

(1980) 09 CAL CK 0003
In the Calcutta High Court
Case No : Civil Rule No. 14475 (W) of 1976

Abdul Latif Mullick and Others

APPELLANT

Vs

Special Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 02-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Land Acquisition Act, 1894 — Section 2, 4, 6

Citation : AIR 1981 Cal 395 : 85 CWN 148

Hon'ble Judges : Manas Nath Roy, J

Bench : Single Bench

Advocate : Samarendra Nath Banerjee and Sailendra Kumar Roy Chowdhury, for the Appellant; Praditta Roy, for the Respondent

Judgement

Manas Nath Roy, J.—By a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), lands in full and in Plots Nos. 1376 and 1377. Jurisdiction List No. 108, P. S. Pandua, Village Pandua, District Hooghli. were sought to be acquired for a public purpose viz. for construction of office-cum-quarters of the Sectional Officers at Pandua for Rural Damodar Irrigation. Such notification was dated 22nd September, 1972, and was issued in the extraordinary issues of the Calcutta Gazette on 28th December 1972. The petitioners claim to be the owners of the lands as notified. It is the case of the petitioners that within the period as prescribed, the State of West Bengal had not published any declaration u/s 6 of the said Act, in respect of the plot of lands as mentioned in the notification u/s 4, by giving the boundaries, approximate areas and Khatian numbers and on 9th August 1974, for the first time, the petitioners received notices under Clauses (3) and (4) of Sections 9 and 11 of the said Act, whereby they were asked to produce documents, in the matter of compensation to be awarded for the concerned acquisition. It is their further case that they made representations to the Special Land Acquisition Collector, Damodar Valley Project, Respondent No. 1, claiming that the declaration u/s 6 of the said Act, did

not declare the needs of acquisition of the plots in question and as such, such acquisition amongst other grounds, was bad. The acquisition in question was also claimed in the said representation to be illegal, without jurisdiction and made in colourable exercise of statutory powers, apart from being in mala fide use of the same. The petitioners have further made representations that there were other alternative vacant plots in the neighbouring area and the purposes of the acquisition in question, could be satisfied by acquiring those plots and thereby to realising the plots as notified, the more so when, in those plots, there were valuable structures and residential houses of the petitioners,

2. The above representation, the petitioners have stated, was not acceded to and it is their allegation that without duly applying their mind, as to the suitability of the lands in question, the authorities concerned proceeded with the concerned acquisition.

3. After this, on or about 12th April 1975, the petitioners were served with notice u/s 12(2) of the said Act, whereby they were asked to receive compensation on 19th April 1975. The concerned award, according to the petitioners, was made ex parte. The notice as mentioned above also informed that the compensation of the lands in question, u/s 16 of the said Act, would be taken on 24th April 1975,

4. Against the above initiation and proceeding, the petitioner moved and obtained Civil Rule No. 9616 (W) of 1975, with a corresponding interim order for a limited period, which was ultimately extended till the disposal of the Rule. It has been alleged that from the affidavit-in-opposition as filed in the said Rule, the petitioners had learnt, that a notification was issued on 21st November 1974, stating that in the declaration under sec. 6 as mentioned above, wherein the plot numbers were mentioned as Plot Nos. 137 and 138, should be read as 1375 and 1377. It should be noted that the said declaration was dated 1st March 1974, and was issued in the issues of the Calcutta Gazette on 4th April 1974 and although in the notification u/s 4 of the said Act, the number of the plots were mentioned as 1376 and 1377 in the declaration in question, those plots were mentioned as 137 and 138. The other particulars in the notification and declaration were the same. It was the contention of the petitioners in that earlier rule that the respondents therein did not disclose to them the notification as mentioned above, nor grant any opportunities to them to raise any objection, but the award in question, was passed ex parte, without hearing the petitioners. It appears that on 23rd November 1976, the earlier rule came up for hearing and on the prayers of the petitioners, the learned Judge allowed them liberty to make fresh application, challenging the notification u/s 4 and the declaration u/s 6 as also the erratum declaration u/s 6 which corrected the number of the plots. As such, on 13th December 1976, the present rule was obtained with the corresponding interim order, challenging the concerned notification u/s 4 and consequent declaration u/s 6 of the said Act and the erratum as mentioned above.

5. The respondents have filed their affidavit-in-opposition, dated 6th July 1978,

through Shri Mritunjoy Haldar, who incidentally is the Special Land Acquisition Collector, Damodar Valley Project, Chinsurah, being respondent No. 1. The said deponent has stated that the notification u/s 4 of the said Act, contained necessary details about the plots in question and the acquisition was for a public purpose. It is his case that the description of the plots as given in the notification, was sufficient to identify them. He has further stated that after the publication of the Section 4 notification, public notices containing substance of the notifications, were duly published at conspicuous and convenient public places in the locality and such notice was also hung up on or near the notified plots, It is the case, that the notification in question, was duly served on the petitioners on 2nd March 1973, inviting objections against the proposed acquisition and Abdul Basad, the petitioner No. 5, duly received the notices on behalf of himself and also on behalf of the other petitioners. It has been stated further that although notices were duly served, the petitioners did not file any objection u/s 5A of the said Act. As such, the deponent has claimed that there was no question or any occasion for violation of principles of natural justice and since the petitioners did not file any objection, there was also no question of giving them a hearing. The above mentioned defence was put forward as it was claimed and contended that in the matter of acquiring the lands in question, the petitioners did not receive due and reasonable opportunities to establish their case and as such there was violation of principles of natural justice.

6. The deponent of the affidavit-in-opposition has further stated that as the petitioners did not file any objection u/s 5A of the said Act, the Land Acquisition Collector concerned, initiated enquiries and submitted a report stating inter alia amongst others that there was no objection filed within the statutory period, the proposed acquisition will not affect any house or constructions, place of religious worship, market place or education institution and the lands involved are Bhati and Doba. On the basis of such report, the Collector concerned recommended that the acquisition of the plots in question, may be proceeded with and on consideration of the said report, the records of the case and other relevant materials, the State Government was satisfied, that the plots were needed for a public purpose and accordingly a declaration u/s 6, dated 1st March 1974, was published in the issues of Calcutta Gazette on 4th April 1974. The deponent has accepted the position that in the Section 6 declaration as published, the plot numbers as mentioned, did not tally with the plot numbers as notified in the Section 5A Notification, The particulars of the difference in the plot numbers have been mentioned hereinbefore. Since the defect, which was a printing defect was detected, an erratum declaration dated 14th August, 1974, particulars whereof have been mentioned hereinbefore, was published in the issues of Calcutta Gazette on 21st November 1974, stating that in the declaration u/s 6 as published on 4th April 1974, the plot numbers 137 and 138 were to be read as plot numbers 1376 and 1377. The deponent has further stated, that the notification u/s 5A, the public notices given by the Land Acquisition Collector, the declaration u/s 6 with the subsequent erratum and a map of the plots, clearly

showed that actually plot numbers 1376 and 1377 were sought to be acquired. It has been further denied by the answering respondents that the declaration u/s 6 of the said Act was not published within the statutory period,

7. It is the further case of the answering respondents that in view of the above, the petitioners had the knowledge that the plots in question, were going to be acquired and as such, they had no occasion to be surprised as alleged, in receiving the subsequent notices as mentioned above. It has been stated that the petitioners did not make any representation to the respondent No. 1 as mentioned above, at any stage, during the acquisition proceeding and they did not also file their claim for compensation or appear at the time of hearing. It has been stated that the other shareholders of the plots in question, preferred their claims and they have received payment of compensation for their shares of the plots. In any event, the respondents have denied that the notices as issued were illegal, without jurisdiction or in any way bad in law as claimed. It has also been denied that such notices as issued or the proceeding as initiated, were in colourable exercise of statutory powers or mala fide as suggested. The fact that there were representations made by the petitioners or at least by petitioner No. 5, Abdus Basad, offering some alternative lands for the concerned acquisition, appears to be true. But the respondents have stated that such offer was made to the Executive Engineer, Lower Damodar Valley Irrigation Division, during the pendency of the earlier rule, being Civil Rule No. 9616 (W) of 1975. It has been stated that from such representation, it would also appear that none of the petitioners had any doubt or difficulty in knowing or finding out that plot numbers 1376 and 1377 were being acquired. The answering respondents have further stated that at the relevant time, there was no structure or house on the plots in question, and such story has been evolved after the issue or disposal of Civil Rule 9616 (W) of 1975. In fact, it has been claimed and contended that there was or has been no structure on the lands in question, at the time when they were sought to be acquired. The respondents have further stated that acquisition for the purposes as mentioned in the notification, would be for a public purpose and the lands in question, have actually been acquired, after due application of mind and since there was no other objection or impediments in the matter of such acquisition. It is the categorical case of the respondents that after the award was passed, notices u/s 12(2) of the said Act were served on the petitioners and other shareholders for the purpose of receiving the compensation as awarded. The respondents have claimed that under the provisions of the said Act or the general statutes, it was within the power and jurisdiction of the authorities concerned, to have the defects in the earlier declaration u/s 6 of the said Act, to be corrected by subsequent erratum declaration u/s 6 and after the said erratum declaration was published, notices under Sections 9 and 11 of the said Act, were duly served on the petitioners. It has been stated that against such notices, the petitioners did not file any claim before the Land Acquisition Collector concerned and as such, the ex parte award as mentioned above, had to be passed. It has also been claimed that since in law, there is no provision for

filing any objection against the declaration u/s 6 of the said Act, the claim that after the erratum notification was published, an opportunity to object, as made by the petitioners, would be of no avail or any assistance. It has been stated that after the declaration u/s 6 of the said Act, had been published, the petitioners had no right to question or say that the acquisition in question or acquisition as involved, was not for a public purpose. It is the case of the deponent that the declaration u/s 6 of the said Act, within the erratum of the same as mentioned above, having been duly published, there was no question or any occasion for making a fresh declaration u/s 6 of the said Act. It is the categorical case of the respondents that the declaration u/s 6 of the said Act, was duly published in terms of law. The respondents have further stated that the plots of lands were never substituted as mentioned above and since there were printing mistakes, so far as the number of plots were concerned, such mistakes were rectified or corrected by the subsequent erratum declaration as published and such subsequent act had neither altered nor modified the purposes, for which the lands were acquired or the particulars of the lands.

8. Mr. Banerjee appearing in support of the rule, firstly, claimed and contended that by the erratum declaration u/s 6 of the said Act, the acquisition of plot Nos. 1376 and 1377 could not be validated, as in the earlier original declaration u/s 6, those plots were not mentioned, but plot Nos. 137 and 138 were only mentioned. He contended that since in the original declaration u/s 6, the plot numbers as mentioned, differed from those as in the notification u/s 6, so there was non-application of mind. That apart, in support of his second contention, he contended that there was not only non-application of mind as mentioned above, but the notification and declaration as made, could not serve the purposes of acquisition as the particulars viz. Khatian numbers of the lands have not been mentioned and furthermore when no definite description of the lands have been mentioned. It was thirdly, contended by him that the acquisition in the instant case, of the lands in question, for construction of office-cum-quarters of Sectional Officers at Pandua for the Lower Damodar Irrigation Scheme of the Damodar Valley Corporation, would not be a public purpose. He also claimed the acquisition as mentioned in the notification, to be vague and it was his specific submissions that the acquisition for making provisions for the officers as mentioned, would not be a public purpose or a purpose of the State. He fourthly, submitted that since there were other plots, more conveniently located and situated for the concerned acquisition, available and there were and are buildings, structures and constructions on the lands as sought to be acquired, proceedings were not initiated bona fide, rather the same has been continued with the mala fide intention of depriving the petitioners of their property. It was also the categorical submissions of Mr. Banerjee that at other steps and stages there were violation of principles of natural justice, as the petitioners had not had the due opportunities to have their case represented or to represent themselves. Lastly and fifthly on a reference to the first proviso to Section 6 of the said Act, which provides that no declaration in respect of any particular land covered by a

notification u/s 4(1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication, he contended that since in the instant case, the publication u/s 6 was after such period, the proceeding for acquisition, cannot be allowed to continue.

9. In support of his third submission as mentioned above Mr. Banerjee, first relied on the determinations of the Supreme Court in the case of State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others, . In that case, a question arose as to whether acquisition for Ramkrishna Mission, for the purpose of building of their staff quarters, was proper or not or whether such acquisition would be for a Company. The Supreme Court, after considering the necessary requirements for such acquisition has observed that, when the three purposes which were specified In the notification u/s 6, for which the land was to be acquired for the Ramkrishna Mission were, construction of (1) staff quarters, (2) hostel building and (3) playground, construction of hostel building and playground would come within the provisions of Section 40(1)(b) of the said Act, but the construction of staff quarters cannot come under that clause. It has been observed that hostel buildings and playgrounds are obviously meant for the students of the institution and such students are a body and a section of the public and therefore, the hostels and playgrounds can be primarily useful to such sections of public and in certain circumstances be used by other sections of the public also, as, for example, the parents and guardians of the students concerned. But so far as staff quarters are concerned, they are meant for occupation of individual members of the staff and an individual member of the staff cannot be held to be a section of the public. It was also the observations of the Supreme Court that when one speaks of section of the public an individual must be excluded from it and what can be used by an individual cannot be said to be used by a section of the public which must always be more than one. The second case of the point, on which reliance was placed by Mr. Banerjee was that of Iftikhar Ahmed Vs. State of Madhya Pradesh and Others, . That was a case of acquisition of lands for a new slaughter house and it has been observed by the Bench decision as mentioned above, that acquisition of lands for construction of a new slaughter house, for maintaining supply of food to the residents of the city, is a public purpose and the existing slaughter house, is insufficient and insanitary, would be adequate reasons justifying the acquisition. It has also been observed that the Government as the local authority, are the best judges of the needs of the growing population and unless their decision is made in bad faith, it must ordinarily be accepted as correct. In that case, it has also been observed that the notifications under Sections 4 and 6, are the essential part of the acquisition proceeding and they are in the nature of jurisdictional facts which gives power to the Land Acquisition authorities, to act further and in the absence of which, subsequent proceeding would be ultra vires. It is also the observation in that case that although at the stage when a notification u/s 4 is issued, the

Government is not in a position to say definitely which particular piece of land is proposed to be taken, all the same, the locality, in which the land to be acquired is, has to be given which should be reasonably a small one to show whereabouts of the land. It has been stated that u/s 6, it is the particular land that should be specified in the notification. It was the further observations in that case, that where all that the notifications under Sections 4 and 6 stated was that an area of 6 acres of land in Bhopal City was proposed to be acquired, the notifications were vague, as they did not show the particular land to be acquired and as such, the proceedings for acquisition were rendered invalid by the omission to specify sufficient particulars of the land. The above case was also cited by Mr. Banerjee in support of his second submission as mentioned hereinbefore. On the question of the second submission as mentioned above, Mr. Banerjee further referred to and relied on the determinations of this Court in the case of Abdul Jabbar v. State of West Bengal (1967) 71 Cal WN 129. In that case, it has been observed that a notification u/s 4 is merely exploratory or preliminary in nature and the exact area to be acquired need not be particularised at this stage. But, it is otherwise with the declaration u/s 6, which is issued after the Government had applied its mind to the exact area and location of the lands, which are needed for the purpose and are, therefore, to be acquired. It has been observed that lands must, therefore, be particularised in the declaration u/s 6, 10. The Calcutta case as mentioned above was also relied upon by Mr. Banerjee, in support of his first submissions and while elucidating those submissions, Mr. Banerjee contended that, when after the issue of the Section 4 notification, the initial declaration u/s 6, in the manner and form in which the same was issued and which stated that plot Nos. 137, 138 were being acquired, so application of mind, if at all, was in respect of those plots, even though the particulars of the lands were not given. He contended that since there were discrepancies in the number of plots in the Section 4 notification and declaration u/s 6, the entire acquisition proceeding, was vitiated. It was his submission further that the subsequent erratum u/s 6, was not only improper, but the same was unauthorised and without jurisdiction, and as by the said erratum plot Nos. 137 and 138 as mentioned in the initial declaration u/s 6, were changed to plot Nos. 1376 and 1377, there was also non-application of mind. While on the last and fifth submissions, Mr Banerjee referred to the first proviso u/s 6 and claimed that on the basis of such law, there was no proper declaration u/s 6, within the time allowed and as such, the entire proceeding was also vitiated.

11. Mr. Roy, appearing for the appearing respondents, on a reference to the Damodar Valley Corporation Act, 1948 and more particularly to Section 50 therein, which deals with compulsory acquisition of land for the Corporation and lays down that any land required by the Corporation for carrying out its functions under the Act, shall be deemed to be needed for a public purpose and such land shall be acquired for the Corporation, as if the provisions of Part VII of the said Act, were applicable to it and the Corporation would be Company within the meaning of Section 3(c) of the said Act, claimed that the acquisition in the

instant case as such, was one for the said Corporation and its officers and for other persons of the Corporation, and so, the same was for a public purpose. The word Corporation as used in Section 50 as mentioned above no doubt means the Damodar Valley Corporation in terms of Section 2(2) of the Damodar Valley Corporation Act, 1948. In view of the above, it was thus submitted by Mr. Roy that the above provisions have thus clinched the issue and since the acquisition was for such a statutory Corporation, and the necessary terms or requirements under the said Act have been satisfied, no interference with the acquisition proceedings under challenge, should or need to be made. In support of his submissions about the statutory character of the Damodar Valley Corporation or for the tests necessary to find out such character, Mr. Roy placed reliance on the determinations in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , in addition to the determinations in the case of *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, . On the basis of the above determinations, read along with the provisions of the Damodar Valley Corporation Act, 1948, there cannot be any other way but to hold the said Corporation as a statutory one. On the basis of his submissions as mentioned above, Mr. Roy contended that the determinations in the case of *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, (supra), would have no application in this case, as, such determination was made on the basis of the character of the society viz. *Ramakrishna Mission*, as involved in that case, whereas the present acquisition, admittedly relates to a statutory Corporation. Such distinction as made by Mr. Roy appears to be of substance, as such, I hold that the said determinations of the Supreme Court, will have no application in this case and specifically when the acquisition in the instant case, was for a Statutory Corporation or its officer. The acquisition of land for the purposes of the Damodar Valley Corporation or for the purpose of construction of office-cum-quarters of such Corporation, in my view, would be a public purpose and that too when the Damodar Valley Corporation, if allowed to function duly, would serve the need of the public or cater to their need and if such accommodation is not made available, then the working of the Damodar Valley Corporation and thus the activities, which are public in nature, would suffer. Apart from the above, Mr. Roy relied on the determinations in the case of *The State of Bombay Vs. R.S. Nanji*, , wherein, it has been observed that it is impossible to precisely define the expression "public purpose" and in a case all the facts and circumstances will require to be clearly examined in order to determine whether a "public purpose" has been established. It has been observed in that case further that prima facie Government is the best Judge as to whether "public purpose" is served by issuing a requisition order, but it is not the sole Judge. The Courts have the jurisdiction and it is their duty to determine the matter, whenever a question is raised whether a requisition order is or is not for a "public purpose". That was a case where requisition order was made for providing accommodation for an

employee of a Road Transport Corporation and on the basis of the provisions in the Road Transport Corporations Act, 1950, it has been observed that the power in the Corporation to provide living accommodation for its employees, must be regarded as one of its statutory activities and as such, an order of the Government of Bombay, requisitioning a part of building for housing an official of the State Road Transport Corporation, was found to be an order for "public purpose", as it was essential for the Corporation to provide such an accommodation to its employees in order to ensure an efficient working of the Road Transport system. Mr. Roy then made a reference to the determinations in the case of Bokaro and Ramgur Vs. Additional Collector and Another, , where acquisition of land, for the purpose of constructing quarters of a Police Training College and Swimming Pool, has been found to be for public purpose, in addition to the other decision of the Supreme Court in the case of Ratilal Shakarabhai and Others Vs. The State of Gujarat and Others, . In that case, it has been observed that acquisition for housing scheme, prepared by a registered co-operative body, would be for a public purpose. Apart from the cases as mentioned above, reference was also made by Mr. Roy to the Bench decision of this Court in the case of Sushila Debi Forma v. State of West Bengal (1980) 84 CWN 661 where, it has been observed that the purposes of the State Transport Corporation which has been created by the State Government, for making suitable arrangement for public transport, are purposes of the State itself and land can be requisitioned or acquired for the Corporation, under the West Bengal Land Requisition and Acquisition Act, 1948. Mr. Banerjee, sought to distinguish the above determinations on facts, of course without much substance, for the views which I have expressed above and since I am also of the view that if the lands as are necessary and required, are not allowed to be acquired, the purposes of the Damodar Valley Corporation and thereby the need of the people, may suffer, I hold that the acquisition in the instant case, was for a public purpose and the construction of quarters for such officer, who would implement and control the functions of the Corporation, thus would also come within the purview of "public purpose". The acquisition for the official in the instant case was thus a public purpose.

12. In answer to the submissions of Mr. Banerjee on the invalidity of the declaration as mentioned above, which consequently made the entire proceedings including the notification u/s 4 to be void, nugatory and of no effect, Mr. Roy claimed that since by the erratum declaration, the typing mistakes which crept in, in the matter of plot matters, were corrected and on such correction, there was no discrepancy in respect of the lands as involved either in the notification or in the declaration u/s 6, there was no illegality or any irregularity and misuse or abuse of the powers, which rendered the acquisition, as claimed, to be void. The mentioning of plot numbers 137 and 138 in the initial declaration u/s 6, was claimed to be a printing mistake and on production of the records, which were looked into, after making them available to Mr. Banerjee, it was established that as soon as the mistake was detected, steps were taken, for

having the same corrected, by issuing the erratum declaration and in fact, the same was done. Such steps were initiated by the Collector concerned and such power, the Collector had u/s 21 of the General Clauses Act, 1897, corresponding to Section 22 of the Bengal General Clauses Act, 1899. It was submitted by Mr. Roy, on the basis of the above provisions, that since the power to issue the declaration in the instant case included and includes power to add, to amend, vary or rescind orders, the rectification of mistakes on detection, as was made, was due, legal, proper and authorised. In support of such submissions, reliance was placed by him on the case of *Bangeswari Cotton Mills Ltd. v. M. C. Banerjee*, (1961) 3 Fac LR 186 (Cal). Such propositions of Mr. Roy could not be disputed by Mr. Banerjee. But he contended that when Section 6 declaration as initially made was final and the same was sought to be changed by the erratum declaration, the entire action or any action taken on that basis, was not only unauthorised, but the same was void and in violation of principles of natural justice, as before the corrections were made, no opportunity was given to the petitioners to make representations against the proposed corrections and furthermore, as after the corrections were made, opportunities were not given to them to file objections. The corrigendum in this case was claimed by Mr. Banerjee to be not permissible. He further contended that when an application of mind, which was and is required, the appropriate authority, had mentioned plot numbers as 137 and 138 in the initial declaration u/s 6, so the subsequent erratum was not only void and illegal as mentioned above, but such action itself, would be enough to hold and find abject non-application of mind. The corrections in respect of the plot numbers as made, in my view, considering the import and effect of the sections of the General Clauses Act, were permissible and authorised, the more so when, by such erratum declaration, the nature and character of the acquisition in question, was neither changed nor shifted to a new acquisition, particularly when the plot numbers as in the erratum declaration were the same as those in the notification u/s 4. Such rectification of printing mistakes, as in this case, was and is permissible and possible. Since there is no provision in the said Act about filing and consideration of objections, after the declaration u/s 6 and since such objections were available to the petitioner, only after the notification u/s 4 and they had not filed such objections or taken any exceptions even in spite of due service and knowledge, the grounds regarding violation of principles of natural justice, as urged now, appear to me to be without any avail or assistance. In fact, it also appears to me that there was no difficulty for the petitioners or any hindrances for them, in the matter of making their objections or taking exceptions, in the facts of this case and more particularly when, on being duly apprised of the acquisition proceedings and the lands involved therein, they duly offered alternative lands or pointed out such lands were available and they could have served the purposes of the acquisition. The above findings on the basis of the arguments by the respondents, also apply in respect of the first branch of submissions of Mr. Banerjee. In fact Mr. Roy also put forward such arguments in reply to those submissions by Mr. Banerjee. As such, I reject those contentions of Mr. Banerjee, on my findings that the particulars of the lands as given, were

neither vague nor indefinite. I find that the determinations in the case of Iftikhar Ahmed Vs. State of Madhya Pradesh and Others, , have no application and are distinguishable on facts, as in that case the area of the lands mentioned was 6 acres in Bhopal city, without any other particulars.

13. In support of his fifth submission, Mr. Banerjee, on a reference to the provisions in the proviso to Section 6, claimed that, such provisions being mandatory, no proceedings could be carried on and concluded as there was admitted violation in respect of the statutory prohibitions in the matter of issuing the concerned declaration. The proviso lays down or requires that no declaration in respect of any particular land, concerned by a notification u/s 4(1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication. Mr. Banerjee, on a reference to the proviso contended the same to be mandatory. He argued on a reference to the determinations in the case of Cullimore v. Lyme Regis Corporation (1961) 3 All ER 1008 that when the prescriptions in the proviso relate to the performance of public duty, the provisions in the proviso should be construed and considered as mandatory. The tests relevant for mandatory or directory provisions of a statute, have been laid down in the case of Montreal Street Railway Co. v. Normandin 1917 AC 170 : (AIR 1917 PC 142). The provisions in the proviso to Section 6 as mentioned above, on application of the relevant tests, appear to me to be mandatory. Thus, the question in the instant, case would be, whether such mandatory requirements have been complied with. The proviso speaks of or contemplates one notification u/s 4, which should have been published after 20th January, 1967 i. e. when the concerned ordinance had commenced and all declarations u/s 6 thereafter, must be "made within three years from the date of such publication. Mr. Roy contended that taking the date of publication of notification u/s 4, the subsequent initial declaration and so also the erratum declaration, steps were taken within the specified time, and as such there was no violation of the proviso. The notification in the instant case was dated 24th Sept., 1973, the same was published on 20th December, 1973. The initial declaration, which was dated 1st March, 1974 and published on 4th April, 1974 and the erratum was dated 14th August 1974 and the same was published on 21st November, 1974. So, taking into account the dates as mentioned above, it cannot be held and observed that there was violation of the statutory prohibition in respect of the time-limit. Thus, the arguments of Mr. Banerjee on the aspect as mentioned above, also fail.

14. The fourth submission of Mr. Banerjee, would require investigation on facts, which the Court is not entitled to embark upon, ordinarily, and in this jurisdiction. As submitted by Mr. Roy, it also appears to me that no extraordinary circumstances have been established on the pleadings, which would justify this Court to enter into such questions. The scheme of the said Act lays down that a person interested in any land sought to be acquired u/s 4, may object to the acquisition in question or of any land in the locality and u/s 5A of the said Act,

the right to object has not only been conferred on the land owners, but on all persons residing in the locality and under the said section the Collector is required to give the objector an opportunity of being heard either in person or through an agent and furthermore, at all stages of the said enquiry and also at the time of making of award, the objector would be entitled to appear personally or by his agent. The Collector concerned is also required to give the objector a reasonable opportunity of being heard. Thus, a notice fixing the date of hearing, must be served on the objector and such notice must give him ample time to appear in person or to have his case represented through an authorised agent. The Collector concerned, is further required to find out on the enquiry, whether the land sought to be acquired is needed for public purpose or for a Company and such enquiry must be conducted by issuing a notification u/s 4(1) of the said Act. The objection as mentioned above u/s 5A, is to be taken or filed within 30 days of such notification. There is no scope for filing any exception of taking objection, after a declaration u/s 6. Up to the stage of declaration the Collector is not required to take any proceeding under the said Act and before any formal proceeding can be taken, a declaration u/s 6 must be made by the Government. Such declaration should be published, after the notification u/s 4 has been published. Such a declaration u/s 6, is essential to give validity and jurisdiction as observed in the case of AIR 1939 235 (Privy Council) , to the acquisition of land. It has also been observed in that case that if declaration is not made or is materially defective, the acquisition proceedings would be ultra vires and void. A declaration when published in the Gazette gives public notice of the intended acquisition, it is not open to any person or authority, then to challenge the same or to say that the land is not needed for the purpose as mentioned or that another piece of land should be taken or that the purpose is not a public purpose. On those points, the declaration is conclusive and once the same is issued, all the lands included within the same, must be acquired, unless the Government withdraws from the acquisition u/s 48. Acquisition proceedings could not be held to be illegal and void, because of the fact of the lapse of some years between the notification u/s 4 and declaration u/s 6. This was the former rule. But after the amendment or by inclusion of the first proviso to Section 6, the position has been changed now, by incorporating a statutory limitation as mentioned above. It is true that on the issue of the declaration u/s 6, notification made u/s 4 is exhausted and cannot thereafter support any declaration u/s 6. There would thus be no notification u/s 4 to support a second declaration u/s 6. After the declaration is made, thereafter, comes the time for making award and compensation. In the instant case, the declaration, since the erratum declaration was possible and permissible should be treated as one made in consequence of the notification u/s 4.

15. The above being the position the arguments of Mr. Banerjee fail, so also the application and the rule is thus discharged. There will be no order for costs.