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agreement if any of the parties but it is unnecessary to go into these cases because the offer which was originally made by the appellant and accepted by the respondent company has not been adhered to and the appellant is now proceeding on an entirely new basis.

In our opinion the offer and the acceptence of the terms of the trust deed being wholly different from what has now been executed by the appellant and from the manner in which the new trust has been constituted into a lessee of the company without the company's agreement it is not possible for a court in equity to accept the new trust as a bar to the respondent's claim for possession. In this case the appellant has suffered no loss. The amount which he has expended has been returned to him.

In our opinion the judgment of the High Court was right and we therefore dismiss this appeal with costs.

Appeal dismissed.

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March 28.

THE COLLECTOR OF MONGHYR AND OTHERS

v.

KESHAV PRASAD GOENKA AND OTHERS

(And connected appeals)

(B. P. SINHA, C.J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

Private Irrigation Works—Repairs to works—Notice to landlord—Collector's power to direct repairs without notice—Statute requiring reasons to be recorded by Collector—If mandatory—Demand on landlord for share of costs—Legality—Bihar Private Irrigation Works Act, 1922(Bihar and Orissa 5 of 1922), ss. 3, 4, 5, 5A, 5B, 11, 12—Constitution of India, Art. 226.

The Bihar Private Irrigation Works Act, 1922, was enacted to provide, inter alia, for the repairs and improvements

of certain irrigation works. Under ss. 3 to 5 of the Act the Collector was empowered to take action, where he was satisfied that the matter was of sufficient importance for the repairs etc. of the existing irrigation works after causing a notice to be served on the landlord of the land in which the irrigation work was situated and after making the necessary enquiries. Section 5A provided: "Notwithstanding anything to the contrary contained in this Act, whenever the Collector, for reasons to be recorded by him, is of opinion that the delay in the repair of any existing work which may be occasioned by proceedings commenced by a notice under s. 3 adversely affects or is likely to affect adversely lands which are dependent on such irrigation work for a supply of water, he may forthwith cause the repair of such irrigation work to be begun...."

In pursuance of a circular issued by the Government of Bihar to the District Officers, the officials of the revenue department submitted reports pointing out that the irrigation works specified by them needed repairs. The Collector of Monghyr, on receipt of the report passed an order under s. 5A of the Act on the terms as recited in that section, but he did not record the reasons why he considered that the delay in issuing the notice under s. 3 would bring about the consequences which were recited in s. 5A. After the work was completed, there was an apportionment of the total cost and a demand was made on the landlord under s. 11 of the Act for his share of the contribution. The landlord challenged the legality of the demand by filing an application before the High Court of Patna under Art. 226 of the Constitution of India on the grounds, inter alia, that it was an essential requirement of s. 5A that the Collector should record his reasons for departing from the normal procedure of an order based on an enquiry under ss. 3 to 5, and that the failure to do so rendered the action taken under s. 5A void, so as to render invalid all further proceedings for the recovery of the landlord's share of the apportioned cost.

Held, that in the context in which the words "for the reasons to be recorded by him" occur in s. 5A of the Bihar Private Irrigation Works Act, 1922, and considering the scheme of the Act, the requirement of these words was mandatory; that as in the present case, the requirement was not complied with, the order of the Collector under s. 5A was null and void.

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Held, further, that even assuming that the order of the Collector under s. 5A was administrative in its nature, the landlord was entitled to relief under Art. 226 of the Constitution because the demand which was made against him under s. 11 of the Act and which was sought to be recovered as arrears of public demands under s. 12, was based on the order under s. 5A found to have been passed without jurisdiction.

Held, also, that s. 5B of the Act was applicable only to cases of compensation for loss sustained by third parties and not where a liability arose under ss. 11 and 12.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 53 to 81, 133 to 137 253 to 263 of 1960.

Appeals by special leave from the judgments and orders dated March 28, 1957, April 20, 1956, July 12, 1960 and March 14, 1956, of the Patna High Court in Misc. Judicial Cases Nos. 531, 535, 539, 541, 543, 548 to 552, 554 to 557, 559, 560, 562 to 572 and 574 of 1956 and 141, 142, 256, 271 to 273 and 349 to 358 of 1955.

L. K. Jha, Bhagawat Prasad, D. P. Singh, R. K. Garg, S. C. Agarwala and *M. K. Ramamurthi*, for the appellants in C. As. Nos. 53 to 81 of 1960.

J. C. Sinha, K. K. Sinha and *R. R. Biswas*, for the respondents Nos. 1, 3 to 6 and 8 to 11 in C. As. Nos. 53 to 56 of 1960, and the respondents in C. As. Nos. 77 to 81 of 1960.

L. K. Jha and *R. C. Prasad*, for the appellants in C. As. Nos. 133 to 137 of 1960.

J. C. Sinha and *R. R. Biswas*, for the respondents in C. As. Nos. 133 to 137 of 1960.

T. P. Sinha and *S. P. Varma*, for the appellants in C. As. Nos. 253 to 263 of 1960.

A. V. Viswanatha Sastri, Ugra Singh and *D. Goburdhan*, for the respondents in C. As. Nos. 253 to 263 of 1960.

1962. March, 28. The Judgment of the Court was delivered by

AYYANGAR, J.—These three batches of appeals are before us by virtue of special leave and have been heard together because of the common point raised in them which relates to the proper construction of s. 5A of the Bihar Private Irrigation Works Act, 1922 (Bihar and Orissa Act, 5 of 1922), which will be hereafter referred to as the Act. The State of Bihar which is the appellant in these appeals questions the correctness of the orders of the High Court by which a number of writ petitions filed by landlords challenging the legality of demands for contribution made on them under s. 11 of the Act were allowed by the High Court of Patna.

For the purposes of the decision of these appeals it is not necessary to state the detailed facts of any of the cases but it is sufficient if a reference were made to any one of the orders passed under s. 5A of the Act which was the basis of the demand for contribution which was successfully impugned, since it is common ground that every one of these orders concerned in the several appeals was subject to one infirmity to which we shall presently refer and that is sufficient to dispose of these appeals.

Before setting out in brief outline the facts which led to the present proceedings it would be convenient to refer to the relevant provisions of the Act. The preamble to the Act reads :

> "Whereas it is expedient to provide for the construction repair, extension or alteration of certain kinds of irrigation works and to secure their maintenance and to regulate the supply or distribution of water by means of such works and to facilitate and regulate their construction, extension and alteration."

The repairs and improvement of Irrigation Works are dealt with in Ch. II whose provisions are material for the controversy before us. Section 3 with

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which this Chapter opens enacts, to quote the material words :

> "Whenever it appears to the Collector
>
> (a) that the repair of an existing irrigation work is necessary for the benefit of any village or local area within the district and that the failure to repair such irrigation work adversely affects, or is likely to affect adversely, the lands which are dependent thereon for a supply of water, or
>
> (b) that it is desirable for the purpose of settling or averting disputes or preventing waste of water or injury to land by the wrongful or undue diversion of a stream or channel that any sluice, weir, outlet, escape, head work, dam or other work should be constructed in any irrigation work, in order to regulate the supply or distribution of water for agricultural purposes,
>
> he may, if satisfied that the matter is of sufficient importance to justify his intervention,—
>
> (i) cause in the prescribed manner a notice to be served on the landlord of the land in which the irrigation work is situated and public notice to be given at convenient places in every village in which the irrigation work is situated stating that he intends to take action under this Chapter for the repair of the said work or for extending or altering it in any of the ways specified in clause (b) and specifying the date on which the inquiry under section 4 will be held, and
>
> (ii) serve a notice in the prescribed manner on every person known or believed to be under an obligation to maintain

the irrigation work in an efficient state, calling on him to show cause on the date specified in the notice why he should not be required to repair the said work or alter it as aforesaid;

....."

Section 4 makes provision for an inquiry and it reads:

"4. On the date stated in the notices issued under section 3, or on any other date to which the proceedings may be adjourned, the Collector shall hold an inquiry and shall hear the persons on whom the notices have been served (if they appear) and any other persons affected or likely to be affected by the order who may attend; and may take down in writing any evidence that he may think fit regarding—

(a) the necessity for repairing, extending or altering the said irrigation work,

(b) the nature of the works required for such repair, extension or alteration,

(c) the obligation to maintain the irrigation work in an efficient state and the reasons why the person under such obligation has failed to repair it, and

(d) the probable cost of the proposed work of repair, extension or alteration."

Section 5 which follows sets out the powers of the Collector and it reads :

"5. (1) If, after making an inquiry under section 4, the Collector is satisfied that the state of disrepair of the irrigation work

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is such as materially affects or is likely to affect materially the irrigation of the lands which are dependent thereon for a supply of water, or that any extension or alteration of such irrigation work is necessary for the purposes specified in clause (b) of section 3, he shall issue an order in writing requiring that the proposed work of repair, extension or alteration shall be carried out—

(a) by one or more of the persons on whom notices under clause (ii) of section 3 have been served and who agrees or agree to carry out the said work, or

(b) by any such agency as he thinks proper, if, for reasons to be recorded by him, he considers that there are adequate reasons why any person mentioned in clause (a) should not be entrusted with the carrying out of the said work ;

Provided that the Collector shall, if he is satisfied that the cost of carrying out the proposed work of repair, extension or alteration will be prohibitive, pass an order declaring that such work shall not be carried out :

.....

(2) Every order made under sub-section (1) shall specify, as closely as may be practicable, the nature of the work to be done the estimated cost of executing it and the manner in which and the time within which it shall be executed."

At this stage reference may be made to the terms of s. 47 under which any person aggrieved by an order of a Collector under s. 5 has, within three months from the date on which the first over act is taken in pursuance of such order, a limited right of suit in a civil court.

Section 5A, whose construction is involved in these appeals was introduced by an amendment effected by Bihar Act X of 1939 and it is necessary to set it out in full:

> "5 A. (1) Notwithstanding anything to the contrary contained in this Act, whenever the Collector, for reasons to be recorded by him, is of opinion that the delay in the repair of any existing irrigation work which may be occasioned by proceedings commenced by a notice under section 3 adversely affects or is likely to affect adversely lands which are dependent on such irrigation work for a supply of water, he may forthwith cause the repair of such irrigation work to be begun by any one or more of the persons mentioned in clause (ii) of section 3 or by such agency as he thinks proper:
>
> Provided that the Collector shall cause public notice to be given at convenient places in every village in which the irrigation work is situated stating that the work mentioned therein has already been begun.
>
> (2) When any such work has been completed, the Collector shall cause notice to be given in the manner aforesaid stating that the work mentioned therein has been completed."

As some reference was made by learned Counsel for the appellant to the provisions of s. 5B, we might extract the relevant portion of it:

> "5B. (1) Any person who has sustained any loss by anything done by the Collector or by any person acting under the orders of the Collector under sub-section (1) of section 5 A may make an application to the prescribed authority for compensation for such loss and for an order directing the restoration of the land or the irrigation work to its former condition.

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....."

Section 7 makes provision for the recovery of the cost of the work by persons who effected them under s. 5 (1)(a) or under s. 5A by application to the Collector. When the cost has been ascertained under s. 7 s. 8 empowers the Collector to apportion the cost between persons "having regard to the obligations under which they were to maintain the irrigation work in an efficient state, the reason for their failure so to maintain it, the benefit which is likely to result from the work of repair or construction and any other considerations which in the circumstances of the case he may deem it fair and equitable to take into account". And after such apportionment is made the Collector is empowered to make an award specifying the person or persons by whom the sum so apportioned is payble. The other provisions of the Act enable demands to be issued on the persons who are liable to make the payment and for the recovery of these sums as a public demand payable to the Collector.

The facts giving rise to these petitions were briefly as follows: On 19th April, 1948 the Government of Bihar issued a circular letter signed by the Additional Secretary to Government to the District Officers of various districts including Monghyr from which these appeals arise. In this communication the Additional Secretary stated.

> "I am directed to say that Government have decided that in addition to the irrigation work under the Grow More Food Scheme of the Development, each of the District Officer mentioned above should take up and execute before the rains one hundred Minor Irrigation works in his district under section 5, 5A, 32A and 32B of the Private Irrigation Works Act on an approximate average cost of Rs.2,000/- for each work.....

(2) To finance these schemes under the Revenue department a sum Rs. 1,00,000/- to the district of Monghyr (is allowed).....

(3) Government have decided that the minor irrigation work should continue to be executed both under the Development department (Grow More Food section) and the Revenue Department but the Collector of the district village responsible for the entire minor irrigation works under both the categories.....Even the schemes to be executed under the Revenue department should be treated as Grow More Food scheme, but all use of the provision of the Privite Irrigation works should be made in all cases in order to ensure that quick work on the initiative of the Collector is done and cost recovered later on after the work has been completed.

(4) In deciding upon the scheme to be taken up under the Revenue Department, the District Officers are requested to consider those sent by the Presidents, District Congress Committee, for which special request was made to them.

(5) The cost will in the first instance be met by Government but 50% of the same will be realised from the persons benefited.....

(6) In every village selected for one of the following items of work, namely (1) construction of Ahar or bundh (2) clearance of pynes and khanra and (3) re-examination if silted up pynes and khantas, on which Government desire you to concentrate this year, a small panchayat office public spirited and reliable persons should be formed with a headman..... .....

(7) .....You are therefore requested to contact immediately the District Supervisor

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and the President, District Congress Committee of your district.

(9).....Government have authorised expenditure to be incurred in anticipation of provision of funds."

Some time after this circular, and as stated by the State in the counter-affidavit filed by it in answer to the writ petitions under Art. 226 from the orders on which Civil Appeals 53-81 of 1960 arise, in pursuance of this circular, the officials of the Revenue Department submitted reports to Sub-Divisional Officers who were vested with the powers of a Collector under s. 5A pointing out that the irrigation works specified by them needed repairs and thereafter orders were passed by the Collector in these terms:

"Whereas it appears to me that the repair of an existing irrigation work, viz..... .....situated in village.....Thana .....District Monghyr is necessary for the benefit of the aforesaid village and the failure of repair of such irrigation work adversely affects and is likely to affect adversely the lands which are dependent thereon for supply of water, and

Whereas I am satisfied that my intervention is necessary because, in my opinion, delay in the repair of the existing irrigation work which may be occasioned by the proceedings commenced by a notice under s.3 adversely affects or is likely to affect adversely the land which depends on such irrigation work for supply of water it is deemed expedient to proceed under section 5A of the BPIW Act. I therefore hereby order that the said work be forthwith put to execution under section 5A of the said Act. A public notice under section 5A (1) be given at a convenient place

at the aforesaid village that the work mentioned therein has already begun."

The public notice that the work has already been commenced s. 5A(1) was issued and the work was completed. Thereafter there was an apportionment of the total cost and in line with the circular of Government which we have recited earlier, the landlord's share of the contribution was determined as 50% of the total cost of the work. When these sums were sought to be demanded from the landlords (from whom it might be stated that by the date of this demand their estates had been taken over by Government under the provisions of the Bihar Land Reforms Act (Act I of 1950) they came forward to question the legality of the demand.

Pausing here, it is necessary to mention a few matters: The first is that the orders passed by the Sub-Divisional Officers in each of these several cases was on a cyclostyled form in which only the name of the work and its location with reference to the village, Thana, district etc. had to be filled up. In some of the cases even the name of the work which was left blank in the cyclostyled form was not filled in by the Collector before he signed this order. Mr. Varma—learned Counsel who appeared for the appellant-State in Civil Appeals 53-81 of 1960 in which some of the orders sufferred from this infirmity, suggested that these orders might stand on a different footing. But in the view we are taking of the requirements of s. 5A it is not necessary to separate these cases. Secondly, in none of the orders passed under s. 5A whose legality has been challenged in these several appeals, has the Collector recorded the reasons why he considered that the delay in issuing the notice under s. 3 would bring about the consequences which are recited in s. 5A(1) of the Act.

Though, as stated earlier, it was the case of State, in the High Court at least in the petitions which have given rise to Civil Appeals 53-81 of

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1960, that the orders of the Collectors were passed in pursuance of Government's policy as disclosed in the circular dated April 19, 1948, we shall, for the purposes of dealing with the points urged before us, omit from consideration this feature and proceed on the basis that the Collector had passed these orders *suo moto* in exercise of their own discretion without having been induced to do so by an external authority. It will be noticed from the sample order of the Collecter we have extracted earlier, that even where the form was properly filled up, it does not recite the reason why the Collector considered the procedure requiring a notice to the affected party followed by an enquiry outlined by ss. 3 to 5 could not be adopted.

The learned Judges of the High Court have decided in favour of the respondents on two grounds; (1) that having regard to the order it was apparent that the Collectors had not applied their minds to the question before them, the recitals therein being merely a mechanical reproduction of the terms of s. 5A, and (2) that it was an essential requirement of s. 5A that the Collector should record his reasons for departing from the normal procedure of order based on an enquiry under ss. 3 to 5 and the failure to do so rendered the action taken under s. 5A void, so as to render, invalid all further proceedings for the recovery of the landlords' share of the apportioned cost from the respondents. As we are clearly of the opinion that the learned Judges of the High Court were right in their second ground it is unnecessary to consider the first' viz., whether the learned Judges were right in holding that the first ground was made out in the present case or not.

We shall first proceed to consider the place of s. 5A in the scheme of the Act. Section 3(a) deals with the same type of cases as that dealt with by s. 5A,viz., that the repairs of an existing irrigation work is necessary for the benefit of a village and

that the failure to repair such irrigation work adversely affects or is likely to affect adversely the lands which are dependent thereon for the supply of water —words which are repeated in the latter Provision. If action was taken under s. 3 then notices would have to be issued in the present case to the landlords for it is on the basis that they were under an obligation to effect the repair that they are sought to be made liable for the cost of the repairs [vide s. 3(b)(ii)]. The landlords would then have an opportunity of disputing: (1) their obligation to make the repair, (2) whether the repair suggested is necessary or not, and (3) whether to achieve the same result any other manner of repair which might cost less might not suffice, and it would be after considering the objections made and the evidence led on these points that the Collector would have to decide under the terms of s. 5 whether the repair should be carried out and if so, what repairs and in what manner. When the Collector proceeds under ss. 3 to 5 he will undoubtedly be a quasi-judicial authority and would have to decide objectively on the basis of the materials placed before him.

The notice, determination and enquiry contemplated by ss. 3 to 5 would normally take some little time before the work, it decided upon, could be put into execution and be effected. Emergencies might arise such as a sudden inundation, unexpected rains etc. by reason of which repairs have to be undertaken immediately in order to avoid danger to an irrigation work which would not brook any delay. It is obvious that it is to provide for such a contingency that s.5A was introduced. It dispenses with notice of an enquiry and an enquiry which might follow the notice and denies to the landholder or other person who is ultimately charged with the liability to meet the cost of the repair the opportunity of pointing out to the Collector that there is no need for the repair or that the repair could be effected at less cost.

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That the power under the section can be invoked only in an emergency is not disputed before us, but what the learned counsel for the appellant submitted was that s. 5A vested in the Collector an administrative jurisdiction and that it contemplated action being taken on his objective satisfaction that an emergency exists. It is unnecessary for the purposes of the present that appeals to consider the question whether the satisfaction of the Collector under s. 5A indicated by the words "whenever the Collector.....is of opinion" is purely a subjective satisfaction or posits also that he should reach that satisfaction only on relevant material and that it would be open to a party affected by the order to challenge the validity of the order by establishing the absence of any relevant material for such as satisfaction. We shall assume that (a) the Collector is exercising merely an administrative jurisdiction and not functioning as a quasi-judicial authority, (b) that what matters and what confers on him jurisdiction to act under s. 5A is his subjective satisfaction that the delay in the repair of an existing irrigation work which may be occasioned by a proceedings commenced by notice under s. 3, leads or is likely to lead to the consequences set out in the latter part of sub-s. (1) of s. 5A. If these had been the only statutory requirements, learned Counsel would certainly be on firmer ground, but the statute does not stop with this but proceeds to add a direction to the Collector that the reasons for his opinion should be recorded by him. There is no doubt that on the texture of the provision the recording of the reasons is a condition for the emergency of the power to make the order under sub-s. (1)

The question; however, debated before us was that the condition or the requirement was not mandatory what was only directory with the result that the failure on the part of the Collector to record his reasons was at the

worst an irregularity which would not affect the legality of the order. In this connection learned Counsel placed strong reliance on the judgment of this Court in *State of Uttar Pradesh* v. *Manbodhan Lal Srivastava* (1) where it held that Art. 320(3)(c) of the Constitution was not mandatory and that the absence of consultation or any irregularity in consultation did not afford a public servant whose case was omitted to be referred to the Public Service Commission a cause of action in a court of law. Learned Counsel pointed out that even though the language used in Art. 20 (3) appeared imperative in that it enacted "that the Public Service Commission *shall be consulted,*" those words were held not to be mandatory. The present case was, according to him, a fortiori, because the imperative word "shall" had not been used. He also referred us to other decisions were the requirements of the law had been held to be directory, but to these it is not necessary to refer, for it ultimately depends on the construction of each enactment and none of the decisions relied on were really in pari materia with the case now before us.

We feel unable to accept the submission of learned Counsel that in the context in which the words "for the reasons to be recorded by him" occur in s. 5A and considering the scheme of Ch. II of the Act, the requirement of these words could be held to be otherwise than mandatory. It is needless to add that the employment of the auxiliary verb "shall" is inconclusive and similarly the mere absence of the imperative is not conclusive either. The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific provision which, for instance, sets out the consequence of the omission to observe the requirement, but on the purpose for which the requirement has been enacted, particularly in the context of the

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other provisions of the Act and the general scheme thereof. It would, *inter alia*, depend on whether the requirement is insisted on as a protection for the safeguarding of the right of liberty of person or of property which the action might involve.

Let us now examine the provision with reference to the several relevant matters we have just set out. Firstly, on the main scheme of the Act and what one might term the normal procedure, is that indicated by ss. 3 to 5 where there is ample opportunity afforded to persons affected to put forward their objections and prove them before any pecuniary liability is fastened upon them. Section 5A constitutes a departure from this norm. It is obviously designed to make provision for cases where owing to an emergency it is not possible to comply with the requirements of ss. 3 to 5 of affording an opportunity to affected persons to make out a case that there is no justification for burdening them with any pecuniary obligation or pecuniary obligation beyond a particular extent. It is in the context of this consideration that the Court has to consider whether the requirement that reasons should be recorded by the Collector is mandatory or not. If the question whether the circumstances recited in s. 5A(1) exist or not is entirely for the Collector to decide in his discretion, it will be seen that the recording of the reasons is the only protection which is afforded to the persons affected to ensure that the reasons which impelled the Collector were those germane to the content and scope of the power vested in him. It could not be disputed that if the reasons recorded by him were totally irrelevant as a justification for considering that an emergency had arisen or for dispensing with notice and enquiry under ss. 3 to 5, the exercise of the power under s. 5A would be void as not justified by the statute. So much learned Counsel for the appellant had to concede. But if in those circumstances

the section requires what might be termed a "speaking order" before persons are saddled with liability we consider that the object with which the provision was inserted would be wholly defeated and protection afforded nullified, if it were held that the requirement was anything but mandatory.

If, as we hold, the requirement was mandatory it was not disputed that the orders of the Collector which did not comply with the statutory condition precedent must be null and void and of no effect altogether. Learned Counsel for the State however drew our attention to the fact that in several of these appeals, before the Collectors passed these orders under s. 5A they had before them reports of Overseers or Estimating Officers who had reported about the condition of the irrigation work and had suggested that action under s. 5A was called for. It was, therefore, suggested that as the Collectors had, before they passed these order under s. 5A, materials on the basis of which an order under s. 5A could be justified, it should be held that the report of the Overseer or Estimating Officer and the order of the Collector should be read as part and parcel of each other, with the result that the requirement of the reasons having to be recorded in writing should be held to have been complied with. In the alternative it was submitted that as "reasons" which could justify an order under s. 5A did in fact exist, the Collectors should be deemed to have taken them into account when in the course of the impugned order they recorded their opinion that "the delay which may be occasioned by a notice under s. 3 would adversely affect the lands dependent on the irrigation works". We must express our inability to accept either submission.

There are two matters, which though somewhat inter-related are never the less distinct and separate. One is the conclusion or finding of the

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Collector that the state of circumstances set out in s. 5A(1) exist, and the other the reasons why and the grounds upon which the Collector reaches that conclusion that in the circumstances existing in a particular case it cannot brook the delay which the resort to the normal procedure of notice and enquiry for which provision is made by ss. 3 to 5 should be departed from.

To suggest that by a recital of the nature of the repairs required to be carried out and employing the language of s. 5A(1) the officer has recorded his reasons for invoking s. 5A is to confuse the recording of the conclusion of the officer with the reasons for which he arrived at that conclusion. Besides just as it would not be open to argument that the terms of s. 5A(1) will be attracted to cases where there is factually an emergent need for repairs of the type envisaged by the section but the Collector does not so record in his order ; similarly the factual existence of reasons for the Collector's conclusion would not avail where he does not comply with the statutory requirement of stating them in his order. The reports of the Estimating Officer or of the Overseer which were relied on in this context would only indicate that those officers considered that action under s. 5A was called for. Several of the reports referred to in this connection, extract the material words of s. 5A(1) and conclude with a recommendation to the Sub-Divisional Officer who was vested with the powers of a Collector that it was a fit case for action being taken under s. 5A. What the section requires is that on the basis of materials which exist—this might include the reports of officers as well as information gathered by the Collector himself by personal inspection or after enquiry—he should reach the conclusion that irrigation works for the purposes set out in s. 5A should be immediately taken on hand and completed and that there is such an emergency in having the work completed which will not

brook that amount of delay which the notice and proceedings under ss. 3 to 5 would entail. It is not therefore the presence of the material that is of sole relevance or the only criterion but the Collector's opinion as to the urgency coupled with his recordings his reasons why he considers that the procedure under ss. 3 to 5 should not be gone through. We are therefore unable to accept the submission the reports of the Overseers or Estimating Officers would obviate the infirmity arising from the failure of the Collector to record his reasons as required by s. 5A(1). From the fact that under s.5A(1) the power of the Collector to make an order emerges on his being bona fide satisfied regarding the matters set out in the sub-section, it does not follow either that the reasons why he has formed that opinion are immaterial, or that it is unnecessary for him to state those reasons in the order that he makes, and that his omission to do so could be made up by the State adducing sufficient grounds therefor when the validity of the order is challenged. We have thus no hesitation in holding (a) that the requirement that the Collector should record his reasons for the order made is mandatory and (b) that this requirement has not been complied with in the cases before us, and (c) that in the circumstances the order of the Collector was therefore null and void.

Before proceeding further, it would be convenient to dispose of an argument based on s. 5B. It was faintly suggested that the respondents were persons who had sustained a loss by reason of a thing done by the Collector and that the statute provided a remedy therefor by permitting a claim for compensation under the provisions of s. 5B. We consider that this submission arises wholly on a misreading of s. 5B. The "loss" for which the section provides compensation is that directly arising from the doing of the work, i. e., loss sustained by third parties and not the liability to make the

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apportioned cost under ss. 11 and 12 for the very basis of the liability under these provisions is that the person from whom payments are demanded has benefited by the work being done in that he being under an obligation to effect the repairs, that obligation was discharged by the work done at the instance of the Collector.

Both Mr. Jha and Mr. Varma who appeared for the State in these bathes of appeals raised a contention that the High Court had no jurisdiction to afford the respondents relief under Art. 226 of the Constitution. In support of this argument two grounds were urged: First, that the orders of the Collector under s. 5A were administrative in their nature and therefore not amenable to the jurisdiction of the High Court for the issue of a writ of *certiorari*. In our opinion, the contention proceeds upon a misapprehension as to the nature of the objection raised and as regards the particular orders which were challenged before the High Court What the High Court set aside were the demands which were issued against the landlords under s. 11 of the Act and which were sought to be recovered as arrears of public demands under s. 12. No doubt, those demands had their origin in or were ultimately based upon an order passed by the Collector under s. 5A. The argument which the respondents presented to the High Court and which the learned Judges accepted was that the demands were illegal and not justified by law, because they had ultimately to be based upon orders (under s. 5A) which were without jurisdiction and therefore void. It would therefore be seen that the respondents were not seeking to set aside the several orders passed by the Collector under s. 5A but only the demands based on them on the ground that they were illegal. The High Court had certainly jurisdiction to direct that these demands be quashed and should not be enforced. If the orders under s. 5A on which these demands

were based were void, i.e., as passed without jurisdiction, they did not need to be set aside and therefore there was no necessity for taking any proceedings for obtaining such relief. They were *non est*. If they were of that character they could not serve as a foundation for the liability which was sought to be fastened upon the respondents by apportionment under ss. 7 and 8 and by the issue of a notice of demand under s. 10. It was on this line of reasoning that the learned Judges have proceeded and we consider that they were right. If the orders under s. 5A had no legal foundation as being wholly without jurisdiction because the statutory requisites or conditions precedent for such orders were not satisfied, no liability to make a payment could arise out of such orders.

The other submission was that several of the orders under s. 5A were passed before the Constitution and that as the Constitution was not retrospective the High Court could not exercise the jurisdiction which was for the first time conferred on it by Art. 226 of the Constitution in respect of orders passed before January 26, 1950. It is not disputed that all the several demands which were quashed were made after rejected the Constitution. For the reasons for which we have the submission just now dealt with the argument in the present form must also be repelled.

Mr. Varma next contended that the respondents must be deemed to have acquiesced in the orders passed under s. 5A by not objecting to them immediately and that they were now estopped from contending that they were void having, by the execution of the work, obtained a benefit by the repair of the irrigation work. There is no substance at all in this argument. Section 5A does not contemplate any notice to the affected party, and the public notice that the proviso to s. 5A provides for is a notice that the work has begun. There is thus,

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before the completion of the work, no provision in the statute for the landlord to make his representations, even assuming that he is shown to have knowledge of the passing of the order. Seeing that the very object of s. 5A is to preclude any objection which a landlord might have to the repair of an irrigation work, we consider it rather anomalous that an argument should be addressed which rest on the basis of a failure to object. Reference was, in this connection, made to the terms of s. 46 under which the Board of Revenue have a general power of supervision and control over all orders and proceedings of the Collector and it was urged that the failure on the part of the respondents to have availed themselves of this provision debarred them from moving the High Court. This would turn upon the question whether the relief by resort to proceedings under the Act would be sufficient and adequate which would render it unnecessary for the respondents to have moved the High Court. Though an objection of this sort appeared in some of the counter-affidavits filed before the High Court the matter does not appear to have been pressed before the High Court at the time of the arguments. As the High Court had certainly a discretion to grant relief under Art. 226 even if there were other alternative statutory remedies, we do not propose to entertain this objection at this stage.

The result is that these appeals fail and are dismissed with costs. There will be only one hearing fee as all the appeals were heard together.

Appeals dismissed.