

(1965) 07 CAL CK 0009

In the Calcutta High Court

Case No : A.F.O.O. No. 526 of 1961 (Mandamus appeal)

Chirkut Tewari

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-07-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18, 40, 40(1), 41(5), 6
Land Acquisition Act, 1962 — Section 7

Citation : AIR 1967 Cal 89 : 70 CWN 1

Hon'ble Judges : H.K. Bose, C.J;B.C. Mitra, J

Bench : Division Bench

Advocate : Arun Kumar Dutt and Nanda Lal Pal, for the Appellant; N.C. Chakrabarty and Rabindra Narayan Chaudhury for Respondents Nos. 1 to 4 and 6, Apurbadhan Mukherjee and Dhruva Kr. Mukherjee for Respondent Nos. 5(a) to 5(i), for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This is an appeal from a judgment and order of Banerjee J., dated September 11, 1961, whereby a rule nisi obtained by the appellant, on a petition under Article 226 of the Constitution, was discharged. A society registered under the Societies Registration Act, 1860, and known as Hooghly Kristi Parishad (hereinafter referred to as the Parishad) required some land for its activities. The appellant claims to be the owner and as such in actual possession of C. S. plots Nos. 3367 and 3368, which together cover an area of more or less .086 acres. These plots are situated in the town of Chinsurah, and it is alleged by the appellant, that they are contiguous to all routes of buses and other communications. The appellant is a minor and it is claimed that he is maintained by his father and natural guardian Jagannath Tewari, out of the income of the said properties.

2. A Notification u/s 4 of the Land Acquisition Act, 1894, (hereinafter referred to as the Act) dated July 11, 1956, was published for acquisition of the said land. In

this notification it was stated that the land was likely to be needed for a public purpose, namely, the construction of a Public Hall and buildings for cultural and social works of the Hooghly Kristi Parishad. It was also stated that the said land was likely to be needed for the public purpose at the expense of the Hooghly Kristi Parishad. The appellant thereupon filed an objection u/s 5-A of the Act, before the Land Acquisition Collector, Hooghly. The grounds of the objection, inter alia, were that the acquisition proceedings were commenced mala fide, as there was dispute and enmity between the appellant and one Nityagopal Dey, one of the members of the said Parishad. Suits were filed to oust the appellant from the said land and Dey, having lost in all the suits, purported to make an ostensible gift to the said Parishad of the plots of land in question by the acquisition proceedings. The next ground of objection was that the purpose of the acquisition was not a public purpose, and that the said Parishad was not in need of any land as it was in possession of sufficient land. The next ground was that there was no need of a Public Hall as there were several such halls and libraries, which could be and were used whenever required.

3. By a letter dated September 20, 1956 the Collector, Hooghly, fixed September 26, 1956, for hearing of the objections before the Special Land Acquisition Collector Hooghly. A declaration u/s 6 of the Act was published in the Calcutta Gazette on January 22, 1959. On February 23, 1959, the Collector, Hooghly, issued a notice u/s 9 of the Act, stating therein that the Government Intended to take possession of the land and that claims for compensation might be made to the Collector. On March 20, 1959, the appellant filed an objection before the Land Acquisition Collector against the said notice. By a notice dated June 2, 1959, the appellant was informed that an award of compensation had been made by the Collector on June 1, 1959, and that a sum of Rs. 4,995.31 nP. was payable to him as such compensation. The appellant was called upon to appear before the Land Acquisition Collector personally or by agent if he was willing to accept the said compensation. The appellant was not satisfied with the award of compensation and filed a petition for a reference u/s 18 of the Act to Court, for determination of the measurement of the land, the amount of compensation and other connected matters, by a memorandum dated August 10, 1959 the appellant was directed to vacate the land and to deliver vacant possession on August 28, 1959 at 11 a. m. to Kanungo, D. L. Chakravarty. This was followed by a written representation dated August 16, 1959, on behalf of the appellant to the Collector of Hooghly, that the acquisition proceedings were bad, firstly, because the said Parishad was not a company, secondly because the acquisition was mala fide as it was alleged to be engineered at the instance of a Minister of the State Government, who was the President of the said Parishad which served no public purpose, thirdly, because, the land belonged to a minor and was encumbered being the subject-matter of litigation and finally because the appellant was not given a hearing. A further representation was made on the same day to the Special Officer and Deputy Secretary, Land and Land Revenue Department to the effect that the Notification u/s 4 and the Declaration u/s 6 of the Act had been

made in contravention of Article 166(3) of the Constitution and the Rules of Business made by the Governor, that no consent of the State Government as required u/s 40(1) of the Act had been taken, and that Section 40(1)(b) of the Act had not been complied with.

4. The appellant thereafter, moved a petition under Article 226 of the Constitution, as the land was not released from the acquisition proceedings, and obtained a rule nisi, which was discharged by Banerjee, J. as herein before mentioned. This appeal is directed against this judgment of Banerjee, J.

5. Mr. Arun Kumar Dutt, learned advocate for the appellant contended that the Declaration u/s 6 of the Act was illegal, on the ground that the acquisition was admittedly purported to be made for the said Parishad, which as a registered Society, was a company within the meaning of Section 3(e) of the Act. But in the Declaration u/s 6 of the Act, it was not stated that the acquisition was for a company. On the contrary, Mr. Dutt argued, it was stated in the Declaration, that the land was needed for a public purpose at the expense of the said Hooghly Kristi Parishad. The Declaration, it was argued, made it plain that land was needed for a company, but the purpose of acquisition was stated to be a public purpose, and although the acquisition was stated to be for a public purpose, the expenses were to be met by a company, namely, the Parishad. Such a Declaration, Mr. Dutt argued, was contrary to law and should, therefore, be struck down.

6. In support of this contention, Mr. Dutt relied upon a decision of the Supreme Court in the 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 land was sought to be acquired for the Ramkrishna Mission, which is a Society registered under the Societies Registration Act, 1860. A Notification u/s 4 of the Act was issued in which it was stated that land was likely to be needed for a public purpose, namely, for the construction of staff quarters, hostel buildings and play ground of the Mission. Proceedings were taken u/s 5-A of the Act, and a further enquiry was made u/s 40 of the Act later on, and thereafter a Declaration u/s 6 of the Act was made. The Supreme Court considered the question whether the acquisition in that case was for a public purpose, in which case the whole or part of the compensation was to come out of the public revenues, or for a company, in which case the compensation was to be paid by the company. It was argued in that case that it appeared from the declaration u/s 6 of the Act that the acquisition was for a public purpose and not for a company, and therefore, in order that a notification might be valid, the whole or part of the compensation should come out of public revenues or some fund controlled or managed by a local authority. But in that case the entire compensation was to be paid by the Mission and, therefore, since in the Declaration, it was stated that the acquisition was for a public purpose, it was argued that it must be held to be invalid. Dealing with the Declaration in that case it was held that the Declaration made it clear that land was needed for a public purpose, but though this Declaration began by

saying that land was needed for a public purpose, and it was not stated that it was needed for a company, it did specify for what particular purpose the land was needed, namely, for construction of staff quarters, hostel buildings and play ground of the Mission which is a company. It was held that the declaration indicated that the land was needed for a company though it did not say so in so many words. On the question of payment of compensation by the Mission it was observed as follows at page 651 of the report :

"Finally, the notification says that the land is needed for the aforesaid public purpose at the public expense of the "Ramkrishna Mission". We must say that this language is rather curious for if the compensation was to be paid by the Mission it could not be at the "public expense" and in any case the words the public expenses of the Ramkrishna Mission" are a contradiction in terms. The reasonable interpretation of these words therefore is that the acquisition will be at the expense of the Mission. This is borne out by the fact that the agreement u/s 41 which preceded the notification and which must precede it in view of Section 39 provides in Clause (1) thereof that "all and every compensation in respect of the said land shall be paid by the Mission". There is no doubt that the notification u/s 6 is very clumsily drafted and we cannot fail to condemn such clumsy drafting where the notification is the basis of all subsequent proceedings. But on a fair and reasonable reading of the notification u/s 6 in this case there can be no doubt that it means that the land is required for a company (namely, the Mission) and that it is to be acquired at the expense of the company (namely, the Mission).

The earlier decision of the Supreme Court in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, , was distinguished on the ground that the decision in that case turned on the interpretation of the particular Notification under challenge in that case.

7. On the law as restated by the Supreme Court, it is clear that a declaration u/s 6 of the Act cannot be held to be bad because land was needed for a company and the compensation was stated to be payable "at the public expense of the Ramkrishna Mission" Such a declaration was to be given a reasonable interpretation, and it was to be seen on a fair reading of a Declaration u/s 6 of the Act as to for what purpose the land was to be acquired, namely, whether it was for a company or for a public purpose. The Declaration, however, in that case was struck down on another ground, namely, that the State Government in giving its consent apparently thought that construction of staff-quarters stood on the same footing as construction of hostel buildings and play ground and considered the necessity of giving consent on the basis of Clause (b) only of Section 40(1) of the Act. The view taken by my Lord the Chief Justice that Clause (a) was not considered at all by the State Government and the land required for the construction of staff quarters could not be brought under Clause (b) of Section 40(1) of the Act, was upheld" the Supreme Court. But in so far as the validity of 8 declaration u/s 6 of the Act on the ground of payment of

compensation by a company for whom land was required, is concerned, the Declaration was held by the Supreme Court to be valid and binding and to that extent this decision is entirely against the contentions of Mr. Dutt.

8. The same question was considered by the Supreme Court in the earlier decision in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, . In that case land was sought to be acquired for a company for the construction of buildings for godowns and administrative office. A notification u/s 4 of the Act was issued and thereafter, proceedings were taken u/s 5-A of the Act and an enquiry was made by the Collector. The Collector reported that the land was essential for the company, and was needed for a public purpose, and accordingly, recommended that a Declaration u/s 6 of the Act might be made. In the Declaration u/s 6 of the Act, it was stated that the State Government was satisfied that the land was required for a public purpose, namely, for the construction of buildings for godowns and administrative office. Dealing with the question, if the Declaration u/s 6 of the Act, was valid as it was stated that land was needed for a public purpose, but in fact it was needed for a company, the Supreme Court held at page 429 of the report as follows :

"Further the proviso to Section 6(1) provides that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by a local authority, This clearly contemplates two kinds of declarations. In the first place, a declaration may be made that land is required for a public purpose, in which case in view of the proviso, the compensation to be awarded for the property to be acquired must come wholly or partly out of public revenues or some fund controlled or managed by a local authority. No declaration u/s 6 for acquisition of land for a public purpose can be made unless either the whole or part of the compensation for the property to be acquired is to come out of public revenues or some fund controlled or managed by a local authority; see *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, . In the second place, the declaration u/s 6 may be made that land is needed for a company in which case the entire compensation has to be paid by the company. It is clear therefore, that where the entire compensation is to be paid by a company, the notification u/s 6 must contain a declaration that the land is needed for a company. No notification u/s 6 can be made where the entire compensation is to be paid by a company declaring that the acquisition is for a public purpose, for such a declaration requires that either wholly or in part, compensation must come out of public revenue or some fund controlled or managed by a local authority. In the present case it is not in dispute that no part of the compensation is to come out of public revenues or some fund controlled or managed by a local authority; on the other hand the whole compensation was to be paid by the company. Therefore, the notification u/s 6 if it was to be valid in the circumstances of the present case had to declare that the land was needed for a company. No valid notification u/s 6 could be made in the circumstances of this case declaring that land was needed for a public purpose, for no part of

compensation was to be paid out of public revenues or some fund controlled or managed by a local authority."

Relying upon these observations, Mr. Dutta argued that in this case land was needed for the Parishad which was a company and the Declaration u/s 6 of the Act made it clear that the expenses of acquisition were to be paid by the parishad. But Mr. Dutt argued that the opening words of the Declaration made it clear that the land was needed for a public purpose and there was no indication in the Declaration that it was needed for the purpose of a company, except for the statement that expenses were to be paid by the Parishad. This, Mr. Dutt argued, was not permissible having regard to the observations of the Supreme Court in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, . But *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, has been explained by the Supreme Court in the later decision of *State of West Bengal and Others and Ramkrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, . In that case the Declaration stated that the land was needed for a public purpose, namely, for the construction of staff quarters, hostel buildings and play ground of Ramkrishna Mission at Narendrapur. The Declaration in the appeal now before us is also to a similar effect, namely, that although it is stated that land is needed for a public purpose, the purpose for which it is required is also specified, namely, for the construction of a Public Hall and building for cultural and social works by the Hooghly Kristi Parishad in the village of Chinsura. List 20, Thana--Chinsura, Paragana--Arsa, Dist. Hooghly. It will thus be seen that the Declaration in the appeal now before us is almost identical in terms with the Declaration made in the case of the proposed acquisition for the Ramkrishna Mission, and this Declaration was upheld by the Supreme Court as it did specify for what particular purpose land was needed, namely, for construction of staff quarters, hostel buildings and play ground of the Mission, which is a company. It was held that the Declaration did indicate that the land was needed for a company though it did not say so in so many words. As I have noticed earlier, the Supreme Court in its decision in *State of West Bengal and Others and Ramkrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, distinguished the earlier decision in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, on the ground that the decision in the latter case turned on the interpretation of the particular Declaration under challenge in that case. The distinguishing feature appears to be, that in the Declaration u/s 6 in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, it was stated that the State Government was satisfied that the land was required for a public purpose, namely, for the construction of building for godowns and administrative office, whereas in *State of West Bengal and Others and Ramkrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, , it was stated in the Declaration that land was needed for a public purpose namely, for construction of staff quarters, hostel buildings and play grounds of Ramkrishna Mission at Narendrapur. This Declaration was upheld by the Supreme Court on the ground that on a fair and reasonable reading of the

Declaration u/s 6, there could be no doubt that it meant that the land was required for a company. In *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, also the land was needed for a company, but the company in that case was engaged in private trade and industry and the godowns and administrative office, for which land was needed was to advance the commercial and business interest of the company. But in *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, land was needed for the Mission, the object of which, as noticed by the Supreme Court was to impart and promote the study of Vedanta and its principles as propounded by Shri Ramkrishna and also to propagate religious, social and educational teachings and activities for the benefit of the public. The object, therefore, of the two companies in the two cases before the Supreme Court was entirely different. In the appeal now before us, land has been declared to be needed for the purposes of the Hooghly Kristi Parishad for construction of a Public Hall and building for cultural and social works conducted by the Parishad. There is no motive of private gain or advancement of Society's interest in trade, commerce or industry, The objects of the Parishad have been set out in its Memorandum of Association and they are:

(a) To promote a cultural life among the people, to maintain study circle with free reading room, and a Public Hall for the use of the members of the Association and the public

(b) to hold meetings, debates and lectures on literature, science, fine arts and other allied subjects for the diffusion of knowledge among the members of the association and the public.

(c) to establish and conduct free night school for adult education and in day times primary school,

(d) to stage dramas, to hold musical soirees, to conduct educational excursions, to hold exhibitions for the development of cultural faculties.

9. The objects of the parishad, therefore, are to put it briefly, the development of a cultural life among the members of the public of the locality and spread of education. These objects though not so wide and varied in range as those of the Ramkrishna Mission, are without a doubt, objects in which the public at large are interested and which are intended primarily for the benefit of this public. There is no element of private gain or advancement of any private interest of any individual or association. That being so, can the Declaration u/s 6 of the Act for the acquisition of the land be held to be bad on the grounds urged by Mr. Dutt? Before this question is answered, it is necessary to deal with the contentions raised on behalf of the respondents.

10. Mr. A. D. Mukherjee, learned advocate for the respondents Nos. 5 (a) to (i) contended that having regard to the decision of the Supreme Court in *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, , the validity of the Declaration u/s 3

of the Act, cannot be challenged by the appellant, either on the ground that the land was not needed for a public purpose, or on the ground that the Declaration, while stating that land was needed for a public purpose, also made it clear that the expenses of the acquisition were to be paid by the parishad. He argued that there was a difference in the public purpose as specified in the Declaration in this case and the public purpose specified in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, . In this case the public purpose as specified in the Declaration is

"the construction of a Public Hall and building for cultural and social works by the Hooghly Kristi Parisad."

But in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, the public purpose specified in the Declaration was the "the construction of buildings for godowns and administrative office" of the company for whom the land was needed. It was further argued that in *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others* and *Abdul Kadar Laskar and Others*, the public purpose specified was "the construction of staff quarters, hostel buildings and play ground of Ramkrishna Mission", and the Supreme Court upheld in particular the conclusion of my Lord the Chief Justice that the construction of hostel buildings and play grounds came within Clause (b) of Section 40(1) of the Act, but that the construction of staff quarters did not come under that Clause. Hostel buildings and play grounds were meant for the students of the institution, who as a body was held to form a section of the public and therefore, it was held that the hostel and the play ground would be directly useful to a section of the public. But in the case of staff quarters, it was held, they were meant for occupation of members of the staff, individual members of whom could not be held to be a section of the public, and therefore, the staff quarters could not be held to be useful to the public. Mr. Mukherjee argued that in this case there could be no doubt that the public purpose for which the land was needed was different from the public purpose in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, and also from the building of staff quarters in *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others* and *Abdul Kadar Laskar and Others*, , which was held not to be a public purpose by this Court and also by the Supreme Court. It was argued that there could be no doubt that the construction of a Public Hall and buildings for cultural and social works would be directly useful to the public of Chinsura. Therefore, Mr. Mukherjee argued, the Declaration could not be held to be bad, as it was quite plain that the buildings sought to be constructed would be directly useful to the public. The learned Government Pleader appearing for the respondents Nos. 1, 2, 3 and 4 adopted and supported this branch of Mr. Mukherjee's argument. It seems to us that there is good deal of force in this contention of Mr. Mukherjee. The purpose for which the land is needed in this case is manifestly different from the purpose for which it was needed in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, , in which the land was needed for a company, and the public was to

be in no way directly benefited by the construction of the building. In *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, , construction of hostel buildings and play ground was held to be a valid public purpose, as they were to be directly useful to the public. For these reasons the Declaration u/s 6 cannot be held to be invalid on the grounds advanced by Mr. Dutt.

11. The next contention of Mr. Dutt was that the land acquisition proceedings were invalid because of violation of Sections 39, 10 and 41 of the Act. It was argued that u/s 39, the provisions of Sections 6 to 37 of the Act could not be put in force for acquiring land for a company, except with previous consent of the State Government. Under that Section, the company is also required to execute an agreement before the said Sections are put into operation. u/s 40(1) the consent of the State Government, it was argued, should not be given unless the State Government was satisfied, either on the report of the Collector u/s 5-A or by an enquiry held as provided in Section 40(1).

12. Mr. Dutt argued that in *R.L. Arora Vs. State of U.P.*, , the Supreme Court held that the acquisition of land for setting up a factory for manufacturing textile machinery, in which the entire compensation was to be paid by the company was held to be invalid, even though the products of the company would be useful to the public, and even though the agreement between the company and the Government, provided that all persons having dealings with the company would have the right of access to the land and works of the company. It was also held that the intention of the Legislature in enacting Sections 40(1)(b) and 41(5), which must be read together, was that the land should be acquired only when the work to be constructed thereon was directly useful to the public and the agreement contained a covenant that the public should be entitled to use the work as such for its own benefit. Mr. Dutt argued that the acquisition proceedings in this case were invalid because the agreement did not at all make it clear that the buildings to be constructed on the land would be directly useful to the public, and unless there was a covenant in the agreement that the public should be entitled to use the work, the acquisition must be struck down and held to be invalid.

13. In support of this contention Mr. Dutt drew our attention to Clause (8) of the agreement which is as follows:

"8. The public shall be entitled to use the buildings subject to the rules and regulations of the Hooghly Kristi Parishad."

Mr. Dutt argued that no rules and regulations had been framed by the Parishad providing for the time within which and the conditions on which and the terms on which the public shall be entitled to use the work as required by Section 41(6) of the Act. In the absence of rules and regulations of the parishad laying down the terms on which the public shall be entitled to use the work, the agreement, it was argued, must be held to be illegal as being contrary to Section 41(5) of the

Act.

14. Mr. Dutt also referred to another decision of the Supreme Court in *R.K. Agarwalla and Others Vs. State of West Bengal and Others*, . In that case land was sought to be acquired for a religious and charitable organisation known as Bharat Sebashram Sangha, which was registered under the Societies Registration Act, 1860. The land was needed for a public purpose which was specified to be the construction of social workers quarters, the students' home, publication department, the guest house and Panthasaia. An enquiry was held by the Government u/s 40 of the Act, and on being satisfied that the land was needed for the said purposes and that the said work was likely to prove useful to the public, the Government gave its consent to the acquisition. Notices were issued under sections 9 and 10 of the Act, and possession of the land was taken by the State Government on March, 8, 1958. A petition under Article 226 of the Constitution was moved which was rejected by the trial Court as well as by the Court of appeal and thereafter, the matter went up to the Supreme Court. In that case the Supreme Court followed its earlier decision in *R.L. Arora Vs. State of U.P.*, It was however, noticed that the Land Acquisition Act, 1894, was amended after the decision of the Supreme Court in *R.L. Arora Vs. State of U.P.*, By Section 3 of the Land Acquisition Amendment Act, 1962. Clause (aa) was added immediately after Section 40(1)(a) and is to the following effect :

"That such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; or"

By Section 7 of the said amending Act, all acquisitions of land made before July 20, 1962, were validated and such acquisition proceedings were to be deemed to have been made for the purpose mentioned in Clause (aa) of Section 40(1) of the Act. It was held that although the acquisition of land commenced u/s 40(1) (b) of the Act, the acquisition could not be regarded as valid unless the work was likely to prove useful to the public directly and unless there was an agreement setting out the terms and conditions on which the public was entitled directly to use the work. But it was further held that although the acquisition could not be sustained having regard to the requirement of Section 40(1)(b) and 41(5), the introduction of Clause (aa) in Section 40(1) of the Act made the acquisition legal and valid, and that such acquisition would have been invalid, but for the amendment to Section 40(1) of the Act. In that case it was also noticed that the acquisition was completed on March 8, 1958, when the possession of the land was taken over and the title of the owner was extinguished by operation of Section 17(1) of the Act. By Section 7 of the amending Act. Clause (aa) of Section 40(1) of the Act was made retrospectively applicable to all acquisitions made before, July 20, 1962.

15. Relying upon this decision. Mr. Dutt argued that, the acquisition in that case was upheld because Clause (aa) of Section 40 was held to be applicable. But in this case the amended Clause (aa) of Section 40(1) of the Act, it was argued,

could not be invoked, because the acquisition was not complete before the specified date, namely, July 20, 1962, as required by Section 7 of the Amending Act. Therefore, Mr Dutt argued, the acquisition in the instant case must be struck down because Clause (aa) of Section 40(1) of the Act could not be invoked to uphold the acquisition.

16. Before dealing with the last contention of Mr. Dutt, I shall deal with his earlier contention that no rules and regulations having been framed by the Parishad in terms of Clause (8) of the agreement, providing for the conditions on which the work is to be executed and maintained, and the terms on which the public would be entitled to use the work, the acquisition must be held to be bad, and the Declaration for that purpose should be struck down. This contention is based on Section 41 of the Act. The basis of this contention is that no agreement could be entered into by the State Government as provided in Section 41 of the Act, and even if such an agreement was entered into, it could not be to the satisfaction of the State Government, as no rules and regulations had been framed by the Parishad, laying down the conditions on which the work is to be executed and maintained, and the terms on which the public shall be entitled to use the work. It was argued that unless the right and the title of the public, to use the work, were secured and guaranteed by an agreement containing a covenant regarding the right of the public to use the work or the terms on which such right is to be executed, the agreement would be invalid. Even if such an agreement was entered into, it was argued, it could not be held to the satisfaction of the State Government, as required by Section 41 of the Act. The agreement, therefore, Mr. Dutt argued, was in contravention of Section 41(5) of the Act. If the agreement was invalid, it was argued, the acquisition of the land must be held to be void.

17. Section 41(5) of the Act does not require that there shall be rules and regulations framed by the company setting out the terms on which the public shall be entitled to use the work. All that Section 11(5) of the Act requires is that where, the acquisition is for the construction of any work other than the works specified in Sub-sections (4) and (4-A) of the section, the agreement shall provide for the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work. Clause (5) of the agreement, provides that the construction of the buildings shall be completed and the building shall be equipped and made ready for use within two years from the date on which possession of the said land shall have been given to the Parishad, Clauses (4), (6), (7), (8) and (9) are the material clauses in the agreement concerning the right of the public to use the work. Clause (4) provides that the land shall be held by the Society for the purpose of construction of public hall and buildings for cultural and social work and welfare activities, as provided in the agreement and it also provides that without the sanction in writing of the State Government first had and obtained, the building shall not be used for any other purpose whatsoever. Clause (6) provides that if the work is not completed and equipped within the period specified in Clause (5), i.e., two years from the date on which possession is

taken, or if the land at any time ceases for a period of 12 consecutive months to be held and used for the purposes provided in the fourth clause of the agreement the State Government may summarily re-enter upon and take possession of the land together with all buildings thereon. Clause (7) provides that on taking such possession, the State Government may sell or otherwise deal with the land and buildings as it will think proper Clause (8) provides that the public shall be entitled to use the building subject to the rules and regulations of the Parishad and Clause (9) provides that in the event of any dispute or difference concerning the subject-matter of the agreement, such dispute shall be referred to the State Government whose opinion shall be final and conclusive and binding on the parties.

18. It will be seen from the material terms of, the agreement that sufficient care has been taken in providing for the rights of the public to use the work. It will also be seen that very drastic provision has been made, namely, re-entry by the State Government and sale of the buildings, in the event of violation of any of the terms of the agreement Further the buildings and works cannot be put to any use other than the purposes of the society without the sanction of the State Government in writing obtained beforehand The terms on which the public shall be entitled to use the work have, in our view, been sufficiently set forth in the agreement. The rights of the public to use the works and the buildings of the Parishad have been secured, as far as such rights can be secured, by agreement between the parties.

19. It was, however, argued on behalf of the appellant that no rules and regulations had been framed by the Parishad, as provided in Clause (8) of the agreement and therefore, it should be held to be bad. In our opinion, there is no merit in this contention. The statute does not require any such rules and regulations. The object of any such rules and regulations undoubtedly is, to secure and protect the right of the public to use the works and buildings. The terms of the agreement itself, however, amply provide such security, protection and guarantee. u/s 42 of the Act the agreement is required to be published in the Official Gazette, and on such publication the agreement is to have the same effect as if it had formed part of this Act. Therefore, the terms of the agreement are to be treated as part of the Act itself. The right of the public to use the work on the terms of the agreement, therefore, has a statutory protection. Even if the Parishad subsequently framed rules and regulations affecting or curtailing the right of the public to use the works and the buildings, such rules and regulations cannot, in our view, have the effect of modifying the agreement, which upon publication in the Gazette becomes part of the Act itself. If no rules and regulations have been framed by the Parishad, the public will have unrestricted and unlimited right to use the works and the buildings of the Parishad, subject to the terms of the agreement. In our opinion, therefore the absence of the rules and regulations as provided in Clause (8) of the agreement does not make the agreement itself bad, nor can it be held that this agreement is contrary to the terms of Section 41(5) of the Act.

20. Turning now to the other contention of Mr. Dutt, namely, that in this case Clause (aa) of Section 40(1) of the Act cannot be invoked in aid of the acquisition and that the acquisition proceedings do not come u/s 40(1)(b) of the Act and must, therefore, be struck down, it is to be seen to what extent this contention on behalf of the appellant can be upheld having regard to the decision of the Supreme Court in *R.K. Agarwalla and Others Vs. State of West Bengal and Others*, . Mr. Dutt relied upon a passage in the judgment of the Supreme Court at (SCA) 617: AIR 1002 where after quoting the said Section 7 of the Amending Act of 1962, the Supreme Court held as follows:-

"In the light of these principles the present case must be decided. It is true that the acquisition of the land of the appellant in fact commenced under Clause (b) of Section 40(1), but on the interpretation placed in the first *R.L. Arora Vs. State of U.P.*, , unless the work was likely to prove useful to the public directly and unless there was an agreement between the company for which the land was being acquired and the appropriate Government as to the conditions on which the work was to be executed and maintained and the terms on which the public was entitled directly to use the work, the acquisition could not be regarded as valid. The requirements of Sections 40(1)(b) and Section 41(5) were not complied with and the acquisition could not be sustained under the Land Acquisition Act, before it was amended by Act, 81 of 1962. Relying upon these observations Mr. Dutt argued that in this case also the requirements of Sections 40(1)(b) and 41(5) of the Act were not complied with and, therefore, on these grounds alone, the acquisition proceedings must be held to be void.

21. In our opinion, however, there is hardly any force in this contention of the learned advocate for the appellant. It is true that in *R.K. Agarwalla and Others Vs. State of West Bengal and Others*, the Supreme Court held that the acquisition could not be justified under the statute as it stood before it was amended by Act 31 of 1962. But in that case it was held that the purposes for which the land was sought to be acquired, as set out in the Notifications under Sections 4 and 6 of the Act, namely, the construction of social worker's quarters, the students' home, publication department, the guest house and Panthsala, were not likely to prove directly useful to the public within the meaning of Section 40(1)(b) of Act. The Supreme Court found as a fact that the said purposes were not purposes which could be held to be directly useful to the public as laid down in *R.L. Arora Vs. State of U.P.*, . It was for that reason, that it was held that the acquisition could not be justified under the statute as it stood before its amendment. In this case on the other hand, the land is required for the construction of a Public Hall and building for the cultural and social works by the Hooghly Kristi Parishad, a Society the sole objects of which as I have noticed earlier, are advancement of the cultural life of the public, holding of meeting, debates and lectures on literary, scientific and other allied subjects for diffusion of knowledge among the members of the association and the public, spread of education through free night school for adults and primary school in day time, staging of dramas, holding of musical soirees, holding exhibitions for

development of cultural faculties. The purposes for which the land is required have also been stated in paragraph 14 of the affidavit-in-opposition affirmed by Samarendranath Dasgupta on May 7, 1960. The purposes as mentioned therein are that

"the land in question is needed for the interests of the public, for the construction of a Public Hall providing sitting accommodation for 1,000 persons, a reading room, a maternity clinic and a primary school for girls all of which are unquestionable items of public purpose".

These statements have been dealt with in paragraph 10 of the affidavit-in-reply affirmed by Jagannath Tewari on November 30, 1960. There is no denial that the purposes are public purposes or that the land is required for any purpose other than those mentioned in the said paragraph 14 of the affidavit affirmed by Samarendranath Dasgupta. All that is stated in the said paragraph 10 of the affidavit-in-reply regarding public purposes mentioned in paragraph 14, is that regarding public purposes necessary submissions will be made at the hearing of the rule. The appellant, therefore, has not denied or disputed the purposes for which the land is required or that such purposes are public purposes. We are, therefore, of opinion that such objects in each one of which, members of the public of the locality are interested, cannot but be held to be purposes, which will be directly useful to the public, as laid down by the Supreme Court in *R.L. Arora Vs. State of U.P.*, .

22. In our opinion the decision of the Supreme Court in *R.K. Agarwalla and Others Vs. State of West Bengal and Others*, is of no assistance to the appellant in this case, firstly because the land acquisition proceedings in that case were complete and possession of the land was taken by the Government of West Bengal from the persons interested in the land, secondly as the acquisition in that case was made before July 20, 1962, it was held that Clause (aa) in Section 40(1) of the Act was attracted by reason of Section 7 of the Amending Act being Act 31 of 1962. The purposes for which the land was acquired in that case, and the fact that Section 7 of the Amending Act was attracted, as the acquisition was completed before the specified date, were the determining factors of that decision. In this case, on the other hand, the purposes for which the land is required cannot but be held to be purposes which would be directly useful to the public and the acquisition proceedings are still pending, possession of the land not having been taken over from the appellant.

23. The observations of the Supreme Court in that case, therefore, that the acquisition proceedings would have been invalid but for the amendment of the Act. are of no assistance to the appellant in this case.

24. The learned advocate for the appellant, however, further contended that the introduction of Clause (aa) in Section 40(1) of the Act by the Amending Act of 1962, is of no assistance to the Parishad. He argued that the said Clause (aa) did not permit acquisition of land for construction of a building or work for a

company engaged in an industry or work which is for a public purpose, unless the building or work for which the land was acquired also subserved the public purpose of the industry or work in which the company was engaged. It was argued that the said Clause (aa) could not be called in aid to support or uphold the acquisition in support of this contention Mr. Dutt relied upon another decision of the Supreme Court in the second R.L. Arora Vs. State of Uttar Pradesh and Others, . Mr. Dutt relied upon the majority view of the Supreme Court (SCA) SC 19: AIR SC 1237 as follows :

"In short, the words "building or work" used in Clause (aa) take their colour from the adjectival clause which governs the company for which the building or work is being constructed and acquisition under this clause can only be made where the company is engaged or is taking steps to engage itself in any industry or work which is for a public purpose, and the building or work which the company is intending to construct is of the same nature, namely, that it is a building or work which is meant to subserve the public purpose by the industry or work for which it is being constructed. It is only in these cases where the company is engaged in an industry or work of that kind and where the building or work is also constructed for a purpose of that kind, which is a public purpose, that acquisition can be made under Clause (aa). As we read the clause we are of opinion that the public purpose of the company for which acquisition is to be made cannot be divorced from the purpose of the building or work and it is not open for such a company to acquire land under Clause (aa) for a building or work which will not subserve the public purpose of the company. ""

Reliance was also placed upon another passage in the majority judgment (SCA) 20 : AIR 1238 which is as follows :

"We are therefore, of opinion that Clause (aa) does not permit acquisition of land for construction of some building or work for a company engaged or to be engaged in an industry or work, which is for a public purpose unless the building or work for which the land is acquired also subserves the public purpose of the industry or work in which the company is engaged. "

Relying upon these observations of the Supreme Court it was argued that it must be shown that the land is required by the Parishad for the construction of a building or work which must subserve the public purpose of the Parishad's industry or work. There is no merit in this contention of Mr. Dutt. The objects of the Parishad are quite plainly matters entirely for the benefit of the public, and the purpose for which the land is required is for construction of buildings or works which will be directly useful to the public. Therefore, the observations of the Supreme Court quoted above, on which Mr. Dutt relied, are entirely against his contentions. Then again, the Supreme Court in that case considered if a purpose would be a public purpose within the meaning of Clause (aa) But in this case Clause (aa), cannot be invoked at all. Firstly, because the acquisition was not completed before July 20, 1962, and therefore, Clause (aa) cannot lie attracted and applied u/s 7 of the Amending Act 31 of 1902. Secondly Clause

(aa) cannot be applied because the State Government had no occasion to consider the objects specified in Clause (aa) before giving its consent as required by Section 40(1) of the Act as Clause (aa) was introduced only by the Amending Act 31 of 1962, whereas the State Government's satisfaction as required by Section 40(1) of the Act was expressed and its consent as required by section 39 of the Act was given before the agreement which is dated December 23, 1958. The decision of the Supreme Court in the second R.L. Arora Vs. State of Uttar Pradesh and Others, therefore, is of no assistance to Mr. Dutt.

25. Both Mr. Mukherjee and Mr. Chakravarty contended that the State Government was satisfied as to the need of the acquisition for the purpose of the Parishad on the grounds set out in Section 40(1)(b) of the Act. They argued that the land was required for the construction of some buildings as set out in the Notification u/s 4 and the Declaration u/s 6 of the Act. They further argued that the buildings which were proposed to be constructed would undoubtedly be directly useful to the public. The activities of the Parishad, it was argued, are solely aimed at development of cultural and educational interests of the public. The buildings proposed to be constructed are exclusively to be devoted to such activities and such buildings, they argued, would be directly useful to the public.

26. In our opinion, this contention on behalf of the respondents is well founded. From the analysis made earlier in this judgment of the objects and the activities of the Parishad and upon a scrutiny of the purposes for which the land is required, we have no hesitation in holding that the land is needed for buildings and works which would be directly useful to the public.

27. It was next contended by Mr. Dutt that the satisfaction of the State Government u/s 40(1) of the Act could be either on the basis of the report of a Collector under Sub-section (2) of Section 5-A or enquiry held u/s 40(1) of the Act. Mr. Dutt argued that neither the report u/s 5-A(2) nor the result of any enquiry held u/s 40(1) have been produced by the respondents and therefore, there was no compliance with Section 40(1) of the Act in the matter of the satisfaction of the State Government. It appears, however, from paragraphs 8 and 30 of the petition that an enquiry u/s 5-A was made by the Collector and the appellant filed objections u/s 5-A(1) of the Act. From paragraphs 10 and 11 of the affidavit-in-opposition filed on behalf of the Parishad and affirmed by Govinda Chandra Pal on March 28, 1960, it appears that the enquiry u/s 5-A of the Act was duly held by the Collector. Again in paragraph 19 of the affidavit-in-opposition on behalf of the respondents Nos. 1, 3 and 4 affirmed by Samarendranath Dasgupta on May 7, 1960, it is stated that the objection petition filed on behalf of the appellant u/s 5-A was duly heard by the competent authority and at the hearing the appellant was represented. The appellant has neither denied nor disputed the statements in the said affidavit-in-opposition that an enquiry was held u/s 5-A, at which a hearing was given to the appellant and he was represented in such hearing. In these facts, we are of opinion that an enquiry u/s 5-A of the Act was duly held by the Collector and for these reasons

there was sufficient compliance with Section 40(1) of the Act.

28. There remains to deal with another contention on behalf of the respondents, namely, that the appellant had accepted the acquisition proceedings to be valid and on that basis he submitted a petition u/s 18 of the Act for enhancement of the compensation awarded which was for Rs. 4895.21 nP. This petition is annexure "J" to the main petition and is to be found at page 37 of the Paper Book. Relying upon this petition for enhancement of the compensation awarded to the appellant, it was argued by the learned advocates for the respondents that the appellant had elected to seek a particular remedy, namely, a petition u/s 18 of the Act for reference of his claim for enhanced compensation to Court u/s 18 of the Act. It was argued that having elected to seek his remedy, the appellant was debarred from seeking any relief in the petition under Article 226 of the Constitution. In support of this contention reliance was placed upon a decision of this Court in *Ranibala Bhars and Others Vs. The State of West Bengal and Others*, in which my Lord the Chief Justice (Bose, J., as he then was) held that a petition u/s 18 of the Act did not disentitle a person to relief in a writ petition. This case went up in appeal and the Division Bench dismissed the appeal but took a different view on the same question. In this case, however, since we have come to the conclusion that the land acquisition proceedings cannot be held to be invalid either on the ground that the declaration u/s 6 of the Act is bad or on the ground that there has been non-compliance with Sections 39, 40 and 41 of the Act, it is not necessary for us to deal with the question of election of remedies by the appellant, and we refrain from expressing any opinion on the question if the appellant is debarred from seeking relief in a petition under Article 226, because he filed a petition u/s 18 of the Act, for a reference to Court of his claim for enhancement of the compensation awarded.

29. Before concluding I should point out that the contentions raised by the appellant in this appeal, were not raised before the trial Court, except with regard to the report of the Collector u/s 5-A(2) and the enquiry u/s 40(1) of the Act. It was argued before the trial Court that the enquiry made was insufficient for the purpose of satisfaction of file Government u/s 40 of the Act, and consent given by the Government without the satisfaction mentioned in Section 40, was of no effect and cannot validate a proceeding for acquisition of land for a company. The trial Court held that there was no material on which to hold that the Government did not have sufficient materials so as to be satisfied as required by Section 40(1) of the Act. In our opinion, however, there is sufficient evidence of an enquiry having been made by the Collector u/s 5-A of the Act. We have already held that the appellant filed objections u/s 6-A(1) of the Act and he was represented at the hearing of the objections by the Collector and also that there was sufficient compliance with the requirement of Section 40(1) of the Act.

30. The appellant raised two other contentions before the trial Court, namely, that part of his homestead was going to be acquired and that could not be done u/s 19 of the Act. The other contention raised by the appellant before the trial

Court was that notice u/s 9 of the Land Acquisition Act bore only a rubber-stamp signature of the Land Acquisition Collector and that made the notice invalid. These contentions were neither raised nor canvassed before us in this appeal, and it is therefore, not necessary for us to express our views on these questions.

31. The main contentions of the appellant in this appeal were based on the decisions of the Supreme Court discussed in this judgment. The appellant's writ petition was disposed of by the trial Court by the judgment delivered on September 11, 1961, and the trial Court therefore, had no occasion to consider the principles laid down by the Supreme Court much later in the decision mentioned above. We allowed the learned advocate for the appellant to raise and argue the new contentions in this appeal, as they were questions of law arising out of the amendment of the Act which was made by the Amending Act 31 of 1962, and also because such questions were based on the principles laid down by the Supreme Court in the several decisions discussed in this judgment.

32. For the reasons mentioned above this appeal fails and is accordingly dismissed. Each party to pay its own costs.

33. The operation of this order will remain in abeyance for one month from today, as prayed for.

Bose, C.J.

34. I agree.