BANDULA
v.
ALMEIDA AND OTHERS

SUPREME COURT
BANDARANAYAKE, J.
WADUGODAPITIYA, J. AND
WIJETUNGA, J.
S.C. (SPECIAL) NO. 4/29
FEBRUARY 9, 25 AND MARCH 29, AUGUST 16, SEPTEMBER 7 AND 15, 1993
DECEMBER 2, 1994 AND MARCH 6, 1995.

Writs – Certiorari – Land Acquisition Act, Sections 2 and 38 – Urban Development Projects (Special Provisions) Act, No. 2 of 1980, Sections. 3, 4(1), 6 and 7 – Natural justice – Audi alteram rule – Fairplay – Necessity for Urban Development Project – Recommendation – Requisite of an opinion.

The Petitioner on 01 December 1991 purchased two blocks of land bearing assessment Nos. 1 and 21 on Sri Vipulasena, Mawatha, Colombo 10. On 22.12.91 he submitted a building application to the Colombo Municipal Council. On 13.3.92 the Municipal Council approved the plan. Even before the approval the Petitioner demolished the old buildings standing on the land and started construction. On 19.2.92 the Municipal Engineer wrote to the Petitioner's brother who was an attorney-at-Law and acting for the petitioner to stop construction on the site as he was doing so without approval. On receiving approval the Petitioner commenced construction immediately. On 27.3.92 the 2nd respondent (Additional Director General (P & O) Urban Development Authority) wrote to the petitioner's brother after an earlier visit by officials of the Urban Development Authority, to stop construction immediately. On 01 April 1992 the President of the Republic made an order under Section 2 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980 and published in Gazette Extraordinary No. 708/15 of the same day declaring that several blocks of land including the said lands belonging to the Petitioner are urgently required for the purpose of carrying out an urban development project. On 07 April 1992 a notice under Section 2 of the Land Acquisition Act was published in respect of the Petitioner's property and communicated on 14 April 1992 by registered post to the Petitioner's attorney-at-law brother. The Petitioner became aware of the President's order only on 28 April 1992 and he filed this application on 30 April 1992.

HELD:

(1) The allegation of motive on the part of the 1st Respondent as he had himself unsuccessfully tried to purchase the property sought to be acquired has not been proved and with that the allegation of *mala fides* disappears.

(2) The jurisdiction of the Supreme Court vested by virtue of section 4(1) read with section 6 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980 and unaffected by Section 3 thereof, to hear and determine this matter was considered. The two main ingredients required to be satisfied in order to render the President's order valid in law are:–

(i) that there had to be "a recommendation made by the Minister in charge of the subject of Urban Development" (here the President) and

(ii) that the President had to form an "opinion" upon such recommendation–

(a) that there was in existence "an urban development project";

(b) that such project was of such nature as "would meet the just requirements of the general welfare of the People";

(c) that certain lands were "required for the purpose of carrying out" such project, and

(d) that such requirement was "urgent".

(3) As the President himself is the Minister, he is not required to make any recommendation in writing to himself.

(4) On the question of forming an opinion–

(a) The omission in the order of the words "'to meet the just requirements of the general welfare of the People" does not render the Order invalid.

(b) As there was no malice the next question that arises is, was the President's Order baseless, unreasonable and arbitrary?

(c) The main question which arises for consideration in this case is whether in fact there existed an Urban Development Project but the material produced does not measure up to what is required to show that any Urban Development Project as contemplated by Act, No. 2 of 1980 was in existence at the time the President made his Order.

(5) Although where the President and the relevant Minister are one and the same person, no recommendation is expected, yet he must have the necessary material before him. It is clearly the duty of the officers of the U.D.A. to fully brief and apprise the President of not only the "full facts", but also the "true facts" before requesting the President to form his opinion, to make his Order under Section 2 of Act, No. 2 of 1980.

(6) Section 2 requires the President, prior to making his Order to arrive at and entertain the subjective opinion that there in fact exists "an urban development project" for the carrying out of which, certain lands are urgently required. Section 2 goes on to suggest that the Order itself should declare that the lands are required for such purpose". If there is no project the Act itself becomes inoperable and nothing flows.

(7) As there was no project, the President had no material to form an opinion and an Order made *in vacuo* so to speak cannot stand.

(8) Although the opinion contemplated by section 2 is a subjective one, it is justiciable. The Court can look into the matter to discover, what material, if any, moved the President to form his opinion.

(9) The application is not premature. In terms of section 7 of Act, No. 2 of 1980 it would be possible for the Government to take possession of the Petitioner's land by utilizing the State Lands (Recovery of Possession) Act, and to have all persons ejected from such land within sixty days of the making of an application under that Act. A "section 2 notice under the Land Acquisition Act" had already been published in respect of the Petitioner's land and it was always possible for the State to acquire the land immediately, utilizing the proviso to section 38 of the Land Acquisition Act, thus bypassing the steps in that Act containing the statutory provision in regard, *inter alia* to the holding of an inquiry and giving a hearing at the inquiry.

(10) The general rule is that a right to a hearing constitutes a minimum pre-requisite of natural justice. It ought to have been the duty of the officers of the U.D.A. who were responsible for formulating the so called Urban Development Project and making the recommendation to the President to make the Order in question, to have, at least, informed the owners of the house and buildings to be acquired of the proposed project and the consequent need of acquisition, and to have called for their observations and/or objections. The number of such persons would not have been large and I do not think it could have categorized as an impracticable exercise so as to afford an exercise for non-compliance with the *audi alteram partem* rule. In this content, the existence of a *litis inter partes* is not an essential pre-requisite to the exercise of the *audi alteram partem* rule which arises whenever there is a duty to act fairly. Natural justice is fairness writ large and juridically. It has been described as 'fairplay in action'. Nor is it a lever to be associated only with judicial or quasi-judicial occasions.

Cases referred to:

1. *Hirdaramani v. Ratnavale* (1971) 75 NLR 67.
2. *Visvalingam v. Liyanage* (1984) 2 Sri LR 123.

3. *Wickremabandu v. Herath* (1990) 2 Sri LR 348.
4. *Fernandopulle v. E. L. Senanayake* 79(2) NLR 115.
5. *R. v. Electricity Commissioner* (1924) 1 KB 171.
6. *Schmidt v. Secretary of State for Home Affairs* (1969) 1 All E.R. 904.
7. *Ridge v. Baldwin* (1963) 2 All ER 66.
8. *R. v. Hendon Rural District Council* (1933) 2 KB 696.
9. *Ross-Clunis v. Papadoponllous* (1958) 2 All ER 23.
10. *Don Samuel v. De Silva* 60 NLR 547.
11. *Ashbridge Investments Ltd. v. Minister of Housing and Local Government* (1965) 3 All ER 371.
12. *Coleen Properties Ltd. v. Minister of Housing and Local Government* (1971) 1 All ER 1049.
13. *Secretary of State for Education and Science v. Fameside Metropolitan Borough Council* (1976) 2 All ER 665.
14. *Furnell v. Whangarari High Schools Board* (1973) 1 All ER 400.
15. *R. v. H. K.* (1967) 1 All ER 226, 231.

APPLICATION for Writ of Certiorari to quash the Order of the President made under the Urban Development Projects (Special Provisions) Act, No. 2 of 1980.

L. C. Seneviratne, P.C. with *Mahinda Ralapanawe* and *Laksiri de Silva* for petitioner.

V. Basnayake, P.C. with *D. J. C. Nilanduwa* and *Sarath Abeysinghe* for 1st respondent.

P. L. D. Premaratne, P.C. Additional Solicitor-General for 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th respondents.

Cur. adv. vult.

March 6, 1995.

WADUGODAPITIYA, J.

On 1st December 1991, the Petitioner purchased two blocks of land, in extent 7.25 perches and bearing assessment numbers 19 and 21 on Sri Vipulasena Mawatha, Colombo 10, on Deed No. 383 attested by his brother, Amaradasa Kodikara, Attorney-at-Law and Notary Public (marked X3) and on 23rd December, 1991, submitted, through his brother the said Amaradasa Kodikara, a building application for approval to the Colombo Municipal Council. On the same day he started demolishing the dilapidated building which stood on the said land.

On 19.2.92, the Municipal Engineer wrote to the brother of the Petitioner, A. Kodikara, asking him to stop construction on the site as he was doing so without approval from the Municipality (X3a).

However, on 13th March 1992, the Petitioner's building application was approved by the Colombo Municipal Council and he was granted building permit no. ME/PBK/250/91 (marked X6) for the "erection of a three-storeyed commercial building for shops;" the construction of which commenced immediately. Thereafter according to the Petitioner, on 27th March 1992, some persons purporting to be officials of the Urban Development Authority came onto the premises in several vehicles and threatened the Petitioner's workmen that unless construction work was stopped immediately, the building under construction would be flattened in an hour with a bulldozer. They had stated further that the Petitioner's property had been acquired by the Urban Development Authority. The workmen Piyadasa and Somadasa have stated in their affidavits X4 and X5 respectively, that they identified the 1st, 2nd, 3rd and 4th Respondents as some of the persons who visited the building site on 27th March, 1992.

On the same day, viz, 27th March 1992, the 2nd Respondent wrote to the Petitioner's brother (letter marked X7) as follows

"Premises Nos: 19 & 21 Vipulasena Mawatha, Colombo 10

Reference your development of the above premises.

Our officers have informed you over the telephone of the acquisition of land in the area including your premises and requested you to terminate development activities.

I find that such activities are continuing.

Please be informed to terminate such activities forthwith."

Soon thereafter, on 1st April, 1992, the President of the Republic of Sri Lanka made an Order under Section 2 of the Urban Development

Projects (Special Provisions) Act, No. 2 of 1980 and published in Gazette Extraordinary No. 708/15 of the same day (marked 'B') declaring that several blocks of land including the said lands belonging to the Petitioner are urgently required for the purpose of carrying out an Urban Development Project.

On 7th April, 1992, a notice under Section 2 of the Land Acquisition Act was published in respect of the Petitioner's property and such notice was communicated to the Petitioner's brother Amaradasa Kodikara on 14th April, 1992 by Registered Post (document marked 'C').

The Petitioner states that he became aware of the publication of the President's Order (marked 'B') only on 28th April, 1992. He obtained a copy thereof on the following day and filed this application on the 30th of April 1992.

The Petitioner prays that this Court be pleased to issue Writs of Certiorari quashing the President's Order marked 'B' in respect of his property (viz. Nos. 19 and 21 Sri Vipulasena Mawatha, Colombo 10); the 6th Respondent's recommendation to the President; the 2nd and/or 5th Respondents' decision to acquire his land, and the 2nd Respondent's order to terminate building operations on the Petitioner's land. The Petitioner also seeks a declaration that the Order made by the President (marked 'B') is null and void.

By way of motive for this attempt to take over his land, the Petitioner lays the blame squarely on the shoulders of the 1st Respondent, who, he says, misused and abused his official position and instigated the Urban Development Authority to acquire his land as an act of revenge.

The Petitioner alleges that the reason for this revengeful act is that the 1st Respondent, who is the Member for the Colombo Municipal Council Ward in which the land in question is situated, and who lives a few hundred yards away from the site, had earlier tried to purchase the self-same property, but failed. The Petitioner goes on to state that from the time he purchased the said property, the 1st, 2nd, 3rd, and

4th Respondents had been harassing him: the 2nd, 3rd, and 4th, Respondents so acting at the instigation of the 1st Respondent. The Petitioner points out that according to his workmen, the 1st Respondent accompanied the 2nd, 3rd, and 4th Respondents when they entered the premises on 27th March, 1992 and threatened to flatten the building in an hour if the construction work was not stopped. The Petitioner asserts that it was the 1st Respondent who had induced the 2nd, 3rd and 4th Respondents to acquire the only property which the Petitioner owns, and on which now stands a partly constructed building on which he has spent about Rs. 2 million. The Petitioner alleges that the President's Order (marked 'B') is a sequel to the steps taken by the 1st, 2nd, 3rd and 4th Respondents to dispossess him, and adds that the said 1st to 4th Respondents have used the 5th Respondent to make the necessary recommendation to the President upon which recommendation, the said declaration marked "B", under section 2 of the Urban Development Projects (Special Provisions) Act was made.

The Petitioner goes on to state that the President's order marked "B" is bad in law as there is no stipulation therein as required by Section 2 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980 that the project would meet the just requirements of the general welfare of the People, and prays for the issue of a Writ of Certiorari quashing the said Order made by the President in respect of his lots 19 and 21, and to declare the said order a nullity.

Before I consider the main application, I would take up for consideration the allegations made against the 1st Respondent. Replying to the averments made by the Petitioner, the 1st Respondent complains that he has been wrongly made a party to these proceedings. He states in his affidavit that he had, at no stage made any attempt to purchase or made any offer to purchase the property in question as alleged by the Petitioner; neither did he attempt to have the property transferred to him through an acquisition effected by the 5th Respondent. He denies that he visited the work-site on 12.2.92 accompained by others as alleged. Setting out the part he played, he states that as a Member of the Municipal Council of Colombo and as a resident of Ward No. 26 of Colombo, in the

interests of the slum dwellers of the area he had always been interested in the re-development of this particular area, and in furtherance of such public interest, and the duty he owes the rate-payers of the area, he had promoted the construction of flats for the benefit of the poor, and in this connection admits that he had inspected the site once. The 1st Respondent adds that except for this "legitimate interest" as a politician and an elected member of the Colombo Municipal Council, he had no personal interest in the acquisition of the land in question by the Urban Development Authority. He goes on to state that, on the contrary, he was aware that the said property was included in a proposed re-development project of this area, and that on a routine inspection of Ward No. 26, he noticed a new construction in progress and asked the Municipal Council to investigate into the matter. He admits that, accompanied by the 2nd Respondent and several other officers, he visited the site in question on 27.3.92 on an inspection tour, but says that none of them entered the premises; nor did any of them threaten to flatten the land using bulldozers. He adds that it was the 2nd Respondent who said that the land was subject to acquisition and that therefore construction should be stopped.

It may be recalled that according to the Petitioner, the sole reason for setting in motion the steps for acquisition was that the 1st Respondent had attempted to buy the said property but failed and that he thereafter made this attempt to get the Urban Development Authority to acquire the property with a view to having it given over to him by that Authority after acquisition. Besides merely so stating, the Petitioner does not proceed to substantiate this allegation in any way. Even in the teeth of the categorical denial by the 1st Respondent, the Petitioner has failed to produce any proof that the 1st Respondent had ever attempted to purchase the said property. The best proof of this fact would have been to adduce evidence by way of an affidavit from the previous owner from whom the 1st Respondent is said to have attempted to buy the land, to the effect that the 1st Respondent did in fact attempt to buy the land, but that he did not sell it to him. But no such evidence was adduced by the Petitioner. In this connection, I have to advert to the fact that Learned Counsel for the Petitioner invited the attention of this Court to the averment contained

in the 2nd Respondent's first affidavit, to the effect that he was aware that the 1st Respondent had attempted to purchase the land in question. This is in reply to paragraph 21 of the Petitioner's affidavit to the Court of Appeal which has been filed as part and parcel of the present petition to this Court, and which has been accepted by this Court. The said paragraph 21 states :-

> "I am now aware the 1st Respondent has made offers previously to the owner of the relevant land to purchase the same".

The 2nd Respondent has in reply stated:

> "I am aware of the averments contained in paragraph 21 of the said affidavit".

However, on this being pointed out by the Petitioner in a further affidavit, the 2nd Respondent filed a second affidavit stating that what had been set out in his first affidavit was a mistake due to a typographical error and that the correct position which should have been typed in, was: " I am unaware of the averments contained in paragraph 21 of the said affidavit".

I have considered the matter very carefully and am inclined to agree that this was a mere typographical error, where the typist had inadvertently typed the word "aware" in place of the word "unaware." This is further supported by the context in which it is placed and by the entire tenor of the 2nd Respondent's affidavit. In any event, on the matter being pointed out by the Petitioner, the 2nd Respondent had promptly corrected it by his sworn affidavit. I am therefore of the view that this is a mere typist's error and nothing more.

Thus, it is seen that the Petitioner has adduced no evidence to substantiate the serious allegation made against the 1st Respondent, which is thus reduced to a mere bald statement made by the Petitioner to supply a motive for the acquisition of his land. This allegation, made in such affirmative terms against a Municipal Councillor and a public figure is a very serious one, and being totally unsubstantiated, I have no hesitation in rejecting it. The 1st

Respondent has categorically denied it and said that he had no personal interest in the matter, and in the circumstances, I accept his version and hold that the motive alleged by the Petitioner as against the 1st Respondent remains unproved, and must be rejected. With its jettisoning, the suggestion of *mala fides* disappears. Thus the allegation of malice on the part of the 1st Respondent and the 2nd to 5th Respondents falls away. While still on the question of malice, I must here mention that no malice or *mala fides* has been attributed to the President for making the impugned order marked 'B'.

I shall now turn to a consideration of whether the said Order (marked 'B') made by the President is invalid as urged by the Petitioner.

In this connection, it was common ground that by virtue of Section 4(1) read with section 6 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980, jurisdiction to hear and determine this matter was vested in the Supreme Court, and that it was unaffected by Section 3 thereof.

As set out above, the President made an order on 1.4.92 (marked 'B') under Section 2 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980. The said order reads as follows:

> "By virtue of the powers vested in me, under section 2 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980, I, Ranasinghe Premadasa, President, upon the recommendation of the Minister in charge of the subject of Urban Development, being of opinion that the lands specified in the schedule hereto are urgently required for the purpose of carrying out an Urban Development Project, do by this Order, declare that the said lands are required for such purpose."

The Schedule to the above Order sets out the several lands so specified, which includes the two blocks Nos. 19 and 21 belonging to the Petitioner.

The said Order was made in terms of Section 2 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980, which reads as follows:-

"Where the President, upon a recommendation made by the Minister in charge of the subject of Urban Development, is of opinion that any particular land is, or lands in any area are, urgently required for the purpose of carrying out an Urban Development Project which would meet the just requirements of the general welfare of the People, the President may, by Order published in the Gazette, declare that such land is, or lands in such area as may be specified, are required for such purpose."

The two main ingredients required to be satisfied in order to render the said Order valid in law, are :-

i) that there had to be "a recommendation made by the Minister in charge of the subject of Urban Development", and

ii) that the President had to form an "opinion" upon such recommendation –

a) that there was in existence "an Urban Development Project" ;

b) that such project was of such a nature as "would meet the just requirements of the general welfare of the People";

c) that certain lands were "required for the purpose of carrying out" such project, and

d) that such requirement was "urgent".

As regards the first ingredient (i) above, there was no dispute that the Minister envisaged in Section 2 was the President himself. Learned President's Counsel for the Petitioner submitted that, this fact notwithstanding, there should in fact have been a recommendation upon which the President formed his opinion; especially as the impugned Order (marked 'B') refers specifically to the existence of such a recommendation. However, no such recommendation exists, nor did Learned President's Counsel for the 2nd to 6th Respondents attempt to show the contrary. The question then is, where the

President and the Minister in charge of the subject of Urban Development are one and the same person, would the provisions of section 2 require the President to make a recommendation to himself before arriving at an opinion? Will this not be an unnecessary exercise and if gone through, amount to a fiction, merely for the sake of giving effect to the letter of the law? Will the President ever depart from his own recommendation in making his Order? Inconceivable ! I do not therefore think, that in these circumstances, the President was required to make any recommendation in writing to himself. It must not be forgotten that the President's act in not assigning the subject of Urban Development to a Minister, whereupon such subject would remain under him, is permissible in terms of Article 44(2) of the Constitution.

I now propose considering the second ingredient in Section 2 which concerns the "opinion" which the President ought to have entertained before he made his Order (marked 'B'). The conditions for the formation of such opinion, as set out in section 2 are :-

a) that there should in fact have existed an "Urban Development Project";

b) that such project was designed to "meet the just requirements of the general welfare of the People";

c) that the lands in question were "required for the purpose of carrying out" such project, and

d) that such requirement was "urgent".

Learned Counsel for the Petitioner submitted, firstly, that the Order made by the President (marked 'B') must, on the face of it, reflect the existence of the requisite ingredients and that inasmuch as the Order did not recite the fact that the project would meet the just requirements of the general welfare of the People, the Order was *ex facie* bad.

The impugned Order has, in fact, omitted to set out these words. However, I do not think it is absolutely necessary that all the words in

section 2 should be reproduced in the Order. The Order itself mentions the fact that it is one made under Section 2, and I do not think that these words constitute an essential part of the declaration by the President. They only indicate as to why the lands are required and the reason for making the Order. The essential matters are in fact included in the Order and I do not think any prejudice is caused to anybody by the omission of these words. I am therefore of the view that the omission of the words "to meet the just requirements of the general welfare of the People" does not render the Order invalid.

I now propose to consider the principal submissions of Learned Counsel for the Petitioner. His attack was two-pronged. He first submitted that the entire exercise culminating in the section 2 Order by the President was tainted with malice generated by the 1st Respondent. He did not, at any stage, impute *mala fides* or malice to the President, but submitted that, as set out earlier in this judgment, the attempt to deprive him of his property was motivated by malice on the part of the 1st Respondent and the Officers of the Urban Development Authority (2nd, 3rd and 4th Respondents). However, as set out earlier, I have considered this matter and found this allegation to be baseless and therefore it merits no further consideration.

If therefore, there was no malice on the part of anybody, the question that arises is, was the President's Order baseless, unreasonable and arbitrary?

In this connection, Learned Counsel for the Petitioner submitted very strenuously as the second limb of his attack, that no "Urban Development Project" of any sort existed at the time the impugned Order 'B' was made by the President. He stressed that thus, the principal ingredient required by section 2 to be satisfied, was totally absent and that being so, the President had no material and was in no position to form his "opinion," and upon such opinion, to make his Order (marked 'B').

Thus, in considering the facts of this case in the light of the writ jurisdiction vested in this Court, the questions that arise are, whether, in the absence of material as aforesaid, the President has exceeded

his jurisdiction; whether his Order is unreasonable and whether in consequence there has occurred an error of law.

The main question which arises for consideration in this case is whether there in fact existed an Urban Development Project. Learned Counsel for the Petitioner submitted that there was none, and that all the papers and documents produced by the Respondents revealed none. He in fact challenged Learned Counsel for the Respondents to produce, even during the hearing, any material showing the existence of a project, and this Court did in fact call upon him to do so on the next date of hearing. This he failed to do on any of the subsequent dates of hearing.

I shall now set out in detail, the material placed before this court by Learned Counsel for both the 1st and 2nd Respondents, in proof of the existence of an "Urban Development Project".

The 1st Respondent, in paragraph 7 (c) of his affidavit has stated as follows:-

> "I am aware that there is an integrated plan for the re-development of the larger area, and that the Petitioner's land forms only a part of the said larger area. For the re-development of the said larger area, all plans have been made and other steps taken by the Urban Development Authority for the construction of a Housing Complex consisting of a large number of residential flats and commercial buildings;"

and in paragraph 8(d) (iv), he says:

> "I am aware that the property in question was included in a proposed re-development project of this area."

I need only say that apart from so stating, the 1st Respondent has neither produced nor in any way caused to be produced any material tending to show the existence of any such "project".

Besides the 1st Respondent, the Petitioner has cited the Additional Director-General of the Urban Development Authority as the 2nd

Respondent, the Assistant Director (Lands) as the 3rd Respondent, the Director (Lands) as the 4th Respondent and the Urban Development Authority itself as the 5th Respondent in this case. However, it was only the 2nd Respondent who sought to file an affidavit in reply to the Petitioner. (The 3rd Respondent has also filed an affidavit, which however is merely supportive of that of the 2nd Respondent). I must mention that the affidavit of the 2nd Respondent appears to be only on his own behalf and not on behalf of the other Respondents, including the 5th Respondent (the Urban Development Authority).

In his affidavit, having admitted that on 27.3.92, he, along with several officers (no mention of the 1st Respondent) visited the property of the Petitioner on an inspection tour, and having admitted that, without entering the premises he informed the workmen not to continue construction work as the land was under acquisition, and having denied that any of the officers threatened to flatten the land with bulldozers, he goes on to set out the material in his possession pertaining to the all important question of the existence or not of the alleged "project".

He has produced marked 2R1, a letter sent by the 4th Respondent to the Municipal Commissioner dated 27.3.1989 enclosing "a copy of the acquisition sketch showing the above lands (which includes the Petitioner's property), which are under acquisition by this authority for a commercial and residential complex." He next produces the Order of the President (marked 2R2 by him), and goes on to produce (marked 2R3) a copy of the "proposed development plan of the adjoining area" which had been acquired earlier. On perusal one finds that 2R3 shows sketches of buildings but is neither signed by anyone nor dated. The space for the signature of the Chief Architect remains blank. In any event, this plan does not include and is not applicable to the property of the Petitioner. Another plan produced by him marked 2R3a, is similarly unsigned and undated by the relevant authorities. He admits sending the letter marked X7 to the brother of the Petitioner (reproduced above) wherein, he again uses the word "acquisition" only. Nowhere in that letter is any "Project" even mentioned. At this point, it needs to be mentioned that on one of the dates of hearing (7.9.94), Learned Counsel for the Respondents

attempted to produce enlargements of plans purporting to be the originals of 2R3 and 2R3a abovementioned. However, on a close examination and comparison, this Court found that they were enlargements of some other sketches and plans, and were quite definitely not the originals of 2R3 and 2R3a. We therefore rejected them.

The 2nd Respondent next produced a Gazette marked 2R4 setting out that the area where the Petitioner's property was situated was declared a Development Area under section 3 of the Urban Development Authority Law, No. 41 of 1978. This Gazette however does not mention anything about the existence of a "project" as contemplated by the President's Order. In fact Learned Counsel for the Petitioner submitted that according to 2R4 the entire area of the Municipality of Colombo has been made subject to such a declaration; besides the area covered by the Dehiwala-Mount-Lavinia Municipal Council and the Moratuwa Urban Council.

Further answering, the 2nd Respondent states that in 1986 some land "to the left of the Petitioner's present land" was acquired utilizing the proviso to section 38 of the Land Acquisition Act (enabling urgent acquisitions to be effected). He says that this was part of its development project for that area. He produces the relevant Gazette (2R5) and a copy of the plan (2R5A). No project is discernible and in any event this does not concern the Petitioner's property.

The 2nd Respondent then says in paragraph 10(c) of his affidavit that, "In 1988, the Urban Development Authority took steps to acquire the balance area for the completion of the project and an application was made to the Secretary, Lands, to take steps to acquire the said area under the Land Acquisition Act." He produces the said application marked 2R6 and dated 8.8.88, but this nowhere mentions the Petitioner's property. He also produces marked 2R6A, a document regarding the above acquisition, which however is unsigned, undated and does not bear even a reference number. This too does not specifically mention the Petitioner's property. 2R6B dated 8.8.88, is a document containing details of the lands sought to be acquired and 2R6C is a sketch, again unsigned and undated, showing the lands to be acquired. While these two latter documents

mentioned the Petitioner's property, none of them makes any reference to the all important "Project."

It is to be noted that all this was in August 1988. Although the application was to acquire the land immediately under the proviso to section 38 of the Land Acquisition Act (2R6), nothing further was done in this connection. Thereafter, on 12.10.91, a little over 3 years later, the 4th Respondent wrote 2R7 to the Secretary, Ministry of Plan Implementation requesting to be informed of the present position. Does this show the urgency of the matter, or was the proposed acquisition abandoned and subsequently re-activated?

The 2nd Respondent then says in paragraph 10(e):–

> "The Urban Development Authority was informed over the telephone by the Ministry of Policy Planning and Implementation to make another application in respect of the said proposed acquisition, as the earlier application had got misplaced. As such, another application was made on 28.10.91."

A copy of this application has been produced marked 2R8, where, once again no reference is made to the Petitioner's lands. Annexed to this application are a copy of 2R6A (now marked (2R8A), a copy of 2R6B (now marked 2R8B), and a copy of the sketch 2R6C (now marked 2R8D). The only new document is 2R8C which is again undated and unsigned, giving a description of the land and a list of claimants. The lands of the Petitioner, Nos. 19 and 21 are not mentioned.

A matter worth mentioning in connection with the fresh application for acquisition (2R8) is that in it, the writer (4th Respondent), specifically requests that the acquisition should be under the normal procedure set out in the Land Acquisition Act. This is a noteworthy departure from the original application (2R6), wherein the request was that the acquisition should proceed under the proviso to section 38 of the Land Acquisition Act which is used for effecting immediate acquisitions. This too was signed by the 4th Respondent.

As set out above, the second application dated 12.10.91 was accompanied by a request for a normal acquisition, the only inference from which being that there was no urgency in the matter of the said acquisition.

Thereafter, on 1.12.1991, the Petitioner purchased the property in question (Lots 19 and 21); had his building application approved by the Municipal Council on 13.3.1992, and immediately commenced building operations.

Then, on 27.3.92, as set out earlier, the U.D.A. officials arrived at the building site and asked the workmen to stop construction work; and, just four days later, on 1.4.92, Gazette Extraordinary No. 708/15 was published containing the President's Order (marked 'B') saying, *inter alia,* that the lands were "urgently required."

The 2nd Respondent adverts to this fact in the following manner in paragraph 10(f) of his affidavit:–

> "Consequently, in terms of section 2 of the Urban Development Project (Special Provisions) Act, No. 2 of 1980, H.E. the President made a declaration under the said section, as the land was urgently required for the purpose of carrying out an Urban Development Project."

There is no supportive material to substantiate the averments made. Thereafter on 7.4.92, steps under the Land Acquisition Act were started with the publication of a notice under Section 2 thereof, to acquire the Petitioner's land, (2R9).

It is seen that the 2nd Respondent's narration does not in any way throw any light on the question at issue, viz: was there a project in existence? On the contrary, the only mention is about acquisition of land. No details of a project as contemplated by Act, No. 2 of 1980 are forthcoming. In fact this Court showed much latitude to the Respondents by calling upon Learned Counsel to produce, at any stage of the hearing material to show the existence of a project. Although such opportunity was given on several occasions, Learned Counsel for the Respondents failed to produce any such material. All

that was forthcoming was a further affidavit by the 2nd Respondent enclosing several photographs marked 'A' to 'G' depicting buildings in the area, which the 2nd Respondent says is an area of "active development," situated in "an area of urban renewal interest," with joint intervention of the National Housing Development Authority, Urban Development Authority and the Colombo Municipal Council. He concludes by stating that "the proposed development project is part of the Development Project of the area" which has been jointly undertaken by the three institutions mentioned above. However, the 2nd Respondent does not proceed to say what exactly the project is, nor has he filed any affidavits from the other two institutions mentioned above, as to what the joint project was. In the result, there is no material before us to show that any Urban Development Project as contemplated by Act, No. 2 of 1980 was in existence at the time the President made his Order marked 'B'.

On the other hand, as stated earlier, having purchased the property in question on 1.12.91, the Petitioner, through his brother, Amaradasa Kodikara, submitted on 23.12.91 a building plan for approval to the Colombo Municipal Council, which was in fact approved by the said Council on 13.3.92. The Petitioner's brother, an Attorney-at-Law, has filed an affidavit (marked X9), stating that well before the purchase of this property, in July 1991, he made searches and inquiries at the Land Registry, Colombo Municipal Council and the Urban Development Authority, and was satisfied that there were no encumbrances or any move to acquire the premises. He adds that he made an inquiry in writing from the Chief Architect of the Urban Development Authority, Mr. Tissa Kumarasinghe as to whether that Authority intended to acquire the land in question, and that Mr. Kumarasinghe whilst stating that he could not give a reply in writing, assured him that he was satisfied that the UDA had no such intentions. The 2nd Respondent in reply has not sought to deny this, but merely states that Mr. Tissa Kumarasinghe was not the person competent to give such information. He has not filed an affidavit from Mr. Kumarasinghe.

As stated above, the Colombo Municipal Council had on 13.3.92 approved the Petitioner's building plan. On probing the mater further, this Court requested information as to how the Municipal Council

could possibly have approved a building permit if the land in question was about to be acquired.

It transpired that approval is given by the Planning Committee of the Colombo Municipal Council, on which the Urban Development Authority is represented by an Officer of the level of Director. H. P. Silva who has sworn an affidavit to the effect that, as Director (Development Regulations) of the Urban Development Authority, he attends meetings of the Planning Committee of the Council on Planning and Building approval, on the directions of the Chairman, UDA. He goes on to state that the Petitioner's building application was taken up and approved by the Planning Committee on 10.3.92, and the building permit was issued on 13.3.92, but adds that he was not aware of any intended acquisition of the premises.

The Senior Town Planner, Colombo Municipal Council, Ms. N. P. Herath, who is also a member of the Planning Committee states in her affidavit that the Committee unanimously decided to approve the Petitioner's application; adding that no information was available "with regard to any acquisition of the said land by any Authority."

The third member of the Planning Committee was the Deputy Municipal Engineer of the Municipal Council, U. A. J. S. Perera, who has also filed an affidavit on the same lines as that of Ms. Herath.

The resulting situation is singular. An urgent Urban Development Project authored by the U.D.A., necessitating the acquisition of the Petitioner's property and meriting the personal intervention of the President on 1.4.92, remained unknown to one of the Directors of the U.D.A. who sat on the Planning Committee of the Colombo Municipal Council on the directions of the Chairman of the self-same U.D.A., and who approved the Petitioner's building application on 10.3.92, just 20 days before the President made his Order under Section 2.

In any event, it is inconceivable that the Senior Town Planner of the Council and the Deputy Municipal Engineer had not even heard of this urgent project which, according to the 2nd respondent, had been jointly undertaken by three institutions, of which, the Colombo Municipal Council was a co-participant.

This is not all. The Petitioner has filed a further affidavit in which he refers to premises Nos. 203 and 205, Deans Road, Colombo 10, which fall within the land which, according to the 2nd Respondent, is urgently required for an Urban Development Project, which project has been in existence since 1988. The Petitioner has filed with the said affidavit, the following documents in respect of the said premises Nos. 203 and 205, viz, the Certificate of Conformity (P6) dated 7.9.89 in respect of a three-storeyed shop and office building on the said premises and the Certificate of House Drainage (P7) dated 17.8.89 in respect of the same premises; both of which have been issued by the Municipal Engineer, Colombo Municipal Council. The Petitioner submits that the fact that private individuals like the owner of premises Nos. 203 and 205 have been allowed to construct buildings within the area said to be earmarked for an alleged project goes to show that there never was any such project in the area in question. Further, one wonders as to why and for what purpose a blanket declaration of the area where the Petitioner's land is situated (Gazette marked 2R4, dated 30.9.78), as a "Development Area" was deemed necessary. Was it to put a strangle-hold on ownership of land? According to paragraph 8(i) (a) of the Petitioner's affidavit of 22.6.92, the Gazette marked 2R4 declares as a "Development Area", the entirety of the Colombo Municipal Council area, the Dehiwela-Mount Lavinia Municipal Council area and the Moratuwa Urban Council area, besides other areas in Sri Lanka. The Gazette 2R4 therefore does not help the 2nd Respondent in any way.

What is important in this connection is the reply given by the 2nd Respondent as to why the Colombo Municipal Council allowed the building application of the Petitioner and issued him with a permit to build in the teeth of the fact that the area was supposed to be urgently required for an Urban Development Project, and in the teeth of the fact that a Director of the Urban Development Authority sat on the Planning Committee of the Colombo Municipal Council which approved the building application and issued the building permit X6 to the Petitioner. The 2nd Respondent's reply is at paragraph 4 of his affidavit, where he states that "the Municipal Engineer by an oversight had approved the said building plan". There is no affidavit by the Municipal Engineer supporting this position. In any event it is

not the function of the Municipal Engineer to approve building plans. That function is exercised by the Planning Committee of the Municipal Council consisting of three members, *viz*: the Senior Town Planner, the Deputy Municipal Engineer and the Director (Development Regulations) of the Urban Development Authority, all of whom have filed affidavits to the effect that none of them knew anything about an intended acquisition of the area in which the Petitioner's land stood. It is difficult to believe that, if there in fact was a development project for the entire area, and if such area was to be acquired for such purpose, the representative of the U.D.A. would not have known of it. If he knew of it, I have no doubt that he would have brought it to the notice of the Planning Committee. After all, the whole point of having a senior officer of the U.D.A. on the Planning Committee is for the very purpose of apprising the Committee of the status of the lands in respect of which building applications are made. According to his own affidavit, this U.D.A. representative sits on the Committee" on the directions of the Chairman, Urban Development Authority". At least the Chairman ought to have known and given the necessary directions. The question that arises once again is, whether there was in fact an Urban Development Project in existence relating to the Petitioner's land. The answer inclines towards the negative. There certainly was no "oversight". The Planning Committee was totally unaware of any project, or even of any acquisition for the purposes of a project.

Thus it appears that the totality of the material placed before this Court by Learned Counsel for the Respondents does not measure up in any degree to satisfy the requirements of the factual existence of an Urban Development Project as envisaged in the Urban Development Projects (Special Provisions) Act No. 2 of 1980. Though given numerous opportunities, Learned Counsel for the Respondents produced no documents of any sort to show a project plan or any sort of development plan, which would have constituted a basic document showing the existence of a development project. Neither did he produce before us any feasibility report relating to the alleged project or any project report, or even any minutes in files showing that discussions, at least, were had in connection with the establishment of such a project. On the contrary, what appears to have been uppermost in the minds of the Respondents is the question of

acquisition of the relevant land. Ever so often, in the documents produced, one comes across a phrase to the effect that the land is "under acquisition." Was it that the Urban Development Authority was primarily concerned only with merely acquiring the relevant land; the question of an Urban Development Project to follow at some future time, once the land had been acquired and taken possession of? This seems to have been the pattern, as it was pointed out to us that even the adjacent lands though acquired, were not utilised for any project. It appears that, in their minds, the Respondents equated "acquisition" with "project", or at least, felt that from an "acquisition", one ought automatically to infer the actual existence of a "project". What strikes me at this point is that Learned Counsel for the Respondents wanted this Court to infer that an Urban Development Project existed, from the gazettes, sketches and photographs he produced. I regret I am unable to draw such an inference, and wish to state affirmatively, that this is too important a matter to be disposed of upon the basis of any such inference. There must be definite and positive material showing that a project already existed; for which project, the land in question had to be acquired, and not the other way around. The simplest thing Learned Counsel for the Respondents could have done was to have produced before us the file pertaining to the alleged project or at least the relevant development plans or project reports or feasibility reports and other relevant documents. This he did not do, and it would not be unreasonable to conclude that no such file and no such documents in fact exist.

In view of the conclusion reached that there was no Urban Development Project in existence at the time the President made his Order, the question that arises is: "What material, if any, did the President have before him to enable him to arrive at his opinion before making his Order under section 2 of Act, No. 2 of 1980?"

In fact, Section 2 incorporates the safeguard of requiring the relevant Minister to place his recommendation before the President. This means that the President must not act arbitrarily or unreasonably, but on definite material placed before him. Where the President and the relevant Minister are one and the same person, even though one would not expect him to make a recommendation to himself, he must,

nevertheless, have the necessary material before him. It is clearly the duty of the officers of the U.D.A. to fully brief and apprise the President of not only the "full facts", but also the "true facts" before requesting the President to form his opinion, and upon such opinion, to make his Order under section 2 of Act, No. 2 of 1980.

This involves a consideration of the vital question in connection with the ingredients made necessary of compliance by section 2 of Act, No. 2 of 1980. I have set out the ingredients earlier in this judgment, but feel it necessary to reiterate only the fact that the said section 2 requires the President, prior to making his Order to arrive at and entertain the subjective opinion that there in fact exists "an Urban Development Project", for the carrying out of which, certain lands are urgently required. Section 2 goes on to suggest that the Order itself should declare that the lands are required "for such purpose."

I wish to stress here that the vital ingredient is, that there should exist a project. If there is no project the Act itself becomes inoperable and nothing flows. I have been at pains to set out in detail, every item of relevant material submitted by Learned Counsel for the Respondents but, as stated above, have been unable to discover the existence of any project as contemplated by Section 2.

I therefore hold that there was no Urban Development Project in existence, and that therefore the Respondents have failed to satisfy an essential ingredient, required by section 2, to be satisfied prior to the making of the impugned Order. If there was no project, then it follows that the President had no material before him to enable him to arrive at his opinion before making the Order. How then did the President arrive at his opinion? Can such an Order made *in vacuo,* so to speak, be allowed to stand? I think not.

Although the opinion contemplated by section 2 is a subjective one, I am of the view that it is nevertheless justiciable and subject to review – vide :

Hirdaramani v. Ratnavale (1971) 75 NLR 67 [1]
Visvalingam v. Liyanage (1984) 2 Sri L.R. 123 [2] and
Wickremabandu v. Herath (1990) 2 Sri L.R. 348 [3].

The contention of Learned Counsel for the Petitioner was that the President did not have material on which he could properly have formed such an opinion. Learned Counsel for the Respondents, on the other hand, contended that the President's opinion was unfettered, but I do not think that that is the correct position in law and I therefore cannot agree with him. I therefore hold that this Court can look into the matter with a view to discovering what material, if any, moved the President to form his opinion.

On the question of whether this application is premature and whether the Order of the President has caused prejudice to the Petitioner, it was submitted by Learned Counsel for the Petitioner that upon the impugned Order being published, there was an imminent danger of the Petitioner being forcibly evicted from and deprived of his land, by the use of the provisions of Section 7 of Act, No. 2 of 1980, and of his being immediately divested by the use of the proviso to section 38 of the Land Acquisition Act. Thus, Learned Counsel submitted that once the Order is published, the Petitioner's property was "as good as gone", and that there was an automatic impact of an adverse nature thereon; his rights as owner being necessarily so affected.

In terms of Section 7 of Act, No. 2 of 1980, it would be possible for the Government to take possession of the Petitioner's land by utilizing the State Lands (Recovery of Possession) Act, and to have all persons ejected from such land within sixty days of the making of an application under that Act.

Then again, now that a Section 2 notice under the Land Acquisition Act has already been published in respect of the Petitioner's land, it is always possible for the State to acquire his land immediately, utilizing the proviso to section 38 of the Land Acquisition Act, thus by-passing the steps in that Act containing the salutary provisions in regard, *inter alia*, to the holding of an inquiry and the giving of a hearing at such inquiry. The Petitioner could thus be deprived of the opportunity of voicing his protest under that Act.

It is thus seen that the prejudice caused to the Petitioner by such an act of strangulation is only too clear. At the same time, I feel that

the petitioner's instant application for a Writ of Certiorari is certainly not premature. As set out above, I do not think he need wait until acquisition proceedings actually get going under the Land Acquisition Act, to lodge his protest to Court. If he waits that long it may well be too late in the day, for, after possession of his property is taken under the proviso to section 38, all that the Petitioner could do is to mount a challenge on the question of the urgency in resorting to that provision, vide *Fernandopulle v. E. L. Senanayake* [4].

It is noted in passing, that the label used has no impact on what I have said on this matter. Whether it is called a "declaration" in terms of Section 2 of Act, No. 2 of 1980, or anything else, consequences as set out above do flow from the Order made by the President.

Therefore, I am of the view that the Petitioner has very correctly made his application to this Court in terms of Section 4 of Act, No. 2 of 1980.

Turning now to a consideration of the Petitioner's application for a Writ of Certiorari to quash the Order made by the President under Section 2 of Act, No. 2 of 1980, it needs to be mentioned at the outset, that it is clear that a statute which has the effect of encroaching on the rights of the citizen, whether as regards person or property, must be strictly construed. (Maxwell's Interpretation of Statutes, 11th Edition, at page 275). The Act under consideration is one such, and upon a strict construction thereof, I am of the view that for the reasons set out earlier, the President could not reasonably have arrived at, and entertained the opinion he is said to have entertained.

Lord Atkin said in *R. v. Electricity Commissioners* [5] that Certiorari would issue to "any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially."

Firstly, inasmuch as Section 2 of Act, No. 2 of 1980 vests in the President the legal authority to make the Order thereunder, and inasmuch as the President in fact made the said Order in pursuance of the legal authority so vested in him, there can be no doubt that the President in fact had the legal authority to make the Order in question.

The second question that arises is whether the said order affected the rights of the Petitioner. It is settled now that the word "rights" must be interpreted broadly and is not confined to enforceable rights only. Lord Denning has said in *Schmidt v. Secretary of State for Home Affairs* [6] that, "It all depends on whether he has some right or interest ... of which it would not be fair to deprive him without hearing what he may have to say." I have set out earlier in this judgment as to how and in what manner the President's Order affected the Petitioner's rights, and it is not necessary to repeat those comments here. Suffice it to say that in my view the said Order is one that adversely affects the rights of the Petitioner as owner of the said lots 19 and 21, and as such, he would come within the ambit of the dictum of Lord Atkin as regards his "rights".

Regarding the third matter, *viz:* the duty to act judicially, the accepted view is that the authority concerned (in this instance, the President) is under a duty to act judicially or quasi-judicially not only when he is clothed with judicial power, but even if he were exercising a purely administrative power.

The House of Lords in *Ridge v. Baldwin* [7] made it clear that the remedy lies in respect of "bodies having legal authority to decide questions ... and (which accordingly have) the duty to act judicially." This decision extended both the scope of the operation of the Writ of Certiorari and, with it, the scope of the operation of the rules of Natural Justice.

It has even been held that where a decision is sufficiently close to a judicial decision, such a decision may also be amenable to a Writ of Certiorari, (*R. v. Hendon Rural District council* [8]. However in *Ross-Clunis v. Papadoponllous* [9]) the Privy Council went further and held that even if the power which was granted by the enactment was an administrative power, "If it could be shown that there were no grounds on which the appellant could be so saisfied, a Court might infer that he did not honestly form that view, or that, in forming it, he could not have applied his mind to the relevant facts."

This was followed in *Don Samuel v. De Silva* [10] in which it was held that, "as the Director did not ...even bring his mind to bear upon the

question, the principle enunciated in the Cyprus case (above) would *a fortiori* apply."

In *Ashbridge Investments Ltd., v. Minister of Housing and Local Government* [11] Lord Denning stated that, "The Court can interfere with the Minister's decision if he has acted on no evidence ..." This was followed in *Coleen Properties Ltd. v. Minister of Housing and Local Government* [12] where a local authority had declared two rows of houses to be clearance areas under the Housing Act, 1957. That Act authorised compulsory purchase of "any adjoining land, the acquisition of which is reasonably necessary for the satisfactory development or use of the cleared area." The local authority, under this power, sought to acquire compulsorily, a property owned by the applicants. Following objections by the applicants, a public inquiry was held, at which no evidence was presented to show the need to acquire the applicant's property in order to develop the cleared land. The inspector reported that its acquisition was not reasonably necessary for that purpose. This notwithstanding the Minister rejected this finding and confirmed the compulsory purchase order. The Court of Appeal quashed the Minister's decision on the ground that there was no evidence upon which he could have arrived at his decision.

In *Secretary of State for Education and Science v. Fameside Metropolitan Borough Council* [13] Lord Wilberforce said, "If a judgment requires, before it can be made, the existence of some facts, then, although the evaluation of those facts is for the Secretary of State alone, the Court must inquire whether those facts exist, and have been taken into account. ... If these requirements are not met, then the exercise of the judgment, however *bona fide* it may be, becomes capable of challenge." In this case the subjective wording used, *viz:* "If (he) is satisfied," meant, "if there are reasonable grounds upon which he could be satisfied." and the question for the Court therefore becomes, "did the Secretary of State have reasonable grounds upon which he could, consider that the education authority was acting unreasonably?"; and, "unreasonably" meant, acting in a way that no reasonable authority would act. The House of Lords held that the information available to the Secretary of State did not warrant his entertaining the view he did.

If I may reiterate, in the instant case, it has been clearly demonstrated, and I have so held, that inasmuch as there was no material to show the existence of a project at the time the President made his Order, the President had no evidence whatsoever before him to enable him to form the opinion he was required to form, before making his decision to issue his Order. There was therefore no material before him which he could have considered and given his mind to, and no ground upon which he could have formed an opinion before he made his Order. The Order made by him under these circumstances cannot therefore be allowed to stand.

The duty to act judicially or quasi-judicially involves the duty to afford a hearing. As set out earlier, in *Schmidt v. Secretary of State for Home Affairs* [6] Lord Denning spoke of a right or interest in the aggrieved party, "Of which it would not be fair to deprive him without hearing what he may have to say." In the instant case it was nobody's contention that the President himself ought to have held an inquiry and given a hearing. This would be both impractical and unrealistic. However, the general rule is that a right to a hearing constitutes a minimum pre-requisite of Natural Justice, and in the instant case, I am of the view that it ought to have been the duty of the officers of the U.D.A. who were responsible for formulating the so called Urban Development Project and making the recommendation to the President to make the Order in question, to have at least, informed the owners of the houses and buildings to be acquired, of the proposed project and the consequent need for acquisition, and to have called for their observations and/or objections. The number of such persons would not have been large and I do not think it could have been categorized as an impracticable exercise so as to afford an excuse for non-compliance with the *audi alteram partem* rule. In this context, the existence of a *litis inter partes* is not an essential pre-requisite to the exercise of the *audi alteram partem* rule, which arises whenever there is a duty to act fairly. (S. A. de Smith, Judicial Review of Administrative Action, 4th Edition, pages 176 and 177).

And, on the question of fairness, I need only advert to what Lord Morris said in the Privy Council case of *Furnell v. Whangarai High*

Schools Board [14]. Delivering the majority opinion, he said: "Natural Justice is but fairness Writ large and judicially. It has been described as 'fair play in action'. Nor is it a lever to be associated only with judicial or quasi-judicial occasions."

In *R. v. H. K.*[15] Lord Parker, C.J. said "Good administration and an honest *bona fide* decision must, as it seems to me, require not merely impartiality, but acting fairly," and Salmon L.J. added at page 223: "The authorities, in exercising these powers and making decisions, must act fairly in accordance with the principles of Natural Justice."

As mentioned earlier no hearing of whatever kind was afforded to the Petitioner before the impugned Order was published. Needless to say, if a hearing was given, the fact that there did not exist any project as contemplated in section 2 of Act 2 of 1980 would have, to say the least, come to light.

Learned counsel for the Respondents submitted that since the President's Order relates to several lands besides those of the Petitioner, it will not be possible for this court to quash only that part of the impugned Order (marked 'B') relating to the lands Nos. 19 and 21 belonging to the Petitioner.

It is my view and I so hold that the Order of the President marked 'B', tainted as it is with more than one defect, warrants the issue of a Writ of Certiorari quashing the entire Order.

I would add that on a consideration of Article 35 of the Constitution, the Petitioner has correctly not made the President a party Respondent to the amended application. however he is represented by the Attorney-General.

I have given long and anxious consideration to this matter, and for the reasons set out above, hold that the impugned Order of the President marked 'B' is null and void, and must be quashed.

It is not necessary for the purposes of this case to discuss the other ingredients set out in Section 2 of Act, No. 2 of 1980. It is

sufficient to say that, in the circumstances of this case, Certiorari lies for the reasons set out above.

I accordingly quash the Order of the President of the Republic of Sri Lanka dated 1.4.92. The Petitioner is entitled to costs of this application from the State.

BANDARANAYAKE, J. – I agree.

WIJETUNGA, J. – I agree.

Application allowed.
Certiorari to issue.