it would become incumbent on the learned Sessions Judge to conform as nearly as could be practicable with the provisions of sections 254 and 255. The learned trial Court could not possibly proceed forthwith to convict and sentence the appellant after merely recording his statement. It is the appellant's case that he had sought an opportunity to engage counsel and to lead evidence but was not allowed to do so. Even the learned counsel for the State despite his zeal to have the conviction maintained was unable to take the stand that in the present case, the procedure provided by law has been conformed to.

(13) In the present case we have not chosen to hear the learned counsel for the appellant on merits. Even assuming in favour of the prosecution that in fact no serious prejudice on merits had been occasioned to the appellant because the case against him was a matter of record in the trial of the connected sessions case yet it is plain that the mandatory requirements of law as regards the procedure and the form of trial prescribed have not been satisfied. On the larger principle that justice must not only be done but should appear to be so done, we feel constrained to set aside the conviction and sentence of the appellant and hereby direct that he shall be tried afresh in accordance with law.

(14) The appeal is allowed and the case is remanded to the trial Court for an expeditious disposal.

S.C. Mital, J.—I agree.

H.S.B.

MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and S. P. Goyal, JJ.

NAWAL KISHORE.—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Misc. No. 826 *of* 1977

in

Civil Writ Petition No. 3793 *of* 1973

August 18, 1977.

Constitution (Forty-Second Amendment) Act, 1976—*Section* 58(4)—*Whether a stringent and an exceptional provision*—'*Project of*

Public utility'—Meaning of—Whether a term of legal art—Acquisition of land for developing a residential colony—Whether falls within its ambit—Public utility—Whether the same thing as 'public purpose'.

Held, that section 58(4) of the Constitution (Forty-Second Amendment) Act 1976 is plainly a stringent and an exceptional provision which provides for the automatic vacation of interim orders whether by way of injunction or stay or in any other manner granted earlier in writ petitions under Article 226 of the Constitution of India 1950. This contingency is envisaged in three specific situations; firstly, where such an order has the effect of delaying any enquiry into a matter of public importance; secondly, where it has a similar effect on any investigation or enquiry into an offence punishable with imprisonment and, thirdly and lastly, where it has the effect of delaying either the acquisition of property or the execution of a project of public utility. (Para 17)

Held, that the term 'public utility' though strictly not one of legal art has by a process of long usage acquired a certain hue in a number of cases in which the matter has been considered and therefore it is a term of mixed legal art. In its ordinary dictionary meaning and as a word of common parlance this phrase implies the concept of an essential public service rendered generally in urban areas. Though there is a basic sense as to the true nature and import of the phrase, yet in some cases it has been stretched and extended to cover a great many matters of general welfare of the body politic. The extended construction, is rather an exception to the rule and the basic meaning of the phrase is confined to something patently of use to the public and in essence providing for its common and sometime fundamental needs. Viewed from either angle, a mere acquisition of land for the avowed object of developing it as a residential area cannot be brought within the ambit of the phrase 'project of public utility' as used in section 58(4) of the Act.

(Paras 8, 10, 11 and 13).

Held, that it is inapt to confuse the specialised phrase 'public utility' with the broader and general aspect of 'public purpose' in the matters of land acquisition. The phrase 'public purpose' has a very wide connotation and it may broadly be said that in a welfare State, virtually every act of the State would have an underlying public purpose. The intention of the Legislature was not to extend the matter to such an extent. The language of sub-section 4 of section 58 when construed as a whole is a clear pointer that the words 'project of public utility' are used in a restricted sense for primarily providing those essential services which are necessary to public at large. The phrase would not include within its ambit something so general as the mere development of land for residential purposes

wherein the provisions of some essential amenities may or may not be provided as an ancillary measure. The way sub-section (4) has been framed, the context in which it is laid and the exceptional rule laid therein show that it is only for the purpose if the projects of public utility simpliciter, and not for all acquisitions of land wherein some amenities approximating to a public utility are to be provided as an ancillary measure. (Paras 16 and 18).

Application u/s 151 C.P.C. praying that an appropriate order be made, directing the respondents to respect the order staying dispossession and they may be restrained from attempting or threatening to take possession of the premises of the petitioner.

P. S. Jain, Advocate with V. M. Jain, Advocate, *for the Petitioner.*

Naubat Singh, A.A.G., *for the Respondents.*

ORDER

S. S. Sandhawalia, J.

(1) The precise connotation to be attached to the phrase 'Project of public utility' as used in sub-section (4) of section 58 of the Constitution (42nd Amendment) Act, 1976, is an issue of some significance, which is before us on a reference. The point arises from facts which are not in dispute.

(2) On the 9th July, 1973 the State of Haryana issued a notification under section 4 of the Land Acquisition Act, 1894 for acquiring an area including the land of the petitioner. Therein it was declared as follows:—

> "Whereas it appears to the Governor of Haryana that the land is likely to be needed by the Government, at public expense, for a public purpose, namely, for development and utilization of land as residential areas in Sector 37 of the Ballabgarh-Faridabad Controlled Area, Faridabad, it is hereby notified that the land described in the specification below is needed for the above purpose.
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> * * * *
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> * * * *".

(3) The petitioner challenged the acquisition of his land by way of Civil Writ No. 3793 of 1973 and the Motion Bench whilst issuing

notice therein for 10th December, 1973 stayed the dispossession of the petitioner in the following terms :—

"Notice for 10th December, 1973. Shri Naubat Singh prays for two weeks' time to file the return. Time allowed. Stay already granted will continue till the decision of the writ petition".

(4) For reasons, all of which are not evident on the record, the case could not apparently be listed for an early hearing as directed. Meanwhile the Constitution (42nd Amendment) Act, 1976 (hereinafter called the Act) was enacted by Parliament and received the assent of the President on the 18th of December, 1976, and was published in the Gazette of the same date. The Act empowered the Central Government to appoint different dates by notification for the enforcement of its various provisions. In exercise of that power, the Central Government enforced section 58 of the Act which is the relevant provision with effect from the 1st of February, 1977. Apparently thereafter the respondents initiated proceedings to take possession of the acquired land and the petitioner then moved the present application under section 151 of the Code of Civil Procedure. Herein he averred that despite the continuance of the stay order, the officers and the employees of the Estate Office, Faridabad Complex along with certain policemen came to the premises on the 19th of April, 1977 at about 4.30 p.m. and wanted to take possession of the same. On a representation being made to the Estate Officer, the applicant was informed that on account of the recent changes in the Constitution and apparently in view of the provisions of section 58(4) of the Amendment Act aforementioned, the respondent-State was proceeding to take possession in all cases of acquisition. It was pointed out that unless the petitioner could secure a fresh stay order from the High Court, they would proceed to acquire possession of his premises as well.

(5) The present civil miscellaneous petition first came up before a learned Single Judge and before him the learned Advocate-General, Haryana, took up the stand that in view of the recently enforced section 58(4) of the Act the earlier stay order granted by the High Court stood automatically vacated. In view of the significance of the question raised and the fact that this issue was likely to arise in hundreds of similar petitions where stay orders had been granted by this Court, the learned Judge has referred the matter for authoritative decision by a larger Bench.

(6) Inevitably the answer to the question must turn on the relevant provisions of section 58(4) of the Act and for facility of reference it may first be set down:—

> "58(4): Notwithstanding anything contained in sub-section (3), every interim order (whether by way of injunction or stay or in any other manner) which was made before the appointed day, on, or in any proceedings relating to, a pending petition (not being a pending petition which has abated under sub-section (2), and which is in force on that day, shall, if such order has the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action *for the execution of work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government, stand vacated*".

(7) It appears to me that for a correct construction of the phrase 'project of public utility', the matter must be examined from a twin angle, namely, whether the phrase herein has been used as a term of legal art in the statute, or is it to be construed in its ordinary generic sense. If it is the latter, then it is plain that the dictionary meaning of the phrase may have to be given preference over any technical legal definition.

(8) It seems the term 'public utility' though strictly not one of legal art has by a process of long usage acquired a certain hue in a number of cases in which the matter has been considered and, therefore, it is perhaps more apt to hold that it is a term of mixed legal art. To arrive at its true meaning, it is best to examine it from both these viewpoints.

(9) Coming first to its plain dictionary meaning it may be noticed that the term 'public utility' as a composite phrase does not find mention in some of the even authoritative English dictionaries. Council stated so at the bar and we have also been unable to find the two words as a composite phrase in either Shorter Oxford English Dictionary or the Webster's International Dictionary. However, in the Random House Dictionary, the phrase has been noticed and given the following meaning:—

> "A business enterprise, as a public service corporation, performing an esential public service and regulated by the federal, State, or local Government".

Again in this very dictionary, the meaning of the word 'utility' simpliciter which approximates to its use in the present context is given as follows:—

> "A public service, as a street car or railroad line, a telephone or electric-light system, or the like".

(10) From the above it would appear that even in its ordinary dictionary meaning and as a word of common parlance the phrase 'public utility' implies the concept of an essential public service rendered generally in urban areas.

(11) Coming now to the slightly legal nuances of the word, a reference may first be made to the Corpus Juris Secundum (Vol. 73 page 990). Herein it has been described as follows:—

> "A 'public utility' has been described as a business organisation which regularly supplies the public with some commodity or service, such as electricity, gas, water, transportation, or telephone or telegraph service. While the term has not been exactly defined, and, as has been said, it would be difficult to construct a definition that would fit every conceivable case.
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> * * * *.
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> The term 'public utility' implies a public use, carrying with it the duty to serve the public and treat all persons alike, and it precludes the idea of service which is private in its nature and is not to be obtained by the public".

A reference to the most of American case law on the point brings to the fore the fact that though there is a basic sense as to the true nature and import of the phrase, there is no gainsaying the fact that in some cases it has been stretched and extended to cover a great many matters of general welfare of the body politic. The extended construction, however, appears to be rather an exception to the rule and the basic meaning of the phrase is confined to something patently of use to the public and in essence providing for its common and sometime fundamental needs.

(12) Again in Bouvier's Law Dicctionary, the description of 'public utility' envisages such works as supplying water for city

purposes and for its inhabitants; furnishing electricity for its citizens; build and operate a rapid transit railway, wholly within its limits; and lease and operate such system in conection with another system, to secure a unified system of transportation; operate a natural gas system for its use and the use of the inhabitants, etc

(13) In the Encyclopaedia Britannica, Volume 18, page 774, the broad concept of the phrase and the particular services thereunder have been described in the following terms:—

> "Public utilities; a designation for a special grouping of industries legally 'affected with a public interest' and conducted under Government regulation. * * * The main public services supplied through public utilities are; (1) transportation (common carriers), including rail-road, highway and local transit, oil and gas pipelines, waterways and air lines; (2) communications-telephone, telegraph, radio and television; (3) power, heat and light-gas and electric; (4) community facilities for water, sanitation and irrigation".

It is thus plain that viewed from either angle a mere acquisition of land for the avowed object of developing it as a residential area cannot be brought within the ambit of the phrase 'project of public utility' as used in section 58(4) of the Act.

(14) Repelled on his primary plea, the learned Advocate-General adroitly took up the stand in the alternative that irrespective of the fact whether development and utilisation of the land as residential area was a project of public utility or otherwise yet the respondent-State being committed to provide such basic amenities, like roads, sewerages, electricity etc., for the ultimate development of the residential area the whole project must be deemed to be one of public utility or at least inextricably linked with the same.

(15) This submission at once brings to the fore the issue whether for construing this phrase as usual in section 58(4) the main purpose and object of the acquisition of land is to be taken into consideration or the mere fact that some ancillary services thereto which might come within the ambit of a public utility would also make the whole project as one of public utility.

(16) I am clearly of the view that the way sub-section (4) has been framed, the context in which it is laid and the exceptional rule

laid therein show that it is only for the purpose of the projects of public utility simpliciter, and not for all acquisitions of land wherein some amenities approximating to a public utility are to be provided as an ancillary measure.

(17) Section 58(4) is plainly a stingent and exceptional provision which provides for the automatic vacation of interim orders whether by way of injunction or stay or in any other manner granted earlier in writ petitions under Article 226 of the Constitution. This contingency is envisaged in three specific situations; firstly, where such an order has the effect of delaying any enquiry into a matter of public importance; secondly, where it has a similar effect on any investigation or enquiry into an offence punishable with imprisonment and, thirdly and lastly, where it has the effect of delaying either the acquisition of property for or the execution of a project of public utility.

(18) Now a reference to sub-section (4) would show that the last contingency is with regard only to acquisitions of property for the specific and particular purpose of executing a project of public utility and not to all acquisitions of land generally. It has to be borne in mind that under the Land Acquisition Act all acquisitions by and large are for a public purpose leaving the very exceptional and limited acquisitions for the purposes of companies for which a special procedure is provided therein. Therefore, it seems to me inapt to confuse the specialised phrase of 'public utility' with the broader and general aspect of 'public purpose' in matters of land acquisition. The phrase 'public purpose' has a very wide connotation and it may broadly be said that in a welfare State, to which our body politic is consistently trying to approximate, virtually every act of the State would have an underlying public purpose. If the object of the legislature was to extend the matter to such an extent, then the same could have been simply and plainly achieved by enacting that all interim orders of stay against acquisition of land for a public purpose would stand vacated forthwith. If any such clear intention existed, there was no need to draft sub-section (4) in the manner in which it has been done with great circumspection and limiting it (apart from the other two instances noted earlier) expressly to the execution or the acquisition of the land only for the projects of public utility. The language of sub-section (4) when construed as a whole is a clear pointer in favour of the view that the wrods 'project of public utility' are used in a restricted sense for primarily providing those essential services

which are necessary to the public at large. The phrase would not include within its ambit something so general as the mere development of land for residential purposes wherein the provision of some essential amenities may or may not be provided as an ancillary measure.

(19) I am clearly of the view that section 58(4) is not attracted to the present case and the stay order granted earlier by the Court is not affected thereby. The application is consequently allowed and the respondent State is restrained from interfering with the possession of the petitioner till the decision of the writ petition. There will be no order as to costs.

K. T. S.

CRIMINAL MISCELLANEOUS

Before D. S. Tewatia, J.

SUMESH CHAND ETC.,—*Petitioners*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Misc. No. 2990-M of 1977

August 23, 1977.

Code of Criminal Procedure (2 of 1974)—*Sections* 209, 227, 397 (2) *and* 482—*Committing Magistrate—Whether required to determine the existence of a* prima facie *case—Order of commitment under section* 209—*Petition for quashing such order under section* 482—*Whether maintainable.*

Held, that under the old Code of Criminal Procedure the committing Magistrate was required to commit the case for trial to the Court of Session on charges framed by him, but under the new Code of Criminal Procedure 1973 he merely commits the case to the Court of Session and the question as to whether the person so committed is to be tried or not is to be decided by the Court of Session after applying its mind in the manner envisaged under section 227 of the new Code, with the result that under the old Code the accused was placed on trial by the order of the committing Court under section 207-A, while under the new Code the accused is not placed on trial but only the case is committed to the Court of Sessions which itself places the accused on trial, if a *prima facie* case is made out from the record and the documents submitted to it by the committing Court.

it would become incumbent on the learned Sessions Judge to conform as nearly as could be practicable with the provisions of sections 254 and 255. The learned trial Court could not possibly proceed forthwith to convict and sentence the appellant after merely recording his statement. It is the appellant's case that he had sought an opportunity to engage counsel and to lead evidence but was not allowed to do so. Even the learned counsel for the State despite his zeal to have the conviction maintained was unable to take the stand that in the present case, the procedure provided by law has been conformed to.

(13) In the present case we have not chosen to hear the learned counsel for the appellant on merits. Even assuming in favour of the prosecution that in fact no serious prejudice on merits had been occasioned to the appellant because the case against him was a matter of record in the trial of the connected sessions case yet it is plain that the mandatory requirements of law as regards the procedure and the form of trial prescribed have not been satisfied. On the larger principle that justice must not only be done but should appear to be so done, we feel constrained to set aside the conviction and sentence of the appellant and hereby direct that he shall be tried afresh in accordance with law.

(14) The appeal is allowed and the case is remanded to the trial Court for an expeditious disposal.

S.C. Mital, J.—I agree.

H.S.B.

MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and S. P. Goyal, JJ.

NAWAL KISHORE.—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Misc. No. 826 *of* 1977

in

Civil Writ Petition No. 3793 *of* 1973

August 18, 1977.

Constitution (Forty-Second Amendment) Act, 1976—*Section* 58(4)—*Whether a stringent and an exceptional provision*—'*Project of*

Public utility'—Meaning of—Whether a term of legal art—Acquisition of land for developing a residential colony—Whether falls within its ambit—Public utility—Whether the same thing as 'public purpose'.

Held, that section 58(4) of the Constitution (Forty-Second Amendment) Act 1976 is plainly a stringent and an exceptional provision which provides for the automatic vacation of interim orders whether by way of injunction or stay or in any other manner granted earlier in writ petitions under Article 226 of the Constitution of India 1950. This contingency is envisaged in three specific situations; firstly, where such an order has the effect of delaying any enquiry into a matter of public importance; secondly, where it has a similar effect on any investigation or enquiry into an offence punishable with imprisonment and, thirdly and lastly, where it has the effect of delaying either the acquisition of property or the execution of a project of public utility. (Para 17)

Held, that the term 'public utility' though strictly not one of legal art has by a process of long usage acquired a certain hue in a number of cases in which the matter has been considered and therefore it is a term of mixed legal art. In its ordinary dictionary meaning and as a word of common parlance this phrase implies the concept of an essential public service rendered generally in urban areas. Though there is a basic sense as to the true nature and import of the phrase, yet in some cases it has been stretched and extended to cover a great many matters of general welfare of the body politic. The extended construction, is rather an exception to the rule and the basic meaning of the phrase is confined to something patently of use to the public and in essence providing for its common and sometime fundamental needs. Viewed from either angle, a mere acquisition of land for the avowed object of developing it as a residential area cannot be brought within the ambit of the phrase 'project of public utility' as used in section 58(4) of the Act.

(Paras 8, 10, 11 and 13).

Held, that it is inapt to confuse the specialised phrase 'public utility' with the broader and general aspect of 'public purpose' in the matters of land acquisition. The phrase 'public purpose' has a very wide connotation and it may broadly be said that in a welfare State, virtually every act of the State would have an underlying public purpose. The intention of the Legislature was not to extend the matter to such an extent. The language of sub-section 4 of section 58 when construed as a whole is a clear pointer that the words 'project of public utility' are used in a restricted sense for primarily providing those essential services which are necessary to public at large. The phrase would not include within its ambit something so general as the mere development of land for residential purposes

wherein the provisions of some essential amenities may or may not be provided as an ancillary measure. The way sub-section (4) has been framed, the context in which it is laid and the exceptional rule laid therein show that it is only for the purpose if the projects of public utility simpliciter, and not for all acquisitions of land wherein some amenities approximating to a public utility are to be provided as an ancillary measure. (Paras 16 and 18).

Application u/s 151 C.P.C. praying that an appropriate order be made, directing the respondents to respect the order staying dispossession and they may be restrained from attempting or threatening to take possession of the premises of the petitioner.

P. S. Jain, Advocate with V. M. Jain, Advocate, *for the Petitioner.*

Naubat Singh, A.A.G., *for the Respondents.*

ORDER

S. S. Sandhawalia, J.

(1) The precise connotation to be attached to the phrase 'Project of public utility' as used in sub-section (4) of section 58 of the Constitution (42nd Amendment) Act, 1976, is an issue of some significance, which is before us on a reference. The point arises from facts which are not in dispute.

(2) On the 9th July, 1973 the State of Haryana issued a notification under section 4 of the Land Acquisition Act, 1894 for acquiring an area including the land of the petitioner. Therein it was declared as follows:—

> "Whereas it appears to the Governor of Haryana that the land is likely to be needed by the Government, at public expense, for a public purpose, namely, for development and utilization of land as residential areas in Sector 37 of the Ballabgarh-Faridabad Controlled Area, Faridabad, it is hereby notified that the land described in the specification below is needed for the above purpose.
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(3) The petitioner challenged the acquisition of his land by way of Civil Writ No. 3793 of 1973 and the Motion Bench whilst issuing

notice therein for 10th December, 1973 stayed the dispossession of the petitioner in the following terms :—

"Notice for 10th December, 1973. Shri Naubat Singh prays for two weeks' time to file the return. Time allowed. Stay already granted will continue till the decision of the writ petition".

(4) For reasons, all of which are not evident on the record, the case could not apparently be listed for an early hearing as directed. Meanwhile the Constitution (42nd Amendment) Act, 1976 (hereinafter called the Act) was enacted by Parliament and received the assent of the President on the 18th of December, 1976, and was published in the Gazette of the same date. The Act empowered the Central Government to appoint different dates by notification for the enforcement of its various provisions. In exercise of that power, the Central Government enforced section 58 of the Act which is the relevant provision with effect from the 1st of February, 1977. Apparently thereafter the respondents initiated proceedings to take possession of the acquired land and the petitioner then moved the present application under section 151 of the Code of Civil Procedure. Herein he averred that despite the continuance of the stay order, the officers and the employees of the Estate Office, Faridabad Complex along with certain policemen came to the premises on the 19th of April, 1977 at about 4.30 p.m. and wanted to take possession of the same. On a representation being made to the Estate Officer, the applicant was informed that on account of the recent changes in the Constitution and apparently in view of the provisions of section 58(4) of the Amendment Act aforementioned, the respondent-State was proceeding to take possession in all cases of acquisition. It was pointed out that unless the petitioner could secure a fresh stay order from the High Court, they would proceed to acquire possession of his premises as well.

(5) The present civil miscellaneous petition first came up before a learned Single Judge and before him the learned Advocate-General, Haryana, took up the stand that in view of the recently enforced section 58(4) of the Act the earlier stay order granted by the High Court stood automatically vacated. In view of the significance of the question raised and the fact that this issue was likely to arise in hundreds of similar petitions where stay orders had been granted by this Court, the learned Judge has referred the matter for authoritative decision by a larger Bench.

(6) Inevitably the answer to the question must turn on the relevant provisions of section 58(4) of the Act and for facility of reference it may first be set down:—

> "58(4): Notwithstanding anything contained in sub-section (3), every interim order (whether by way of injunction or stay or in any other manner) which was made before the appointed day, on, or in any proceedings relating to, a pending petition (not being a pending petition which has abated under sub-section (2), and which is in force on that day, shall, if such order has the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action *for the execution of work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government, stand vacated*".

(7) It appears to me that for a correct construction of the phrase 'project of public utility', the matter must be examined from a twin angle, namely, whether the phrase herein has been used as a term of legal art in the statute, or is it to be construed in its ordinary generic sense. If it is the latter, then it is plain that the dictionary meaning of the phrase may have to be given preference over any technical legal definition.

(8) It seems the term 'public utility' though strictly not one of legal art has by a process of long usage acquired a certain hue in a number of cases in which the matter has been considered and, therefore, it is perhaps more apt to hold that it is a term of mixed legal art. To arrive at its true meaning, it is best to examine it from both these viewpoints.

(9) Coming first to its plain dictionary meaning it may be noticed that the term 'public utility' as a composite phrase does not find mention in some of the even authoritative English dictionaries. Council stated so at the bar and we have also been unable to find the two words as a composite phrase in either Shorter Oxford English Dictionary or the Webster's International Dictionary. However, in the Random House Dictionary, the phrase has been noticed and given the following meaning:—

> "A business enterprise, as a public service corporation, performing an esential public service and regulated by the federal, State, or local Government".

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(10) From the above it would appear that even in its ordinary dictionary meaning and as a word of common parlance the phrase 'public utility' implies the concept of an essential public service rendered generally in urban areas.

(11) Coming now to the slightly legal nuances of the word, a reference may first be made to the Corpus Juris Secundum (Vol. 73 page 990). Herein it has been described as follows:—

> "A 'public utility' has been described as a business organisation which regularly supplies the public with some commodity or service, such as electricity, gas, water, transportation, or telephone or telegraph service. While the term has not been exactly defined, and, as has been said, it would be difficult to construct a definition that would fit every conceivable case.
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It is thus plain that viewed from either angle a mere acquisition of land for the avowed object of developing it as a residential area cannot be brought within the ambit of the phrase 'project of public utility' as used in section 58(4) of the Act.

(14) Repelled on his primary plea, the learned Advocate-General adroitly took up the stand in the alternative that irrespective of the fact whether development and utilisation of the land as residential area was a project of public utility or otherwise yet the respondent-State being committed to provide such basic amenities, like roads, sewerages, electricity etc., for the ultimate development of the residential area the whole project must be deemed to be one of public utility or at least inextricably linked with the same.

(15) This submission at once brings to the fore the issue whether for construing this phrase as usual in section 58(4) the main purpose and object of the acquisition of land is to be taken into consideration or the mere fact that some ancillary services thereto which might come within the ambit of a public utility would also make the whole project as one of public utility.

(16) I am clearly of the view that the way sub-section (4) has been framed, the context in which it is laid and the exceptional rule

laid therein show that it is only for the purpose of the projects of public utility simpliciter, and not for all acquisitions of land wherein some amenities approximating to a public utility are to be provided as an ancillary measure.

(17) Section 58(4) is plainly a stingent and exceptional provision which provides for the automatic vacation of interim orders whether by way of injunction or stay or in any other manner granted earlier in writ petitions under Article 226 of the Constitution. This contingency is envisaged in three specific situations; firstly, where such an order has the effect of delaying any enquiry into a matter of public importance; secondly, where it has a similar effect on any investigation or enquiry into an offence punishable with imprisonment and, thirdly and lastly, where it has the effect of delaying either the acquisition of property for or the execution of a project of public utility.

(18) Now a reference to sub-section (4) would show that the last contingency is with regard only to acquisitions of property for the specific and particular purpose of executing a project of public utility and not to all acquisitions of land generally. It has to be borne in mind that under the Land Acquisition Act all acquisitions by and large are for a public purpose leaving the very exceptional and limited acquisitions for the purposes of companies for which a special procedure is provided therein. Therefore, it seems to me inapt to confuse the specialised phrase of 'public utility' with the broader and general aspect of 'public purpose' in matters of land acquisition. The phrase 'public purpose' has a very wide connotation and it may broadly be said that in a welfare State, to which our body politic is consistently trying to approximate, virtually every act of the State would have an underlying public purpose. If the object of the legislature was to extend the matter to such an extent, then the same could have been simply and plainly achieved by enacting that all interim orders of stay against acquisition of land for a public purpose would stand vacated forthwith. If any such clear intention existed, there was no need to draft sub-section (4) in the manner in which it has been done with great circumspection and limiting it (apart from the other two instances noted earlier) expressly to the execution or the acquisition of the land only for the projects of public utility. The language of sub-section (4) when construed as a whole is a clear pointer in favour of the view that the wrods 'project of public utility' are used in a restricted sense for primarily providing those essential services

which are necessary to the public at large. The phrase would not include within its ambit something so general as the mere development of land for residential purposes wherein the provision of some essential amenities may or may not be provided as an ancillary measure.

(19) I am clearly of the view that section 58(4) is not attracted to the present case and the stay order granted earlier by the Court is not affected thereby. The application is consequently allowed and the respondent State is restrained from interfering with the possession of the petitioner till the decision of the writ petition. There will be no order as to costs.

K. T. S.

CRIMINAL MISCELLANEOUS

Before D. S. Tewatia, J.

SUMESH CHAND ETC.,—*Petitioners*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Misc. No. 2990-M of 1977

August 23, 1977.

Code of Criminal Procedure (2 of 1974)—*Sections* 209, 227, 397 (2) *and* 482—*Committing Magistrate—Whether required to determine the existence of a* prima facie *case—Order of commitment under section* 209—*Petition for quashing such order under section* 482—*Whether maintainable.*

Held, that under the old Code of Criminal Procedure the committing Magistrate was required to commit the case for trial to the Court of Session on charges framed by him, but under the new Code of Criminal Procedure 1973 he merely commits the case to the Court of Session and the question as to whether the person so committed is to be tried or not is to be decided by the Court of Session after applying its mind in the manner envisaged under section 227 of the new Code, with the result that under the old Code the accused was placed on trial by the order of the committing Court under section 207-A, while under the new Code the accused is not placed on trial but only the case is committed to the Court of Sessions which itself places the accused on trial, if a *prima facie* case is made out from the record and the documents submitted to it by the committing Court.