

1947

Present : Wijeyewardene J.

VERNON RAJAPAKSE, Petitioner, and THE TRIBUNAL  
OF APPEAL *et al.*, Respondents

IN THE MATTER OF AN APPLICATION FOR A MANDATE IN THE NATURE OF A WRIT OF PROHIBITION ON THE TRIBUNAL OF APPEAL CONSTITUTED UNDER THE PROVISIONS OF REGULATION 8 (2) OF THE DEFENCE (COMPENSATION) REGULATIONS, 1941. APPLICATION No. 505/1946.

*Defence (Compensation) Regulations, 1941—Validity of—Requisition of land—Right of owner to claim compensation in ordinary Civil Courts—Emergency Powers (Colonial Defence) Orders in Council, 1939 and 1940—Right of a Court of Law to canvass the power of the Governor to make Regulations thereunder—Governor's Order made under Emergency Laws (Transitional Powers) (Colonies, &c.) Order in Council, 1946, and published in Gazette of February 22, 1946—Effect of that Order—Writ of Prohibition.*

The competent authority appointed under the Defence (Miscellaneous) Regulations took possession of an estate of the petitioner under Regulation 34 of those Regulations. The competent authority could not reach an agreement with the petitioner regarding the latter's claim for compensation in respect of the requisition of the estate and, acting under Regulation 7 of the Defence (Compensation) Regulations, 1941, referred the dispute to a Tribunal appointed under Regulation 8 (2) of those Regulations. In an application made by the petitioner for a mandate in the nature of a Writ of Prohibition against the Tribunal—

*Held*, that the Defence (Compensation) Regulations, 1941, were *intra vires* of the powers conferred on the Governor by the Emergency Powers (Colonial Defence) Order in Council, 1939, and the Emergency Powers (Colonial Defence) (Amendment) Order in Council, 1940, and deprived the petitioner of his right to make his claim for compensation in the ordinary Civil Courts. A court of law is not competent to canvass the power of the Governor to make a particular Regulation under the Orders in Council, 1939 and 1940, once it appears to His Excellency that such Regulation is necessary for any of the specified purposes.

*Held, further*, that the Tribunal had jurisdiction to assess the compensation due in respect of the possession of the estate not only prior to February 24, 1946, but also subsequent to that date.

**A**PPPLICATION for the issue of a Writ of Prohibition on the tribunal of appeal constituted under the provisions of Regulation 8 (2) of the Defence (Compensation) Regulations, 1941.

H. V. Perera, K.C. (with him D. W. Fernando), for the petitioner.—There are two points on which the petitioner relies in support of his application for a Writ of Prohibition against the tribunal, viz., (1) The Defence (Compensation) Regulations, 1941, are *ultra vires* of the powers conferred on the Governor by section 1 of the Emergency Powers (Defence) Acts of 1939 and 1940 as adapted, modified and extended to Ceylon by the Emergency Powers (Colonial Defence) Orders in Council of 1939 and 1940. (2) Even if the Compensation Regulations are *intra vires* of such powers they ceased to be operative on February 24, 1946.

Goluwapokuna Estate was taken possession of under Regulation 34 (1) of the Defence (Miscellaneous) Regulations made by the Governor under

powers conferred on him by the Emergency Powers (Defence) Acts of 1939 and 1940 as adapted, modified and extended to Ceylon by Emergency Powers (Colonial Defence) Orders in Council of 1939 and 1940. Under the same powers the Defence (Compensation) Regulations, 1941, were made. The Compensation Regulations are, it is submitted, *ultra vires*. In England an Act of Parliament, i.e., Requisitioned Land and Works Act, was considered necessary where the rights of subjects were curtailed in that particular way. It is difficult to understand why an Act involving rather cumbersome procedure was resorted to if the simpler way of legislating by Order in Council was possible.

The powers conferred on His Majesty and on the Governor by these Acts are very wide but they cannot be unlimited. They are limited because they are powers of legislation delegated to His Majesty by the Parliament which alone has unlimited power to legislate. If there is a limit one must be able to say that a particular case falls within the limit or not though it may be difficult in so many words to define the exact limits. The test seems to be whether the particular compensation regulations bear any relation to the objects contemplated in the Acts. The question whether there is such a relation must be judged objectively. One can concede without hesitation that taking possession of certain lands may bear a relation to one or several objects of the Acts of 1939 and 1940, but to deprive the subject of his right to full compensation can have no conceivable relation to any of the objects of these Acts. The Regulations therefore which enable the taking possession of land are *intra vires*, but regulations which make compensation payable to the owner much less than what he would be entitled to under the ordinary law, and regulations which enable constitution of tribunals for that purpose, may well be *ultra vires*. The submission is not that the opinion of Courts should be substituted for the view of the Governor. If there is any relation at all between the regulations and the objects no authority can say that the regulations are *ultra vires*. If, therefore, powers given to the Governor are limited and there is no relation at all between the compensation regulations and the expressed objects for which such powers were given, then, the compensation regulations are clearly *ultra vires*. See *De Keyser's Royal Hotel case*<sup>1</sup>; *New Castle Breweries Limited v. The King*<sup>2</sup>.

On the second point. The taking of possession and the retention of property by the competent authority is referable to regulation 34 (1) of the Defence (Miscellaneous) Regulations and to that alone. The emergency powers as defined by 17 (1) of the Compensation Regulations mean powers conferred by the Acts of 1939 and 1940 as adapted, modified and extended to Ceylon under the Orders in Council of 1939 and 1940. The power to retain possession after February 24, 1946, was given under the Emergency Law (Transitional Provisions) Act, 1946, and not under the Acts of 1939 and 1940.

H. H. Basnayake, K.C., Acting Attorney-General (with him Walter Jayewardene, Crown Counsel, and H. Dehergodu, Crown Counsel), for the fourth respondent.—On the first point, that the Compensation Regulations are *ultra vires* of section 1 of Defence Acts of 1939 and 1940, certain

<sup>1</sup> (1919) 88 L. J. R. (Chancery) 415 at 421.

<sup>2</sup> L. R. (1920) 1 K. B. 854 at 865.

limitations are provided in the Statute itself. Apart from that, powers conferred are subject to no limitation. The sole test is whether such regulations appeared to His Majesty or the Governor, as the case may be, to be necessary or expedient for the various objects mentioned in the Statute and not whether such regulations are in fact necessary or expedient. No Court or other authority can review His Majesty's or the Governor's powers once His Majesty or the Governor has made the regulations. The cases cited for the petitioner were cases interpreting powers given for similar purposes under Statutes enacted during the War of 1914. Statutes of 1939 and 1940 have been specially framed, giving powers wider than those given under Acts enacted for the 1914 emergency. See *Rex v. Comptroller of General Patents Ex Parte Beyer Products Limited*<sup>1</sup>; *Liversidge v. Anderson, et al*<sup>2</sup>; *Robinson v. Corporation of Sunderland*<sup>3</sup>; *Wijesekera v. Festing*<sup>4</sup>.

On the second point—The Emergency Acts and with them the Orders in Council of 1939 and 1940 expired on February 24, 1946. But under the Emergency Laws (Transitional Powers) Act of 1946 an Order in Council empowering the Governor to make an Order to keep in force such regulations as the Governor considers necessary for certain purposes was made. The Governor has made such an Order on February 22, 1946. By that Order the Governor made provision for the continuation of certain regulations including regulation 34 (1) of the Defence (Miscellaneous) Regulations in a modified form and also for the continuation of the Compensation Regulations. These regulations, continued in force under the Governor's Order, are therefore regulations made under powers conferred by the Defence Acts of 1939 and 1940. See Maxwell on Interpretation of Statutes, 8th Edition, p. 349; Beale on Cardinal Rules of Legal Interpretation, 3rd Edition, p. 510; *Shipman v. Henbest*<sup>5</sup>; *Wallace v. Clench*<sup>6</sup>.

Counsel also cited *Yoxford and Darsham Farmers Association Limited v. Llewellyn*<sup>7</sup>.

*H. V. Perera, K.C.*, in reply.—The cases cited by the Attorney-General do not show that His Majesty or the Governor has unlimited powers to legislate. The question does arise whether it appeared to His Majesty or the Governor necessary or expedient. If the question arises a negative answer is possible.

On the second point—The question is whether the possession of Goluwapokuna Estate after February 24, 1946, is under powers conferred by the Defence Acts of 1939 and 1940 or under Emergency Laws (Transitional Powers) Acts of 1946. When an Act is kept alive by a subsequent Act, if the subsequent Act did nothing more than keep the old Act alive, then the old Act can be said to be operative. But the position is different once a repeal or amendment is made and substitution of other provisions enacted by the subsequent Act. The substitutions and amendments are in force not by virtue of the old Act but by the new Act. The matter may be looked at in another way: The taking of possession

<sup>1</sup> L. R. (1941) 2 K. B. 306 at 311.

<sup>2</sup> L. R. (1942) A. C. 206.

<sup>3</sup> L. R. (1899) 1 Q. B. D. 751 at 757.

<sup>7</sup> (1946) 2 A. E. R. 38 at 40.

<sup>4</sup> L. R. (1919) A. C. 646.

<sup>5</sup> (1790) 100 E. B. 921.

<sup>6</sup> (1947) 1 A. E. R. 175.

authorised by Defence (Miscellaneous) Regulations 34 (1) has, as its necessary corollary, authority to enter and retain or keep possession. Though the physical acts of entry, taking possession and keeping or retaining possession may be distinct acts, the legal right is one and cannot be separated. Or again entry, taking possession and keeping possession may be considered as several aspects of the same thing. The right to take possession was taken away on February 24, 1946, and all its corollaries and consequences were also taken away on that date.

*Cur. adv. vult.*

March 31, 1947. WIJEWARDENE J.—

This is an application for a Mandate in the nature of a Writ of Prohibition against a Tribunal, consisting of the first, second and third respondents, appointed under Regulation 8 (2) of the Defence (Compensation) Regulations, 1941 (hereinafter referred to as the Compensation Regulations). The fourth respondent is the competent authority under the Compensation Regulations. The petitioner states that the fourth respondent is made a party to these proceedings in order to give him notice of this application.

The petitioner is the owner of Goluwapokuna Estate of the extent of nearly 1,076 acres. The competent authority appointed under the Defence (Miscellaneous) Regulations (hereinafter referred to as the Miscellaneous Regulations) took possession of the estate under Regulation 34 of those Regulations on January 15, 1944. A portion of that estate, of the extent of about 270 acres, was derequisitioned on August 15, 1946.

The competent authority could not reach an agreement with the petitioner regarding the petitioner's claim for compensation in respect of the requisition of the estate, and the competent authority purporting to act under Regulation 7 of the Compensation Regulations referred the dispute to the Tribunal in question.

The petitioner urges the following reasons in support of his application—

- (a) The Tribunal has no jurisdiction to act in this matter, as the Compensation Regulations are *ultra vires* of the powers conferred on the Governor by section 1 of the Emergency Powers (Defence) Acts, 1939 and 1940, (hereinafter referred to as the Defence Acts, 1939 and 1940) as adapted, modified and extended to Ceylon by the Emergency Powers (Colonial Defence) Order in Council, 1939, (hereinafter referred to as the Order in Council, 1939), and the Emergency Powers (Colonial Defence) (Amendment) Order in Council, 1940 (hereinafter referred to as the Order in Council, 1940).
- (b) Even if the Compensation Regulations are *intra vires*, the Tribunal in question has no jurisdiction to determine any matter regarding compensation in respect of the possession of the estate from February 24, 1946, as that possession is under the Regulations "modified and continued in force" by an Order of the Governor made under the Emergency Laws (Transitional Powers) (Colonies, &c.) Order in Council, 1946, (hereinafter referred to as the Order in Council, 1946).

The preamble of the Defence Act, 1939, describes it as an Act passed "to confer on His Majesty certain powers which it is expedient that His Majesty should be enabled to exercise in the present emergency; and to make further provisions for purposes connected with the defence of the Realm". Section 1 (1) of the Act reads—

"Subject to the provisions of this section, His Majesty may by Order in Council make such Regulations . . . . as appear to him to be necessary or expedient for securing the public safety, the defence of the Realm, the maintenance of public order and the efficient prosecution of the war in which His Majesty may be engaged, and for maintaining supplies and services essential to the life of the community".

Sub-section (2) enacts that "without prejudice to the generality of the powers conferred by the preceding sub-section"; the Regulations may authorise "the taking possession or control, on behalf of His Majesty, of any property . . . ." Sub-section (5) places a certain restriction on the very wide powers given in the earlier sub-sections by excluding any Regulations dealing with conscription or extending the powers of Courts Martial. Section 8 of the Act requires every Order in Council containing Regulations to be laid before Parliament and provides that within twenty-eight days of such an Order being laid before it, the Parliament may annul the Order by a resolution of the House.

Acting under section 4 (1) of the Defence Act, 1939, His Majesty in Council made the Order in Council, 1939, extending to this Island some of the provisions of the Act including section 1 but excluding section 8 and some other sections, subject to the adaptations and modifications in the First Schedule of the Order.

The Defence Act, 1940, was passed partly for removing some of the restrictions created by sub-section 5 of section 1 of the Defence Act, 1939. That provision of the Act of 1940 was extended to Ceylon by the Order in Council, 1940.

It will thus be seen that the power of the Governor to make Regulations for Ceylon under the Orders in Council, 1939 and 1940, was, so far as it is relevant to this application, same as the power of His Majesty to make Regulations for the Realm under the Defence Acts, 1939 and 1940, subject, however, to the difference that while a Regulation made by His Majesty could be annulled by a resolution of the Parliament, a Regulation made by the Governor was not liable to be annulled by a resolution of the State Council.

The Miscellaneous Regulations and the Compensation Regulations were made by the Governor by virtue of the powers vested in him by the Orders in Council, 1939 and 1940.

Dealing with the first point of his argument the petitioner's Counsel contended that it was open to this Court to investigate whether the purpose, for which the Compensation Regulations were made, was any of the purposes referred to in section 1 of the Defence Acts, 1939 and 1940. He was prepared to concede that once that identity of purpose was established, it was not within the powers of this Court to make the further investigation whether the Compensation Regulations were reasonably necessary or expedient for that purpose. He contended that, while a

Regulation providing for the competent authority taking possession of the property of a subject was warranted by section 1 of the Defence Acts, it could not be said that it was necessary or expedient for any of the purposes set out in that section that the subject should be deprived of his right to make his claim for compensation in ordinary Civil Courts, especially after the cessation of hostilities. In support of his argument, he referred to certain passages in *Newcastle Breweries, Limited v. The King*<sup>1</sup> and *The Attorney-General v. De Keyser's Royal Hotel, Limited*<sup>2</sup>. In the former case Salter J., who was considering the validity of Regulation 2B of the Defence of the Realm Regulations made under Section 1 of the Defence of the Realm Consolidation Act, 1914, said—

“I do not think that a Regulation which takes away the subject's right to a judicial decision, or transfers the adjudication of his claim, without his consent, from a Court of law to named arbitrators, could fairly be held to be a Regulation for securing the public safety and the defence of the Realm, or a Regulation designed to prevent the successful prosecution of the war being endangered, within the meaning of these words in the Defence of the Realm Consolidation Act, 1914”.

In *The Attorney-General v. De Keyser's Royal Hotel, Limited* (*supra*) the House of Lords considered the right of a person to claim compensation *ex lege* in respect of a property which was found to have been requisitioned under the Defence of the Realm Consolidation Act, 1914. In that case Lord Dunedin said—

“It is clear that under these sub-sections (*i.e.*, sub-sections 1 and 2 of section 1 of the Defence of the Realm Consolidation Act, 1914) the taking possession of De Keyser's Hotel was warranted, but there was no necessity for the public safety or the defence of the Realm that payment should not be made”.

These passages have to be construed with reference to the Acts and Regulations discussed in those cases. Both those cases dealt with Regulations made under the Defence of the Realm Consolidation Act, 1914, and the Courts were considering the scope of that Act in the light of some previous Acts which were in force and were connected with the matters arising in those cases. The language of section 1 of the Defence of the Realm Consolidation Act of 1914 differs from the language of section 1 of the Defence Act, 1939. The power given by the former Act to His Majesty in Council was merely the power “to issue Regulations for securing the public safety and the defence of the Realm” and not the power as given by the latter Act “to make such Regulations . . . as appear to him to be necessary or expedient for securing the public safety . . .”. Those cases do not, therefore, afford much help in construing the scope of section 1 of the Defence Act, 1939.

If the contention of the petitioner's Counsel with regard to the Governor's powers is sound it must be equally sound with regard to the powers of His Majesty in Council to make Regulations under the Defence Act, 1939. The words in the Defence Act that have to be considered are:—  
“His Majesty may . . . make such Regulations . . . as appear to him to be necessary or expedient for securing the public

<sup>1</sup> (1920) 1 *King's Bench* 854.

<sup>2</sup> (1926) *Appeal Cases* 508.

safety, &c.” Do these words mean that it is sufficient for the validity of a Regulation if it should so appear to His Majesty, or do they mean that there should be in existence some circumstances which a Court of Law would hold sufficient to make it appear to the Court that the Regulation is necessary or expedient for the specified purposes? If the contention of the petitioner's Counsel is correct, it will involve the substitution of the opinion of the Court for the view of His Majesty. I think the words show clearly that once it appears to His Majesty that a particular Regulation is necessary or expedient he has the power to make the Regulation and that power cannot be canvassed directly or indirectly in a Court of Law. His Majesty is given the power to make a Regulation if it appears to him to be necessary for any of the specified purposes. The decision has to be taken by him. It was stated in *Liversidge v. Sir John Anderson et al*<sup>1</sup> in considering a Regulation made by the Home Secretary that, on a question of interpreting the scope of a power, it was obvious that a wide discretionary power would more readily be inferred to have been confided to one who had high authority and grave responsibility. That observation would apply with much greater force where the power is conferred by the Imperial Parliament on His Majesty. I think the words make it clear that it is beyond the competence of a Court of Law to decide whether a Regulation should have been made by His Majesty. If that is the correct position with regard to a Regulation in England, that would equally be the position regarding a Regulation made in Ceylon by His Excellency the Governor acting under the Orders in Council, 1939 and 1940.

I would refer to *Wijeyesekere v. Festing*<sup>2</sup> where the Privy Council considered the powers of the Governor under sections 3 and 5 of the Land Acquisition Ordinance. Section 3 says that “whenever it shall appear to the Governor that land in any locality is likely to be needed for any public purpose, it shall be lawful for the Governor to direct the Surveyor-General to examine . . . such land and report . . . whether the same is fitted for such purpose”. Section 5 says that “upon the receipt of such report it shall be lawful for the Governor to direct the Government Agent to take Order for the Acquisition of the land”. The Privy Council held that under these provisions the decision of the Governor was conclusive on the point that the land was wanted for a public purpose and that it was not open to the person whose land was affected to challenge the decision of the Governor upon this point (see also *The Government Agent v. Perera*<sup>3</sup>.)

The Acting Attorney-General has invited my attention to the case of *Rex v. Comptroller General of Patents, Ex Parte Bayer Products, Limited*<sup>4</sup> where the Court of Appeal considered the validity of a certain Regulation in England made under section 1 of the Defence Act, 1939. Dealing with an argument analogous to the argument submitted to me by the petitioner's Counsel, Scott L.J. said—

“The effect of the words ‘as appear to him to be necessary or expedient’ is to give to His Majesty in Council a complete discretion to decide what Regulations are necessary for the purposes named in

<sup>1</sup> (1942) *Appeal Cases* 205.

<sup>2</sup> (1919) *Appeal Cases* 646.

<sup>3</sup> (1903) 7 *New Law Reports*, 313.

<sup>4</sup> (1941) 2 *King's Bench*, 306.

the sub-section. That being so, it is not open to His Majesty's Courts to investigate the question whether or not the making of any particular Regulation was in fact necessary or expedient for the specified purposes. The principle on which delegated legislation must rest under our constitution is that legislative discretion which is left in plain language by Parliament is to be final and not subject to control by the Courts. In my view, the sub-section clearly conferred on His Majesty in Council that ultimate discretion".

In the course of his judgment Clauson L.J. said—

"The applicants have attacked Regulation 60E on the ground that His Majesty was not authorised by the Act of 1939 to make it. It was argued that the Regulation was not necessary or expedient for securing the public safety, or any of the other purposes mentioned in the Act, but it appears to me, as a matter of construction of the Act to be quite clear that the criterion whether or not His Majesty has power to make a particular Regulation is not whether that Regulation is necessary or expedient for the purposes named, but whether it appears to His Majesty to be necessary or expedient for the purposes named to make the Regulation. As I construe the Act, Parliament has plainly placed it within the power of His Majesty to make any Regulation which appears to him to be necessary or expedient for the purposes named. Accordingly, the validity of Regulation 60E, or any other Regulation made under section 1, sub-section 1, of the Act, can be investigated only by inquiring whether or not His Majesty considered it necessary or expedient, for the purposes named, to make the Regulation and this application for prohibition can succeed only if it is within the power of this Court to investigate the action of His Majesty when he stated, as I conceive that His Majesty did in making the Order in Council, that this Regulation appeared to him to be necessary or expedient for the named purpose. In my view, this Court has no jurisdiction to investigate the reasons or the advice which moved His Majesty to reach the conclusion that it was necessary or expedient to make the Regulation. The legislature has left the matter to His Majesty and this Court has no control over it. I know of no authority which would justify the Court in questioning the decision which His Majesty must be taken to have stated that he has come to, namely, that this Regulation is necessary or expedient for the specified purposes. If His Majesty once reaches that conclusion with regard to a Regulation, that Regulation, when made, is the law of the land, subject to the provision in the Act that, if either House of Parliament takes a view differing from that on which His Majesty has acted, the order can be annulled. This being my view on the construction and effect of the Act, it is clearly wholly irrelevant to discuss whether Regulation 60E was in fact necessary or expedient for securing the public safety, or for any other purposes set out in the sub-section. It is a wholly irrelevant matter, and we have nothing to do with it. His Majesty formed the view that it was necessary or expedient, for the purposes mentioned, to make the Regulation, and, so far as this Court is concerned, there is an end of the matter."



I hold that the Compensation Regulations are *intra vires* of the powers conferred on the Governor by the Orders in Council, 1939 and 1940.

I shall proceed to consider the second point raised on behalf of the petitioner.

The Orders in Council, 1939 and 1940, were kept alive till February 24, 1946, by various Orders in Council made in pursuance of section 11 (1) of the Defence Act, 1939, as amended by the Defence Act, 1940, and also by an Act of 1945, extending the duration of the Defence Acts, 1939 and 1940, till February 24, 1946. By the Emergency Laws (Transitional Provisions) Act, 1946, the Parliament provided for the continuation in force of certain Defence Regulations until December 31, 1947, subject, however, to the limitations, exceptions and modifications specified in Part 1 and Part 2 of the Schedule to the Act. In pursuance of the powers vested in him by section 18 (1) of that Act, His Majesty in Council passed the Order in Council, 1946, empowering the Governor to make an Order providing for the continuation in force until December 31, 1947, of any Defence Regulations having effect in the Island "which appear to the Governor to be required for purposes similar to those for which the Defence Regulations specified in the First Schedule to the Act of 1946 are required, or for purposes similar to the purposes of any Act of the Parliament of the United Kingdom passed on or after the first day of September, 1939, and in force at the date of the passing of the Act of 1946". The requisite Order (hereinafter referred to as the Governor's Order) was made by the Governor and published in the *Government Gazette* No. 9,523 of February 22, 1946.

The argument of the petitioner's Counsel on the second point may be summarized as follows. The Compensation Regulations govern the compensation payable "in respect of the taking possession of any land" in the exercise of emergency powers [*vide* Regulation 2 (1)]. The "taking possession" contemplated by these Regulations is not merely the initial "taking possession" but also the retention of possession, and compensation in respect of the retention of possession is controlled by the Regulations only if the possession of the land is retained in the exercise of emergency powers [*vide* Regulation 2 (1) (a)]. According to the definition given in Regulation 17 (omitting what is irrelevant to this inquiry) "Emergency Powers" means "any power conferred by Regulations made under the Emergency Powers (Defence) Acts, 1939 and 1940, as adapted, modified and extended to Ceylon by the Emergency Powers (Colonial Defence) Order in Council, 1939, and the Emergency Powers (Colonial Defence) (Amendment) Order in Council, 1940". The possession of Goluwapokuna Estate was retained from February 24, 1946, not under the Regulations mentioned under the Defence Acts, 1939 and 1940, but under a Regulation brought into operation by the Governor's Order of February 22, 1946. The Tribunal in question, therefore, had no jurisdiction to assess the compensation due for the period commencing from February 24, 1946.

Now, among the Regulations which were "*continued in force*" by the Governor's Order were (a) the Miscellaneous Regulation 34 subject to the limitations and modifications as set out in the second column of Part I of the Schedule to the Order and (b) the Compensation Regulations

which were made for the Island in 1941 for purposes similar to the purposes of the Compensation Defence Act which was passed on September 1, 1939.

As it stood prior to February 24, 1946, the Miscellaneous Regulation 34 :—

- (a) empowers by paragraph (1) a competent authority, "to take possession of any land" . . . . "in the interests of public safety, &c." if it appears to him necessary or expedient to do so.
- (b) authorises by paragraph (1A) a Police Officer to use such force as may be necessary in carrying out the directions of the competent authority with regard to the taking of possession and
- (c) provides by paragraph (2) that "while any land is in possession of a competent authority by virtue of this Regulation, that land may be used by, or under the authority, of the competent authority for such purpose, and in such manner, as that authority thinks expedient in the interests of the public safety, &c."

The limitations and modifications set out in Part I of the Schedule to the Governor's Order of 1946 with regard to this Regulation are as follows :—

- (a) In place of paragraph 1 the following paragraph is substituted :—  
 "Where possession of any land had at any time prior to the twenty-fourth day of February, 1946, been taken by a competent authority by virtue of the powers conferred by any Defence Regulation in force at such time, and such land was immediately prior to that day in the possession of a competent authority by virtue of such powers, possession of such land may be continued after the aforesaid day if it appears to the authority that such continuance is necessary or expedient."
- (b) Paragraph 1A is omitted.
- (c) Paragraph 2 is modified to read :—"while any land is in the possession of a competent authority by virtue of this Regulation the land may . . . . be used by, or under the authority of, the competent authority for the purposes of the public service or in any manner in which the land was being used immediately prior to the twenty-fourth day of February, 1946".

As they stood originally, paragraph (1) of the Regulation contemplated the initial taking of possession as well as the retention of possession by the competent authority and paragraph 2 indicated for what purposes the land could be used during the retention of possession. Under the Governor's Order of 1946 paragraph 1 of the Regulation discontinued the right to take possession of lands after February 24, 1946, but provided for the continuance of the retention of the possession of some lands whose possession had already been taken and paragraph 2 enabled the competent authority *inter alia* to use the lands, whose possession had been retained, for the purposes "specified in the enabling Act".

It appears to me, therefore, that the Governor's Order "*continued in force*" that part of Regulation 34, as it stood before February 24, 1946, which enabled the competent authority to retain possession of Goluwapokura Estate and to use it in the manner in which it was being used

immediately prior to the twenty-fourth day of February, 1946. The possession of the Goluwapokuna Estate from February 24, 1946, would thus be under the powers conferred by a Regulation made under the Defence Acts, 1939 and 1940, and would, therefore, be a possession retained in the exercise of Emergency Powers as defined by Regulation 17 of the Compensation Regulations.

The rule *nisi* is discharged and the petitioner's application is refused with costs.

*Rule discharged.*

