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2. But this is not the end of the appellants' principal case. Mr Straker and Mr Dinkin also submit that special considerations apply to the Secretary of State's power to authorize a **compulsory purchase order**, such that as a matter of discretion he cannot do it unless satisfied that the related development will probably occur, even if (as I have held) no such limitation can be derived from the statutory words. The argument is, if I may put it in my own language, that the acquisition by authorities of the state of a person's land against his will is *prima facie* a violation of a constitutional right, such that the courts will only sanction it if a substantial justification is shown, and such a justification must necessarily at least involve the confirming authority being satisfied that the development for whose purposes the acquisition is to be made will probably take place; otherwise, as Mr Dinkin submitted, the acquisition is done upon a speculation. The leading text upon which this argument is founded consists in dicta from the Court of Appeal in Prest v Secretary of State for Wales [1983] 81 LGR 193. At 198 Lord Denning said:

"To what extent is the Secretary of State entitled to use **compulsory** powers to acquire the land of a private individual? It is clear that no minister or public authority can acquire land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when it is necessary in the public interest. In any case, therefore, where the scales are evenly balanced - for or against **compulsory** acquisition - the decision - by whomsoever it is made - should come down against **compulsory** acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorized by Parliament and the public interest decisively so demands: and then only on condition that proper compensation is paid: see Attorney General v De Keyser's Royal Hotel Ltd [1920] AC 508. If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen."

26. At 211-212 Watkins LJ said this:

"The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinized. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factors which sway his mind into confirmation of the **order** sought."

In De Rothschild 57 PCR 330, decided in July 1988, the Court of Appeal considered this authority, and also a decision of Forbes J in Brown 40 PCR 285, in which the learned judge had said at 291: "It seems to me that there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary, in **order** to exercise the powers of the purposes of the Act under which the **compulsory purchase order** is made, that the acquiring authority should have authorization to acquire the land in question."

In De Rothschild Slade LJ, after reviewing Prest and Brown and in particular the specific basis upon which in each case the court's decision had been arrived at, said this at 336:

"Having considered the judgments of this court in Prest and of Forbes J in Brown, I conclude that both of them were merely examples of challenges to the Secretary of State's decision on conventional Wednesbury/Ashbridge grounds. Though all the judgments in Prest contained observations regarding onus, I, for my part, read them as doing no more than giving a warning that in cases where a **compulsory purchase order** is under challenge, the draconian nature of the **order** will itself render it more vulnerable to successful challenge on Wednesbury/Ashbridge grounds unless sufficient reasons are adduced affirmatively to justify it on its merits."

27. At 337 Slade LJ summarised his conclusions as to the applicable

law. Part of the passage reads as follows: