

(1958) 05 CAL CK 0020
In the Calcutta High Court
Case No : Civil Revision No. 2620 of 1956

Bejay Laxmi Cotton Mills Ltd.

APPELLANT

Vs

The State of W.B. and Others

RESPONDENT

Date of Decision : 12-05-1958

Acts Referred:

Constitution of India, 1950 — Article 166(3)
Rules of Business Government of West Bengal — Rule 19, 20
West Bengal Land Development and Planning Act, 1948 — Section 6

Citation : AIR 1960 Cal 113 : 62 CWN 640

Hon'ble Judges : Deep Narayan Sinha, J

Bench : Single Bench

Advocate : Atul Gupta, Subimal Ray, Birendra Nath Banerjee and A.K. Sarkar, for the Appellant; S.M. Bose, J. Majumdar, R. Choudhury, S.K. Rai Choudhury and Somendra Chandra Bose, for the Respondent

Judgement

Deep Narayan Sinha, J.—The facts in this case are briefly as follows: There is a Society registered under the Societies Registration Act (Act XXI of 1860) known as "The Society of Farmers and Rural Industrialists (hereinafter referred to as "The Society"). The Society approached the Government of West Bengal for the purpose of compulsory acquisition of some land for the establishment of an agricultural colony and for creating better living conditions therein. A tentative proposal with a lay-out plan was submitted to the Collector of 24 Parganas. The request was that 58.90 acres of land in villages, Chola and Natagarh within the jurisdiction of Khardah P. S. should be acquired at the costs of the Society. The scheme was later on modified and the area that was to be acquired was scaled down to 28.59 acres. On the 4th of February, 1955 a notification was issued u/s 4 of The West Bengal Land Development and Planning Act 1948 (hereinafter referred to as "The Act"). A copy of this notification is at page 21 of the paper book. The notification states that the land was needed for the establishment of an agricultural colony and creation of better living conditions in the villages of Ghola and Natagarh. The area to be acquired is stated to be 28.59 acres-It

appears that a large portion of this belonged to the petitioner Company, The Bejoy Laxmi Cotton Mills Ltd. It is stated on behalf of the Company that the land had been purchased by the Company for the purpose of erecting factory buildings, roads, quarters for the labourers etc. and that as a result of compulsory acquisition of the greater part of Its lands, that object has been frustrated. It is stated however on behalf of the respondents that the land that was being acquired was not the land whereon the factory was situated. It is said that in fact there was only a roofless steel structure and a few sheds so far as the factory was concerned, and the land tender acquisition was "the land abandoned and unused on the western side of the factory's main land with dilapidated structures". The notification u/s 4 of the Act was published in the Calcutta Gazette dated 17-2-1955. On or about 10-3-1955 the substance of the notification was published by the Collector as required by Section 4 of the Act. The Government thereafter directed the Society to prepare a development scheme and submit the same to the Collector to enable him to hear objections under the Rules framed under the Act. On or about 21-3-1955 the Society submitted a development scheme and on 18-4-1955 the Collector issued notice under Rule 5(2) of the Rules inviting objections by the end of May 1955, against the scheme. About 30 petitions of objection were filed and heard but at that stage the petitioner company did not file any objection. It was sometime in the first week of June, 1955 that the Company filed its objections. Although the objections are belated it is stated that the Collector heard the objections and even made a local inspection. By his report dated 15-10-1955 the objections were overruled. The Society was informed that the entire area notified was not needed but that 6.96 acres out of the total notified area of 28.59 acres was cancelled and that the rest was going to be acquired and the Society was to pay a sum of Rs. 59,679 and odd as costs of acquisition. On or about the 10th of February, 1956 the Land Planning Committee at its 316th meeting considered the matter and recommended that the development scheme as modified should be approved and a declaration should be made u/s 6 of the Act. The recommendation of the Land Planning Committee together with some office notes was placed before Sri Rai Mohan Samanta who was then acting as the Assistant Secretary of the Government of West Bengal in its Land and Land Revenue Department. Sri Samanta has filed an affidavit affirmed on 12-8-1957 and he says there that he approved of the development scheme although no written order was made. On 19-4-1956 a letter was written by Sri Samanta as Assistant Secretary to the Secretary of the Society, stating that the detailed scheme and the lay-out plan had been approved by Government and that the Society should submit a draft agreement. On 21-7-1956 a declaration was issued u/s 6 of the Act in respect of 21.63 acres of land situate in villages Gholia and Natagarh. On the same day another notification was issued to the effect that a copy of the agreement between the Government and the Society was open for inspection by the public. On 28-8-1956 notice to take possession was issued under Rule 8 of the Land Development and Planning Rules (hereinafter referred to as "Rules"). Under that Rule, as soon as a declaration u/s 6 had been

published the Collector may cause a public notice to be given at convenient places in respect of any waste or arable land including any bell, boar, tank or other watery area and the land may be taken possession of within three days from the date of such notice. In the notice it was stated that possession should be taken on 4-9-1956. This Rule was however issued on the 3rd of September, 1956 and the taking of possession has been restrained.

2. In the petition, reference has been made to two other notifications issued u/s 4 of the Act, namely, Notification dated 24-1-1956 relating to 8.55 acres of land required for the purpose of settling immigrants, and another dated 28-2-1955 in respect of 14.46 acres, required for a similar purpose. I find however that these two notifications have nothing to do with the subject matter of this application, and need not be considered any further.

3. In the petition, several grounds have been taken but only one has been pressed at the hearing and it is this: u/s 5 of the Act, a development scheme is prepared and submitted to the State Government, which has to be sanctioned by it u/s 6 of the Act, when a development scheme is sanctioned u/s 5, the State Government has further to be satisfied that any land in the notified area for which such scheme had been sanctioned was needed for the purpose of executing such scheme. After it is so satisfied, a declaration may be made to the effect that such land was needed for a public purpose. It is therefore argued that the State Government has to exercise two functions. Firstly, it has to sanction the scheme and secondly it has a duty to be satisfied about certain things mentioned above, before a declaration is made u/s 6. It is argued that in the present case it cannot be said that the Government sanctioned any scheme nor can Government be said to have been satisfied before issuing the declaration u/s 6 of the Act. Originally there was a counter-affidavit filed by Sri B. M. Ganguly, Assistant Secretary to the Land and Land Revenue Department, who merely said that on 21-7-1956 the matter was fully considered by Sri Section Banerjee, the Secretary Land and Land Revenue and an order was made by him on behalf of the Government to issue the declaration u/s 6 which was duly published in the Calcutta Gazette on 9-8-1956. This was of course quite inadequate information, upon which the point could not be determined. However, the respondents in their affidavits asked for leave to refer to the records and certain records were produced. Directions were then given for filing further affidavits and two affidavits have been filed, one by Sri Section Banerjee, Secretary, Land and Land Revenue Department, Government of West Bengal and another by Sri Rai Mohan Samanta, who was at the relevant time acting as the Assistant Secretary, Government of West Bengal in the said Department. It appears from the affidavits that the statement of Mr. Ganguly was not accurate, but that whatever action has been taken in the matter, including the sanctioning of the scheme and being satisfied for the purpose of issuing the declaration u/s 6, was done by Sri Samanta as, an Assistant Secretary in the Land and Land Revenue Department. The question is as to whether Sri Samanta had authority to do so and whether there has been a sufficient compliance with the law. The stand taken by Mr.

Gupta on behalf of the petitioner is that the Assistant Secretary had no power to accord sanction or to be satisfied and that in any event such sanction and satisfaction cannot be said to be that of Government and consequently the law has not been satisfied. It is this question which has to be investigated. Article 154 of the Constitution provides that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. It has been held that a Minister of State is an officer subordinate to the Governor. We next come to Article 166(3) of the Constitution which runs as follows:

"The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

4. In this case of course there is no question of the Governor being required to act in his discretion. Under Article 163 of the Constitution, there shall be a Council of Ministers in each State with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except in so far as he is by or under the Constitution required to exercise his functions or any of them in his own discretion. In exercise of the powers conferred by Article 166(3) of the Constitution, Rules of business have been made by the Governor. At the hearing of this application considerable difficulty was experienced in getting hold of a copy of the Rules of Business, which, though published in printed form by the Government Printing Press, is marked "Confidential". It is inexplicable why a publication of such great importance should be marked confidential and be not available to the public. Surely, the rules and regulations under which the executive Government of the country is carried on cannot be kept hidden from the public gaze, in secret archives of the Government. The learned Advocate General frankly confessed that he was unable to explain the reason. However, a copy has ultimately been obtained, and I have ordered it to be marked as Ex. "A" in this case. The Rules embodied in Ex. "A" are called the "West Bengal Rules of Business" and were promulgated on 25-8-1951. Rule 4 lays down as follows:

"The business of the Government shall be transacted in the departments specified in the First Schedule, and shall be classified and distributed between those departments as laid down therein". Under Rule 5.

The Governor shall on the advice of the Chief Minister allot among the Ministers the business of the Government by assigning one or more departments to the charge of a Minister."

Under Rule 7,

"The Council of Ministers shall be collectively responsible for all advice tendered to the Governor and all orders issued in the name of the Governor, whether such advice is tendered or such orders are authorised by an individual Minister on a

matter appertaining to his department or as the result of discussion at a meeting of the Council or the Cabinet or howsoever otherwise."

The First Schedule to the Rules of Business sets out the various departments, of which there appear to be twenty one in the State of West Bengal. The present matter concerns Department No. 5, namely, the Department of Land and Land Revenue which is a department under the Minister for Land and Land Revenue. The Minister at the relevant time was Rai Harendra Nath Choudhuri. Rules 19 and 20 are of great importance and must be set out:

"19. Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may by means of standing orders give such directions . as he thinks fit for the disposal of cases in the Department. Copies o? such standing orders shall be sent to the Governor and the Chief Minister:

Provided that until such standing orders are made by a Minister, the standing orders which were made under the Rules of Business existing immediately before the commencement of those rules and which were in force in the department in charge of such Minister immediately before such commencement shall, so far, as may be, be deemed to be the standing orders for that department made under this rule.

20. Each Minister shall by means of standing orders arrange with the Secretary of the department what matters or classes of matters are to be brought to his personal notice. Copies of such standing orders shall be sent to the Governor and the Chief Minister".

5. It is said that pursuant to Rules 19 and 20 of the Rules of Business, standing orders have been issued by the Minister in charge in the department of Land and Land Revenue. A cony of the relevant Standing Orders has been produced and filed as of record being marked Ext. "B". For the purposes of this case the following Standing Orders are of importance:

"11 All matters specified in Rules 12, 13(2), 23, 24, 27, 28, 29(1), 37, 39, 40 and 51 of Rules of Business shall be brought to my notice.

2. Besides the above, the following matters or classes of matters in the Land and Land Revenue Department shall be brought to my notice before the issue of orders:

* * * * 18. All cases proposed to be taken up by the Land Planning Committee set up under the Land Development and Planning Act.

* * * * (28) All schemes relating to acquisition and settlement of waste lands.

(29) All cases relating to land acquisition by companies or industrial concerns or by Government under the Land Acquisition Act before there is notification u/s 4 and agreement u/s 41.

"5. The Secretary may permit the Deputy or Assistant Secretaries to dispose of or submit to me for orders such cases or classes of cases as the Secretary may by general or special Order direct with the approval of the Minister-in charge." It is said that pursuant to the power given under Standing Order No. 5 mentioned above, an order was passed by the Secretary, Land Revenue Department as follows:

"Subject to the undermentioned provisos, cases in the different branches of the department shall be disposed of, or when so required by any rule or order shall be submitted to the Minister-in-charge, by or under the orders of the Deputy Secretary or the Assistant Secretary, as the case may be, who is according to the office organisation for the time being in force in charge of the matters or classes of matters to which the cases respectively appertain.

Provisos.

(1) If the officer dealing with the case decides that it is of such importance that it should be submitted to a higher officer in the department, it shall be so submitted.

(2) Cases from all branches involving major questions of principles or policy shall be submitted to the Minister-in-charge through the Secretary."

6. This order, although printed at the back of the Standing Orders does not purport to bear any signature of the Secretary. Under Standing Order No. 5 such an order by the Secretary must be made with the approval of the Minister-in-charge. No such approval is forthcoming. Mr. Section Banerjee in his affidavit however says that the order was approved in writing by the Minister but unfortunately the office file has been lost. While I have no reason to disbelieve Mr. Banerjee, it must be regretted that such a serious business as the compulsory acquisition of lands belonging to citizens should be carried on in this perfunctory fashion. As I have stated above, the sanction to the scheme was not recorded in writing and we have to rely on the memory of the officer concerned. In many other cases I have seen that the whole evidence of sanction that can be produced is a hasty initial by the officer concerned, without any statement in writing that the officer was- satisfied or that he had approved of the scheme or that he was satisfied in any way. This is put forward as the practice, and all that I can say is that it is an extremely unsatisfactory practice and while the Courts might be tolerant at the beginning, it is unlikely that such conduct will continue to have our approval. The compulsory acquisition of land of the citizen is a serious matter. Government must be continuously ready to show its authority and to demonstrate that each step that was being taken was being taken in accordance with the law. In this case however, a very senior Officer of Government has stated on oath that to his personal knowledge the order had been approved by the Minister and the particular Minister is no longer available. I must therefore accept the fact that the order was made with the approval of the Minister. It is said that under this order an Assistant Secretary dealt with the

matter and did everything that was necessary. It is argued that the matter did not come under the Provisos nor was it necessary under the Standing Orders to place the matter at any stage before the Minister. Shortly put, it is said that the executive Government is originally vested in the Governor who has, by framing rules of business, delegated his powers to the Minister and further given the Minister the power to issue standing orders, and that the Minister concerned, by virtue of such power, has by standing orders authorised the Secretary to allocate certain matters between the officials of the Department, and that the Secretary has by an order allocated the matter, enabling the Assistant Secretary Sri Samanta to deal with it.

7. Originally, in the affidavit filed, it was stated that the sanction and approval was accorded by Sri Section Banerjee, the Secretary. Now it has been modified and it is said that the approval to the Scheme was done by Sri Samanta. It is not quite clear as to whether it was Sri Samanta who also was the person who was satisfied on behalf of the Government for the purpose of issuing the declaration u/s 6. Mr. Banerjee has, however, tiled an affidavit and stated that everything was done by Sri Samanta. I take it therefore that the duty or being satisfied was also performed by Sri Samanta on behalf of Government. The actual declaration u/s 6 is signed by Sri P. M. Dutt, the Deputy Secretary. There is however no affidavit of Sri P, Dutt. "

8. There can be no doubt that under the statute, the Government has power to sanction a development scheme and to issue a declaration u/s 6 of the Act, after being satisfied of certain matters. The duty to be satisfied is certainly a statutory duty. The question to be determined is as to whether such statutory duties must be performed by the Minister himself or can be performed by officers under him, to whom the matter is allocated. Mr. Gupta has strongly relied on a decision of the Orissa High Court, *Shyamaghana Ray v. State*, AIR 1952 Ori 200 . This" was a case under the Preventive Detention Act. The validity of- an order of detention made u/s 3 of the Preventive Detention Act depends on the satisfaction of the Provincial Government. The question that arose was whether the satisfaction of the Home Secretary was enough. It was held that having regard to Article 166(3) of the Constitution, and Rule 8 of the Rules of Business promulgated by the Governor of Orissa in exercise thereof, the satisfaction of the Minister concerned must be taken to be the satisfaction of the Provincial Government, but there was no legal provision at all for the delegation of that responsibility from the Chief Minister to the Home Secretary. Das C. J. said as follows:

"We cannot treat Rule (2) of the Subsidiary Rules as authorising or validating any such delegation of responsibility. The Subsidiary Rules have been made by virtue of Rule 14 of the main Rules of Business and are meant to be merely supplementary. They cannot be effective to authorise the delegation of statutory responsibility. Besides, Sub-article (3) of Article 166 of the Constitution makes it clear that the allocation of the business of the Government is to be amongst the Ministers of the Government. A Secretary cannot be allocated any such business,

at any rate, no such, business which involves a statutory responsibility though by virtue of the rules made for the more convenient transaction of business he can form an intermediate link."

9. Mr. Gupta has argued that in the present case the Governor has delegated his power by framing Rules of Business framed in exercise of powers conferred by Clause (3) of Article 166 of the Constitution. Such powers have been delegated to the Ministers and it is said that the Ministers have been given the power to issue standing orders but that is merely supplementary and cannot justify the delegation by a Minister of the power to be satisfied which is a statutory responsibility. In answer to this argument of Mr. Gupta, the learned Advocate General has stated that the Minister is entrusted with so great a volume of work that it is impossible for him to do everything personally and that is why the Minister has been given the powers to promulgate standing Orders by which he decides as to whether any particular class of work should be done by himself or that it should be done by his subordinates. He argues that the standing orders are perfectly reasonable and only matters of importance involving questions of policy etc. are required to be placed before the Minister. Here however all the preliminary work had been done by the Land Planning Committee and it was a mere question of considering their recommendation and approving of it, as also of approving the development scheme which had been scrutinised by the Land Planning Committee as well as the Collector, and by the time it came to Government it had almost become a routine work to give it sanction. The first case that is cited is *Local Government Board v. Arlidge* (1915) AC 120 where Viscount Haldane L. C. said as follows:

"The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for that he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff. . . ."

10. The next case cited is *Carltona Ltd. v. Commissioners of Works* (1943) 2 All ER 560. This is a case which is very near the facts that we are dealing with here. Under the Defence (General) Regulation which was in force in England during the last world war, it was laid down that a competent authority, if it appeared to that authority to be necessary or expedient so to do in the interest of public safety, the defence of the realm, or the efficient prosecution of the war, may take possession of any land, and may give such directions as appeared to the competent authority to be necessary or expedient in connection with the taking of possession of that land. On November 4, 1942 a notice was issued on behalf of the Commissioners of Works which was a competent authority under the

regulations, signed by one Mr. Morse, Assistant Secretary to the First Commissioner of Works, which is a ministry in England, to the effect that the Ministry of Works and Planning had come to the conclusion that it was essential in the national interest to take possession of the appellant's factory at Willesden, Amongst others, a point was taken that the requisition was bad because the persons constituting the requisitioning authority never brought their minds to bear on the question. The Commissioners of Works was the competent authority under the regulations and it was conceded that the Commissioners of Works as a body never meet, but its functions are exercised by the First Commissioner of Works who holds a Ministerial rank and is the head of what is commonly known as the office of Works. The question was whether the Assistant Secretary to the Minister concerned could deal with the matter in the way he had done. It was not disputed that the Assistant Secretary had himself conducted the whole matter which was never placed before the Minister, personally. Lord Greene M. R. says as follows:

"The next point which was taken was that the requisition itself was bad quite apart from the notice because the persons constituting the requisitioning authority never brought their minds to bear on the question. That argument is based, as it seems to me -- and I say this without the slightest disrespect to the argument -- upon a complete misapprehension as to the facts. It appears to have been thought at the time of the trial that the proper persons to take into consideration the question of exercising the power under this regulation were the Commissioners of Works themselves, a body which, as I have said, never meets. If that idea ever was put forward, and I am not quite sure whether it was or not, a moment's consideration will show that the argument cannot be supported for the very simple reasons first, that the person who has the statutory power to act for the Commissioners of Works is the First Commissioner, and, secondly, that the person acting for the First Commissioner in this matter was the Assistant Secretary. There is no point in the argument at all that the Commissioners of Works as such did not take the matter into consideration, nor is there, in my opinion, any substance in the argument that, at any rate, the First Commissioner did not personally direct his mind to the matter.

In the administration of Government in this Country the functions which are given to Ministers (and constitutionally properly given to Ministers because they are constitutionally responsible) are functions so multifarious that no Minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual Ministries. It cannot be supposed that this regulation meant that, in each case, the Minister in person should direct his mind to the matter. The duties imposed upon Ministers and the powers given to Ministers are normally exercised under the authority of the Ministers by responsible officials of the Department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an Official is, of course, the decision of the Minister. The Minister is responsible. It is he who must answer before Parliament for anything that his

officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of Departmental Organisation and administration is based on the view that Ministers, being responsible to Parliament, will see that important duties are committed to experienced officials. If they do not do that, Parliament is the place where complaint must be made against them.

In the present case the Assistant Secretary, a High Official of the Ministry, was the person entrusted with the work of looking after this particular matter and the question, therefore, is, relating those facts to the argument with which I am dealing did he direct his mind to the matters to which he was bound to direct it in order to act properly under the regulation?"

11. Coming to the facts of the present case, I find that although the executive government is vested in the Governor, actually the executive government is carried on by the Ministers. According to Rules 4 and 5 of the Rules of Business, the business of Government is to, be transacted in departments specified in the First Schedule thereof, and the Governor shall on the advice of the Chief Minister allot amongst the Ministers the business of Government by assigning one or more departments to the charge of a Minister. So far as the Minister is concerned, the work that he has to do is so multifarious that it is not possible for him to give his personal attention to each and every case. That is why he has been given the power to issue standing orders or give such directions for disposal of cases in his department as was necessary therefore. With great respect I do not think that we are concerned here with the delegation of power or responsibility. It is really devising a scheme under which the administration of Government is to be carried out. The Governor is more or less a constitutional head and the work of executive Government is really carried out by the Ministers. But, as I have stated above, it is not possible for the Ministers to do all their work personally. It has therefore to be divided amongst officials. Thus, the acquisition of land", important as it is, will like all other subjects, be the subject matter of allocation. The question arising therein may be a routine question or an important question of policy. The guiding principle is that the Minister deals personally with the most important matters, but matters of Ordinary import are dealt with by other officials, The Minister is expected to allocate matters only to responsible officers. If he does not do so, the responsibility is his, because in the end the ultimate responsibility is that of the Minister and not of the subordinates who act for him. There can be no doubt that the Secretary or the Assistant Secretary is an important official. In fact, according to the definition in the Rules of Business, the "Secretary includes an Assistant Secretary. In my opinion, therefore the Standing Orders whereby the Minister has determined as to which matters are to be put before him, personally and which are to be dealt with by his subordinates are valid, and with great respect I am unable to agree with the decision of the Orissa High Court in this respect. Perhaps the decision of the Orissa High Court may be supported on the ground that it involved the liberty of

the subject, and was a matter important enough to be considered by the Minister himself. But I do not think that it can be laid down as a general principle that every statutory duty that has to be performed by the Minister must be done by him personally and not through his subordinates. As I have said above, the ultimate responsibility is his, and the notifications that are to be published would have to be published in the proper manner. The declaration in this case has been issued in the name of the Governor and duly authenticated. But it would be too much to expect that the Minister would deal with every case of land acquisition personally.

12. Now that I have held that the Standing Orders are valid and that the Assistant Secretary could deal with the matter and that he could be satisfied on behalf of the Government and also sanction the plan on behalf of Government, the next question that arises is as to whether, in so acting, he has acted in accordance with the Standing Orders. On this branch of his argument Mr. Gupta has formulated his case thus: He has pointed out the Standing Orders 2(18), (28) and (29) all of which have been set out above. He says that under these standing orders the matters involved in this case had to be placed before the Minister before the issue of Orders and as this has admittedly not been done, the orders of sanction and the issue of declaration are invalid. Of course if the Standing Order lays down that the Assistant Secretary can do certain things himself and may not do certain other things but should place them before the Minister for his order, then if such orders are violated, the Assistant Secretary would be acting without authority and the orders would be bad. I shall now deal with the Standing Orders which are stated to have been violated. In other words, it is to be considered as to whether on the facts of the present case the matter came within the ambit of the Standing Orders mentioned above. With reference to Standing Order 2(18) Mr. Gupta argues that in this particular case the case was taken up by the Land Planning Committee set up under the Land Development and Planning Act, and ultimately the Land Planning Committee made its recommendations and acted right up to the acceptance of the development scheme and the issue of the declaration u/s 6. It is argued on the other hand that the particular Standing Order speaks about cases "proposed to be taken up by the Land Planning Committee," that is to say, it must be at a stage when the Land Planning Committee had not actually taken it up. In my opinion, this is not a valid argument, because under the Act and the Rules and as a matter of practice the matter is not dealt with by the Government before the Land Planning Committee has taken it up, or propose to take the matter up. At least, no provision anywhere has been shown to me dealing with such a situation. In my opinion, the Standing Order means that where the Land Planning Committee set up under the Act takes up a case or where the case has to go through the Land Planning Committee, then such a case should be brought to the notice of the Minister, before the issue of orders. In my opinion, the facts of this case show that the matter did come within this heading. It is plain also that at no stage was the matter placed before the Minister, either before or after it came to

be taken up by the Land Planning Committee.

13. As I have stated above, the society in the first instance submitted a tentative proposal with a lay-out plan, and this was placed before the Land Planning Committee. u/s 3 of the Act, the State Government may appoint in accordance with the rules, an authority for carrying out the purposes of the Act, known as the "Prescribed Authority." The Land Planning Committee is the Prescribed Authority, and is appointed in accordance with the rules. The Land Planning Committee is concerned with the initiation of development schemes, the procedure for the finalisation thereof, the sanction of the development scheme, the issue of a declaration u/s 6 and even the execution of the scheme. In practice, it is the Land Planning Committee which, advises the Government as to whether it should issue a notification u/s 4 Or whether it should sanction the development scheme or whether it should issue a declaration u/s 6 and so Forth, In the present case, the Land Planning Committee has done all these things, and it is clear, therefore, that this is a case which has been taken up by the Land Planning Committee. Consequently, it is a matter which the Assistant Secretary should have placed before the Minister under Standing Order No. 2(18), but never did so.

14. I now come to Standing Order No. 2(28). Under this Standing Order, all schemes relating to acquisition and settlement of waste lands have to be placed before the Minister. It is argued that in this case the acquisition is admittedly of waste lands or at least of land part of which is waste. Consequently it is argued that the matter could not be dealt with by the Assistant Secretary himself and should have been placed before the Minister. In my opinion, this point is somewhat doubtful. I do not find any admission on the part Of the respondents that the land which is the subject matter of acquisition is waste land. What has been said in the affidavit is that the factory consists of a half-built iron frame and whatever structure there is, is dilapidated. In his affidavit, Dharendra Kumar Sircar, the Additional Land Acquisition Collector, Alipore, said as follows:

"I say that on local inspection I found that the company had its main factory in a separate piece of land and that was not in running condition. The lands under acquisition were lying abandoned and unused on the western side of the factory"s main land with dilapidated structures. It is only after the notification u/ s 4 was published that the petitioner attempted to make some unauthorised construction without previous permission from the Collector, which has since stopped."

15. It is nowhere stated in the petition that the land or any part of it is waste. It is stated that the various plots of lands in villages Gholia and Natagarh within Police Station Khardah in the District of 24 Parganas were purchased for the erection of factory building, roads, quarters for labourers, bungalows, etc., to be need in connection with the proposed cotton mill. Upon this evidence I do not think it can be said that the acquisition was an acquisition of waste land. An acquisition of waste land would mean the acquisition of lands, the whole of

which, or a substantial part of which, was lying waste. By the expression "waste land" is meant land which was neither developed nor used as arable land, but land which was undeveloped and unproductive, and which in any event could not be made productive unless it was developed. On the affidavits in this case, it cannot be said that the scheme of acquisition that we are concerned with was a scheme for the acquisition of lands which were wholly or mainly waste lands.

16. I next come to the Standing Order No. 2(29). Under this, all cases relating to land acquisition by companies or industrial concerns or by Government under the Land Acquisition Act must be placed before the Minister at a stage before there is notification u/s 4 and agreement u/s 41. In my opinion, the fact that in this case the land is not being acquired under the Land Acquisition Act but under the Land Development and Planning Act makes no difference. Under the latter Act, there is no provision for acquiring land for the purposes of companies. As is well known, at a certain stage the acquisition under the Land Development and Planning Act merges into the procedure under the Land Acquisition Act. In this case, the land was being acquired for the society, which is a registered society and comes within the definition of a company under the Land Acquisition Act. In any event, by the time the stage came for an agreement u/s 41 of the Land Acquisition Act, the matter had commenced to be dealt with by that Act. As will appear from the Standing Order set out above, the matter had to be placed before the Minister before there was notification u/s 4 and agreement u/s 41. Since the land was being acquired under the West Bengal Land Development and Planning Act, the notification u/s 4 would have to be taken as the notification u/s 4 of that Act. It would be absurd to suggest that an acquisition under the Land Acquisition Act was important enough to be placed before the Minister but not an Acquisition under the Land Development and Planning Act. So far as that notification is concerned, it was of course never placed before the Minister at any stage. With regard to the agreement u/s 41 the position is as follows: On 19-4-1955 the society was informed that the development scheme had been approved and the society was required to submit the draft agreement duly signed and sealed by the society in the standard form used for that purpose. The society made certain alterations in the standard form and ultimately the terms of the agreement were approved by both sides and duly executed by the society. On 21-7-1956 a notification was issued, being Notification No. 12813-L. Dev., whereby it was notified that the State Government had empowered the society, being a society registered under the Societies Registration Act, 1860 to execute at its own costs a development scheme in the villages of Ghola and Natagarh, Police Station Khardah, District 24 Parganas in respect of lands situate in the said villages for the establishment of an agricultural colony and creation of better living conditions. It was notified that a copy of the agreement entered into by the said society with the State Government was kept open for inspection of the public at the office of the society. This is in compliance with Ss. 42 and 43 of the Land Acquisition Act. On 9-8-1956 was published the declaration u/s 6. In this case, therefore, there has been a land acquisition by a company, that is to say, by the

Government at the cost of a company. But it was not placed before the Minister either before the notification u/s 4 was published, nor before the agreement u/s 41 was entered into.

17. The question, therefore, is as to how this violation of the Standing Orders has vitiated the acquisition. In my opinion, it is inescapable that the whole proceeding should be declared bad. Since it is an acquisition on behalf of a company, and the matter has to go through the Land Planning Committee. It must be placed before the Minister, even before the notification u/s 4 is published. Since the matter has to be placed before the Minister personally, the question as to whether the subsequent steps require his personal supervision or not will depend upon the Standing Orders themselves. I think he can empower the Assistant Secretary to deal with the routine part of it but since the matter is considered important enough to be referred to him, it should be important enough to require that the statutory liability of the Government should be performed by the Minister, personally that is to say, the sanction and the satisfaction should be his. It is essential that the matter must be placed before him before entering into an agreement.

18. The result is that the Rule must be made absolute and the notification dated 4-2-1955 and the declaration u/s 6 dated 21-7-1956 and the entire land acquisition proceeding including the agreement entered into between the society and the Government must be set aside and quashed and an appropriate writ issued therefore. There will also be issued a writ in the nature of Mandamus upon the respondents not to give effect to the same. This will, however, not prevent the respondents from proceeding to acquire the land in accordance with law.