our law in this respect in line with the law prevailing in England since 1947.

The fear, also expressed, that by the time a declaration is obtained the state will have changed the nature of the property irretrievably can also be allayed by a similar assumption, that the State will respect pending actions in its Courts and will seek the advice of its State Attorneys before proceeding in such a challenged acquisition. If no injunction is available, proper use of the

amended section 51(1) of the Land Acquisition Ordinance will be made in the future and the declaratory actions may well be decided before the various steps of acquisition are gone through.

The "old law" permitted declaratory actions to be freely filed against the Minister to question any acquisition *inter alia,* on the ground of his *mala fides,* and though all such cases filed in the past have failed, the Courts were always compelled to issue interim injunctions, on a mere averment of *mala fides* in the affidavit filed with the plaint; and owing to the laws delays thereafter, the acquisitions were just held up for many years. The amendment still preserves an unlimited right of action as in the past but, to remedy the "mischief," has only stopped the almost automatic issue of an injunction and this will certainly now discourage in the future the filing of any frivolous actions, aimed more at delaying proceedings. The genuine action will still be filed and the state will undoubtedly take heed of such, and where necessary stay further proceedings.

I will not deal with Mr. Jayewardene's argument that we have no jurisdiction to hear and determine these cases because of the facts fully set out in the other judgments of this Court. These cases have been referred to us by the Acting Chief Justice on Mr. Jayewardene's own invitation and that reference is impeccable, and we have the necessary jurisdiction.

I therefore hold that the injunctions issued by the various High Courts and the various District Courts in these several cases before us, were issued contrary to law, and I make order that all these injunctions in these cases be vacated.

I have referred in my judgment only to the arguments of Mr. Jayewardene and Mr. Tiruchelvam because these were the main arguments in the case which all the other Counsel supported. But I am thankful to all the Counsel who addressed us because they all developed individually various aspects of the problem before us and gave us all the assistance necessary.