
(1962) 08 CAL CK 0016
In the Calcutta High Court
Case No : Civil Revn. No. 1915 of 1960

Gadadhar Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-08-1962

Acts Referred:

Constitution of India, 1950 — Article 162, 226, 48, 73
Land Acquisition Act, 1894 — Section 4, 6

Citation : AIR 1963 Cal 565 : 67 CWN 460

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : A.D. Mukherjee, Arun Kumar Dutt Jr., Bijan Behari Mitter, Gopal Ch. Narayan Choudhury, Nikhil Ch. Talukdar and Bimal Bhusan Banerjee, for the Appellant; H.N. Sen, D.N. Bose and J. Majumdar Amicus Curiae, for the Respondent

Judgement

B.N. Banerjee, J.—This Rule is directed against a notification u/s 4 and a declaration made u/s 6 of the Land Acquisition Act, 1894, for acquisition of a large tract of land with the apparent purpose of establishment of a modern slaughter house. The case was argued, on behalf of the petitioners, with a good deal of political fervour, not quite appropriate before a Court of law. In showing cause, the respondents took up an attitude of bureaucratic infallibility, which was unhelpful in resolving the dispute. I, therefore, asked Mr. Jajneswar Majumdar, the learned Additional Government Pleader, to help me as amicus curiae. His arguments were more helpful than the lines of argument adopted (sic) on behalf of the petitioners or on behalf of (sic) respondents.

2. The circumstances leading to the present dispute are hereinafter briefly recounted. On February 18, 1960, there was published, in the Calcutta Gazette, a notification, u/s 4 of the Land Acquisition Act 1894, whereby a large number of plots of land, measuring in all 106.19 acres, in village Mrigala, Police station Chanditala, District Hooghly were notified for acquisition "for a public purpose, not being a purpose of the Union, namely, the establishment of a modern

slaughter-house". The notified plots were described in two schedules -- Schedule "A" containing plots which were said to be waste and arable and Schedule "B" containing plots other than waste and arable. In the notification it was further stated as follows :

"In exercise of the powers conferred by Section 17(4) of the Land Acquisition Act I of 1894, the Governor is pleased to direct that the provisions of Section 5A of the said Act shall not apply to the waste and arable land described in schedule "A" below to which in the opinion of the Governor the provisions of Sub-section (1) of Section 17 of the said Act are applicable."

The petitioners, who are fifty-three in number, allege that they are the owners of the majority of the plots included in the schedules to the notification and that they use to utilise the plots in cultivation. They say further that the substance of the notification was not published in the locality until much too late and they knew nothing of the notification until the substance thereof was published in the locality and claims for compensation were invited. On making enquiries thereafter, they came to know that there had been a declaration, u/s 6 of the Land Acquisition Act, published in the Calcutta Gazette, dated March 3, 1960, in respect of the notified schedule "A" land only. By reason of the belated publication of the substance of the notification and the wrongful application of the provisions of Section 17(4) of the Land Acquisition Act, they allege, they were illegally deprived of their right to make objection to the land acquisition.

3. The petitioners challenge the acquisition of the land on various grounds. They say that the establishment of a slaughter-house is not and cannot be a public purpose. They further say that in the absence of legislative sanction the executive authority of the state is not competent to engage in the business of a slaughter house and compulsorily to acquire land therefor. They also say that the provision of Section 17(4) of the Land Acquisition Act is void under Articles 13 and 19(1)(f) of the Constitution and is not saved by Article 19 of the Constitution. They say, lastly, that the purpose of acquisition was beyond the spirit and intendment of Article 48 of the Constitution and should not be upheld as a public purpose.

4. Making the grievances as aforesaid, the petitioners moved this Court asking for a writ of mandamus directing the respondents not to give effect to the declaration of land acquisition and for a writ in the nature of prohibition restraining the respondents from depriving the petitioners of their land and obtained this Rule.

5. In showing cause to the Rule, Sri N. N. Adhikary, a Deputy Secretary to the Department of Animal Husbandry and Veterinary Services, Government of West Bengal, pleaded certain facts in justification of the land acquisition. He states in his affidavit-in-opposition:

(a) "(sic) order to centralise slaughter of animals for (sic) of meat to the public as well for maximum utilisation of the blood and glands of animals slaughtered

for medicinal purposes, under proper control and supervision, it is necessary to establish a slaughter house with adequate capacity."

(b) "that the utilisation of blood and glands of animals slaughtered for medicinal purposes will lead to considerable saving in foreign exchange, because such medicinal products, essential for treatment of diseases, have to be imported at a heavy cost."

(c) "that endocrinology has assumed great importance in modern times in the treatment of diseases in as much as secretions (hormones) from endocrine glands of animals are of invaluable help in such treatment and that utilisation of such glands is not possible without a proper slaughter-house."

(d) "that the Government of West Bengal invited Dr. N. E. Wrenberg, Food and Agricultural Organisation Expert of the United Nations, to submit a report in the matter. * * *"

(e) that after consideration of the report of Dr. Wrenberg the Government of West Bengal has taken steps for the acquisition of lands * * * * *

(f) that the object of the acquisition being urgent the Government has proceeded u/s 17(1) of the Land Acquisition Act."

6. Sri S. N. Das Gupta, the respondent No. 2 Land Acquisition Collector, has filed a separate affidavit-in-opposition, in which he states, inter alia, that there was a preliminary local inspection of the site made by him, accompanied by Sri B. Chakravarty, Assistant Secretary, Land and Land Acquisition Department and Capt. B. D. Chatterjee of Animal Husbandry and Veterinary Department, on the recommendation of Dr. Wrenberg, the F.A.O. Expert, especially deputed to give shape to the project and to implement the same. The site had been recommended by the expert as fulfilling the several conditions required for the purpose of establishment of a slaughter-house on modern lines and for the further auxiliary object of manufacturing valuable or important drugs like adrenalin, insulin etc. now exclusively imported from abroad. Dr. Wrenberg's report was verified by the Collector of Hooghly and thereafter the recommendation was sent to the Government for initiating land acquisition proceeding in the prescribed manner. 106.19 acres of land, in village Mrigala, was thereafter notified u/s 4 of the Land Acquisition Act, by a notification, dated January 25, 1960, which was published in the Calcutta Gazette of February 18, 1960, as land, needed for the public purpose of establishment of a slaughter-house and for the auxiliary purpose of manufacture of highly important drugs now imported from foreign countries. The substance of the notification was published in the locality between March 7, 1960 and March 10, 1960. The declaration u/s 6 of the Land Acquisition Act was, however, published in the Calcutta Gazette, dated March 3, 1960. He says further as, follows :

"The reason for the establishment of a modern slaughter house with the all important auxiliary purpose of production of valuable and very necessary gland

products like adrenalin, insulin etc, out of the bye-products is the public purpose motivating the State Government with substantial financial assistance from the Centre for the creation of the proposed modern slaughter-house."

7. The disclosure that the land was not merely being acquired for the notified and the declared purpose of establishing a slaughter house but was also being acquired for the establishment of a manufactory for preparation of medicinal products from animal blood and glands, as in the two affidavits-in-opposition, made the petitioners curious and they applied Before this Court for further and better particulars of the latter purpose. That prayer was allowed. Thereafter, Sri N. N. Adhikari, the Deputy Secretary in the Department of Animal Husbandry and Veterinary Services, affirmed a supplementary affidavit giving the following particulars :

(a) "The Cabinet at its special meeting held on the 25th, 26th and 27th January, 1960 approved of the scheme for the establishment of a Slaughter House at Dankuni, near Calcutta, with a provision of Rupees 25 Lakhs in the Budget for the year 1960-61. The Civil Budget Estimate for the year 1960-61 and the West Bengal Appropriation Bill 1960, as presented and in which provision in respect of the scheme was included, were passed by the West Bengal Legislative Assembly in the last Budget Sessions. The services of Dr. N. E. Wrenburgh were secured by the State Government through Government of India under the Expanded Technical Assistance Programme of the Food and Agriculture Organisation of the United Nations. The Cabinet also approved of this in its meeting held on the 14th May, 1959."

(b) "The Ad-hoc Committee on the Slaughter Houses and Meat Inspection Practices, with Dr. S. Dutta, Director of Veterinary Services and Animal Husbandry, West Bengal as Chairman; Sarvashri S. R. Chadha, Director of Veterinary Services, Bombay, H. S. Bawa, Senior Marketing Officer, Central Directorate of Marketing and Inspection and V. A. Mehta, Asst. Development Officer, (Food) representing the Ministry of Commerce and Industry and Dr. K. Mitra, Assistant Director General of Health services representing the Ministry of Health as members and Sri R. H. Mohan, Asstt. Animal Husbandry Commissioner with the Govt. of India as Member-Secretary, was appointed by the Govt. of India in Ministry of Food and Agriculture (Department of Agriculture) Resolution No. F. 25/2/54-LS, dated 11th May, 1955.

In Chapter III page 39 of the Report of the said Ad-Hoc Committee forwarded to the State Government by the Government of India Ministry of Food and Agriculture (Department of Agriculture) with letter No. F. 21-40/57-LD dated 9/11-10-1958, it was recommended, amongst others, that new Slaughter Houses, designed on modern lines and well provided with requisite arrangements and facilities for efficiently conducting the slaughtering, flaying, dressing and all other operations, should be set up well away from inhabited areas and that in selecting the new sites, future expansion of the towns should be taken into consideration and adequate space should be provided for further development of

the Slaughter House and for locating around it various ancillary trades.

In Chapter V page 43 of the said report, that Committee also recommended, amongst others, that systematic collection, efficient preservation and processing and full utilisation of all Slaughter House by-products and wastes should be properly organised in all towns. The Government of India, Ministry of Food and Agriculture (Department of Agriculture) in their letter No. F. 21-37/57 L.D. dated 4th November, 1958 recommended the establishment of a modern Slaughter House at the main Ports including Calcutta and they offered to extend financial assistance to the State Government in consultation with the Planning Commission."

8. Sri S. N. Das Gupta, the Land Acquisition Collector, also affirmed a supplementary affidavit stating that in addition to adrenalin and insulin, other gland products like pituitrin, thyroxin, testicular hormones, and oestrogenic hormones, now imported from other countries, were expected to be manufactured in the proposed Slaughter-House on scientific basis.

9. To the affidavits-in-opposition, including the Supplementary affidavits, there are several affidavits-in-reply, three of which should have been made supporting affidavits to the affidavit-in-reply filed by the petitioner No. 1. But curiously enough those have been filed as independent affidavits-in-reply, affirmed by persons who are not parties to the Rule.

10. Affidavit-in-reply (No. 1) is an affidavit by Dr. Nalini Ranjan Sen Gupta M.D., a physician of repute. His affidavit contains medical objections to the establishment of a hormones drug factory, within the environment of a slaughter house. He also says that organotherapy does not at present occupy the same position as it used to hold 30 years back and is decreasing in importance. He expressed the definite opinion that it was not necessary to establish a slaughter house with a drug manufactory attached, of the nature proposed.

11. Affidavit-in-reply (No. 2) is affirmed by Sri Rabindra Nath Mukherjee, who is the Secretary of the Managing Committee of a School at a place known as Garalgacha. He claims to have read at the Commercial Library in Calcutta volumes of a journal styled "Monthly Statistics of the Foreign Trade in India" and his affidavit contains statistical objections to the utility of establishment of a hormone drug factory at the place proposed. Without going into the details of figures collected by him, it appears from his affidavit that he intends to establish that foreign exchange employed in importing hormone drugs does not come up to a very large figure.

12. Affidavit-in-reply (No. 3) is affirmed by Sri Basanta Kumar Chatterjee, who had served as an Accountant-General in Burma and in several other provinces of British India and also as the Chief Auditor of the East Indian and the Bengal Nagpur Railways. He claims to have acquired knowledge of cow-protection and in legislation prohibiting cattle slaughter and in modernisation of slaughter-houses. His affidavit contains political, economic and sentimental objections to the

proposed scheme for the establishment of a slaughterhouse. He says that while many States in India have passed laws prohibiting cattle slaughter. West Bengal lags behind. He further states that the Delhi Municipal Corporation turned down a proposal for establishment of a slaughter house and if a similar proposal had been put up before the Municipal Corporations of Bombay and Madras, they would have, he believed, rejected the same. He also says that the proposal to establish a slaughter-house was not even mooted before the Calcutta Corporation. He believes that the Government was persuaded (whom by he does not expressly say) to start the slaughter-house scheme, He condemns the whole thing as an attempt or a pretext to deprive West Bengal of the beneficial provisions of the directive principles contained in Article 48 of the Constitution, to benefit hide merchants and butchers and to rob the State of plentitude in the supply of milk and ghee.

13. Affidavit-in-reply (No, 4) is affirmed by petitioner No. 1 himself. He adopts the criticisms in the other three affidavits-in-reply and condemns the land acquisition scheme as mala fide, unnecessary and beyond the power of the State Government.

14. Before I turn to the arguments advanced on behalf of the petitioners, I have to dispose of two preliminary objections taken by Mr. Hemendra Chandra Sen, learned Advocate for the respondents. He invited my attention to annexure E to the petition and submitted, in the first place, that petitioners Nos. 1 to 4 alone had objected to the acquisition before the Land Acquisition Collector and that none other amongst the petitioners had done so; that there had been no formal demand for withdrawal of the declaration made by anybody amongst the petitioner and that prayer for issue of a writ of mandamus, therefore, must fail.

15. According to the English rule of practice,, as a general rule, the order prayed for in an application for Mandamus will not be granted

"unless the party complained of has known what it was he was required, to do, so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that the demand was met with a refusal. The requirement, however, that before the Court will issue a mandamus there must be a demand to perform the act sought to be enforced and a refusal to perform it cannot be applicable in all possible cases and does not apply where a person has by inadvertence, omitted to do some act which he was under a duty to do, and where the time within which he can do it has passed" (Halsbury's Laws of England Vol. XI, Article 198, Simonds Edition).

The same rule has also been emphasised in this Court, see for example, Surendra Nath Das and Others Vs. The State of West Bengal, , per Harries C. J. and Banerjee, J., Amalendu Roy Choudhuri v. Kailash Behari, 56 Cal W N 846, per Bose, J. as the Chief Justice then was. It has also been held by this Court that demand for justice by somebody else cannot be relied upon by the

petitioners (Tarapada Banerjee Vs. State of West Bengal and Another, , per Chakravartti, C. J. and Lahiri, J.), But aforesaid rule has also been held to admit of certain exceptions, for example, demand for justice is a matter of substance and not of mere form (Commissioner of Police, Bombay Vs. Gordhandas Bhanji, ; Rabindra Nath Chakravarty Vs. The State of West Bengal and Others, , Das and Debabrata Mooker-jee, JJ.) and that no demand need be made when the respondents have placed themselves in a position when they could not have complied with the demand of that they were determined to pursue it as of set purpose and such demand would be a mere idle ceremony (Ramphal Singh Vs. The Govt. of the State of Bihar and Others, , per Ramaswamy and Sinha, JJ.; Ashraf Ali Khan and Others Vs. State of West Bengal and Others, , per Chakravartti. C. J. and Guha, J.)

16. In the instant case, the declaration was published in the Calcutta Gazette, on March 3, 1960, but the substance of the notification was not published in the locality before March 7, 1960. The petitioners say that they were not aware of the land acquisition earlier than the publication of the substance of the notification. I have no reason to disbelieve them on this point. That being so, by the time they came to know about the notification, the declaration had already been made and the respondents were proceeding with a set purpose. At that point of time it would have been useless for the petitioners to make a formal demand for justice. I therefore, hold that the absence for a formal demand for justice by all the petitioners is not a fatal defect in this Rule and I overrule the first preliminary objection.

17. I now take up for consideration the second preliminary objection raised by Mr. Sen, namely, that the petitioners, who are fifty-three in number, cannot join in a single application for an order of Mandamus to enforce their claims. It appears that the petitioners do not claim to be jointly interested in all the plots under acquisition. It may be that they are separately entitled to separate plots of lands under different rights. From the cause title of the petition it appears that petitioners intended to move the petition in a representative capacity but no leave was asked for, in the body of the petition, for making the application in a representative capacity and no order to that effect was obtained. The petition as framed, therefore, stands as petition by fifty-three individual persons, who joined in one application. Is such an application maintainable? The question has been dealt with in Halsbury's Laws of England (Simonds Edition) Vol. XI, page 83, Article 155, where it has been stated that two persons cannot join in a single application for an order of Mandamus to enforce separate claims. This view has been reiterated by this Court in the case of Ganesh Nayak v. Land Acquisition Collector, 65 Cal WN 908, in which Sinha, J. observed that there must be separate applications for separate orders. The aforesaid statement of law admits, however, of an exception and a joint application is permissible against a common or class injury done by a common order or orders. The aforesaid exception was noticed by Subba Rao, J. In re, Gopalakrishna Rao AIR 1957 A P 88 and was also referred to in Ganesh Nayak and Others Vs. Land Acquisition Collector and

Others, . In the instant case, the petitioners, although interested in different plots of land, are aggrieved by one declaration for land acquisition. They also complain of a common injury, if the slaughter house be established in the locality. In these circumstances it may be permissible for them to join in one application and attack the one declaration by which they all feel aggrieved. In the view that I take, I overrule the second preliminary objection as well.

18. Having cleared the ground of the preliminary objections, I now turn to consider the arguments advanced on behalf of the petitioners.

19. Mr. Apurbadhan Mukherjee, learned Advocate for the petitioners, argued, in the first place, that saving of foreign exchange, which was said to be a purpose behind the proposed establishment of the drug factory, on the land to be acquired, was not and could not be the purpose of a State, because foreign exchange came under List I, entry 36 of Schedule VII of the Constitution, that is to say the Union Legislative List. He further contended that the establishment of a slaughterhouse did not come under entries 15, 16 and 20 of List II of Schedule VII of the Constitution, that is to say the State Legislative list, because the entries related to the preservation of animal life and not to their annihilation. Entry 6 of List II, dealing with "public health and sanitation; hospitals and dispensaries", he contended, did not include establishment of a medicine factory. Relying on the aforesaid entries, Mr. Mukherjee argued that the establishment of a slaughter-house-cum medicine preparation factory, with the ultimate object of saving foreign exchange, could not, by any stretch of imagination, be a purpose of the State and land could not be acquired by the State Government for the aforesaid purpose. This argument is based on a misconceived reading of the provisions of Articles 73 and 162 of the Constitution, which provide that the executive power of the Union and the States shall respectively extend to the matters in respect to which the Parliament or the State legislatures has or have power to make laws. Neither of these Articles contains any definition as to what executive function is and what activities would legitimately come within its scope. The two Articles are concerned primarily with the distribution of executive power between the Union on the one hand and the States on the other. They do not mean that it is only when the Parliament or the State Legislature has legislated on the items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand the language of Article 73 clearly indicates that the powers of the Union executive do extend to matters on which the Parliament is competent to legislate and are not confined to matters over which the legislation has been passed already. The same principle underlies Article 162 of the Constitution. This is the view which the Supreme Court expressed in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, . If any legislation is required to be passed touching on foreign exchange the Parliament may pass such a law or if any legislation is required to be passed touching on preservation, protection and improvement of stock, prevention of animal diseases, establishment of pounds or protection of wild life State Legislatures alone may pass such laws. But although

that is so, it is no argument that a State cannot even establish a slaughter house or a drug factory, because the State legislative list does not contain a specific entry for establishment of drug factory or slaughter house. A modern State is no longer a protective or a police state, principally concerned with maintenance of peace and order within and outside the country. It has assumed the role, and in this country also, of a social service or Welfare state, the activities of which aspire to concern citizens from the cradle to the grave, from birth registration to death registration, from maternity welfare to the management of crematorium of graveyards -- all under the generic name --Social welfare or public service. There is no reason why in the absence of specific legislation, such a State cannot establish a slaughter house, in modern lines, to ensure supply of good protein food to its people and utilise animal glands and blood in the preparation of medicines vital to the life of its people. I have, therefore, to overrule the contention of Mr. Mukherjee that the establishment of a slaughter house and a drug manufactory cannot be a State purpose and a State must not establish the same. In my opinion both the Union and the State may launch upon such projects, if they are social service projects.

20. Before I part with this branch of the argument, I have, however, to point out that it was not necessary to express either in the notification or in the declaration that the land acquisition was being made for a purpose, which was not a purpose of the Union. Before its amendment, by the Constitution Seventh Amendment Act, entry 33 of List I used to read as follows:

"Acquisition or requisitioning of property for the purpose of the Union." Similarly entry 36 of List II used to read as follows:

"Acquisition or requisitioning of property except for the purposes of the Union, subject to the provision of entry 42 of List III".

21. The Constitution Seventh Amendment Act 1956 deleted entry 33 in List I and entry 36 in List II and also amended entry 42 of List III, the Concurrent List, to which latter entry now reads merely as "acquisition and requisitioning of property". The disclosure that that acquisition of land was being made for a purpose, which was not the purpose of the Union, in the notification and declaration, was possibly made under the time-worn idea that since the State could legislate in the matter of land acquisition, for its own purpose only, every land acquisition by the State must be justified on that ground. After the Constitution Seventh Amendment Act, 1956, it was not necessary to make such a statement in the notification or the declaration, even if it was at all so necessary at a time when the Constitution had not been so amended. The statement was an unnecessary embellishment in the notification and declaration, which must have encouraged Mr. Mukherjee in advancing the argument that the purpose of the acquisition was not and could not be a purpose of the State.

22. Mr. Mukherjee contended, in the next place, that animal slaughter of the nature contemplated in the slaughter-house included cow-slaughter, which the

directive principle contained in Article 48 of the Constitution discouraged. It was on this point Mr. Mukherjee mainly concentrated his attack and waxed into political eloquence. He thought that affidavit-in-reply (No. 3) by Basanta Kumar Chatterjee, a veteran in cow-protection, contained enough materials giving the factual basis of this branch of his argument. The affidavit-in-reply by Basanta Kumar Chatterjee contains matters mostly based on his personal belief and is dominated by a sentimental strain. Such an affidavit can ill-serve the purpose for which Mr. Mukherjee wants to utilise it. Then again, invocation to the directive principles as in Article 48 is useless before a Court of law, because none of the directives can be enforced by any Court of law. It is no doubt true that the directive principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. But so long as laws are not made under the one or other of the directives, an executive action for establishment of a slaughter-house, where cows may also be slaughtered, must not necessarily be condemned as violating the directive principles. The slaughter-house has been too much confused with cow slaughter and condemned, by Mr. Mukherjee, as an institution offensive to Hindu religious feeling, which holds cows sacred, as a gesture to win the support of the Muslims, who are said to be the principal beef eaters in the country, and also as an adventure which may deprive the country of good milk. All these criticisms appear to have been too easily made. It is one of the primary functions of a Government to look after the health of the people and for that end to arrange for supply of good food and medicine to them, Indians are not all vegetarians; there are many for whom meat is a part of their diet, or a necessity when they may afford. Animals slaughtered under insanitary conditions or diseased animals slaughtered in private butcheries do not supply hygienic food. If a State tries to set up a slaughter-house, so as to provide the people with good meat, the project is not per se condemnable. Mr. Mukherjee, however, contends that in such a slaughter-house cows may also be slaughtered and that a State must not be allowed to indulge in such an activity. The directive as to prohibition of slaughter of cows, calves and other milch and draught cattle is not absolute. As pointed out by the Supreme Court in the case of Mohd. Hanif Quareshi and Others Vs. The State of Bihar, the protection recommended by Article 48 is confined to cows and calves and to those other animals which are presently or potentially capable of yielding milk or doing work as draught cattle but does not extend to cattle which were at one time milch or draught cattle but has ceased to be such. I have no reason to suppose that the slaughter house will be so administered as to go against the directive principles of State Policy. The other criticism, namely, that the establishment of the slaughter house would wound Hindu religious feeling and placate the Muslims only, does not appeal to me. The slaughter house is being established not for cow-slaughter only. Goats and sheep will also be slaughtered in the slaughter-house. It is common knowledge that many caste Hindus eat goat meat and sheep mutton. Goats and even buffaloes are also sacrificed, with a good deal of sacrificial pomp, by the Shakti worshippers amongst the Hindus. To say that the establishment of the slaughter house is

bound to wound Hindus religious feelings is to make an unthinking political criticism of the project, without more. Cow-slaughter, it is true, is disliked by the caste Hindus. Hindus do not, however, make the entire population of India. The Government has an equal duty to look after the welfare of non-Hindu population of India, by no means a negligible figure. It is no argument to say that a slaughter house, if at all to be established, there must not be slaughtered cows and bulls, the meat of which animals the caste Hindus do not eat. Such meat is not a taboo to Non-Hindus and there is no reason why State slaughter houses must not cater to their needs as well. On reading the scheme for the establishment of the slaughter house, as in the affidavits-in-opposition, it appears to me that the slaughter house is being established to meet the need of hygienic meat for all religious denominations, Hindus and Non-Hindus alike. I, therefore, find no substance in the criticism that behind the project there is a hidden political purpose to placate the Muslims at the cost of the Hindus. The last criticism that the slaughter-house adventure will minimise the supply of milk in the country is also without substance. It could not be established that the administration of the slaughter house would be so thoughtless as to slaughter milch cows only and thus blatantly violate the directive principles contained in Article 48 of the Constitution. I, therefore, overrule the second branch of the argument made by Mr. Mukherjee.

23. I also overrule the contention advanced by Mr. Mukherjee that regard being had to the nature of the public purpose declared, Section 17(4) of the Land Acquisition Act should not have been applied and the petitioners' right to prefer objection to the land acquisition should not have been barred. Sub-sections (1) and (4) of Section 17 of the Land Acquisition Act read as follows:

"(1). In cases of urgency, whenever the appropriate Government so directs, the Collector though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) * * * * (3) * * * * (4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section (1)."

24. Under Sub-section (4) of Section 17 of the Land Acquisition Act, the opinion which the Government has to form relates both to the urgency as well as to the nature and condition of the land. The opinion as to the nature and condition of the land, that is to say, whether the land is waste or arable, must be objectively arrived at by the Government. The opinion as to the urgency, under the scheme of the Act, may be subjectively arrived at by the Government and the

correctness of the opinion so formed cannot raise a justiciable issue, unless of course, it can be shown that such an opinion was only a pretended opinion or an opinion formed in mala fide exercise of the discretion vested in the Government. In the instant case, it is the petitioner's own case that the plots of land, included in Schedule "A" of the declaration, are arable lands. Therefore, the objective test for application of Section 17(4) of the Land Acquisition Act is satisfied. The urgency for the land acquisition is to be determined on the subjective satisfaction of the Government and in the absence of any proof that the opinion as to the urgency was only a pretended opinion or an opinion mala fide formed, I cannot give effect to the contention that the provisions of Section 17(4) of the Land Acquisition Act should not have been applied to the disputed land acquisition.

25. Mr. Mukherjee argued lastly, that the purpose stated both in the notification and the declaration was the establishment of a modern slaughter house, but the affidavits-in-opposition showed that there was an additional and a hidden purpose behind the land acquisition, namely, establishment of a drug manufacturing factory from the glands and blood of the slaughtered animals. He contended that even though it be held that the establishment of such a factory was for a public purpose (which, however, he strongly disputed), even then in the absence of the expression of satisfaction of the Government, in the name of the Governor, that the particular plots of land should be acquired for the aforesaid purpose, it was not permissible to the State Government to declare such a large tract of land for acquisition under the Land Acquisition Act. This argument is not without substance. Under the scheme of the Land Acquisition Act 1894, when a notification for land acquisition is published, the mind of the Government is in an exploratory stage, seeking to ascertain, under the prescribed procedure, whether the notified area should be acquired for the notified purpose. That exploration is completed by survey of the notified area and by other steps, mentioned in Section 4 of the Act, for ascertainment as to whether the land is adapted for the notified purpose. If there is no urgency as contemplated u/s 17 of the Land Acquisition Act, the Collector also considers objections against the acquisition from persons interested in the notified area and submits a report to the State Government on the objections. The State Government considers the survey report, the other data collected and the report of the Collector and then makes up its mind whether or not to require the whole or a part of the notified area. On such determination by the State Government, the declaration u/s 6 of the Land Acquisition Act is made, containing the expression of the satisfaction of the Government, in the name of the Governor, that the notified area is needed for the declared public purpose. From the scheme of the Act it is amply clear that in arriving at the satisfaction as to whether private property must be compulsorily acquired for a public purpose, there must be a fixity of purpose in the mind of the Government, because it is in relation to that purpose the Government explores and arrives at its satisfaction, Prima facie, the Government is the best judge as to whether an acquisition is for a public purpose. But it is not the sole judge. Courts have the jurisdiction and it

is their duty to determine whenever a question is raised whether an acquisition is or is not for a public purpose, (vide *The State of Bombay Vs. R.S. Nanji*, . In so determining. Courts have to proceed on the basis of the purpose declared u/s 6 of the Land Acquisition Act and try to find out if the declared purpose is a public purpose at all.

26. It may be that in order to make a declaration u/s 6 of the Land Acquisition Act valid, it may not be necessary to declare the exact nature of the public purpose. That was the view which was expressed by the Supreme Court in *The State of Bombay Vs. Bhanji Munji and Another*, in which Bose, J. observed:

"In our opinion it is not necessary to set out the purpose of the requisition in the order. The desirability of such a course is obvious because when it is not done proof of the purpose must be given in other ways and that exposes the authority to the kind of charge we find here and to the danger that Courts will consider them well founded. But in itself an omission to set out the purpose in the order is not fatal so long as the facts are established to the satisfaction of the Court in some other way. The underlying principle of our decision in *Biswabhusan Naik Vs. The State of Orissa*, applies here."

The same view was expressed by the Supreme Court in *Babu Barkya Thakur Vs. The State of Bombay and Others*, in which Sinha, C. J. observed as follows:

"It is argued that in terms the notification does not state that the land sought to be acquired was needed for a public purpose. In our opinion it is not absolutely necessary for the validity of the land acquisition proceedings that the statement should find a place in the notification actually issued. The requirements of the law will be satisfied if, in substance, it is found on investigation, and the appropriate Government is satisfied as a result of the investigation that the land was needed for the purposes of the Company, which would amount to a public purpose under Part VII as already indicated. See in this connection *The State of Bombay Vs. Bhanji Munji and Another*, . In that case the question was whether the Bombay Land Requisition Act (Bombay Act XXXIII of 1958) was invalid inasmuch as the purpose of the requisition was not in express terms stated to be a public purpose. This Court laid it down that the Statute was not invalid for that reason provided that from the whole tenor and intendment of the Act it could be gathered that the property was acquired either for the purpose of the State or for any public purpose."

On the authorities cited above, it is amply clear that the public purpose behind a land acquisition need not be expressly stated in the notification or declaration: but if the purpose be challenged, before a Court of law, as not a public purpose, the same has to be established by evidence aliunde. But the converse of the above is not a legal proposition, namely, when the purpose is expressly stated in the notification or the declaration and that is challenged as not a public purpose, it does not become permissible to add to that purpose other purpose or purposes, not notified or declared, and try to support the land acquisition both

on the notified and declared purpose and also on the unnotified and undeclared purpose.

27. On the materials disclosed in the affidavits-in-opposition and the further affidavits giving particulars, the State Government may have been generally satisfied as to the propriety of establishment of a drug manufacturing factory along with a slaughter house. But on the materials disclosed it does not appear that the State Government was satisfied about the propriety of acquisition of the particular plots of land for the public purpose of establishment of the drug preparation factory; at any rate the State Government did not declare such satisfaction. I cannot read into the declared public purpose an undeclared purpose, about which, for reasons best known to itself, the State Government did not declare its satisfaction. Since the acquisition of such a large tract of land is being supported not only for the declared purpose of establishment of a slaughter house but also for the undeclared purpose of establishment of a drug preparation factory, I do not think it proper to take into account the undeclared public purpose and to hold that the declared and undeclared purposes taken together constitute the public purpose justifying the land acquisition.

28. In finding out whether the purpose for land acquisition is really a public purpose, a Court has to apply two tests, firstly, whether the purpose benefits the community at large or a section thereof and, secondly, whether the Government is satisfied about the need of land acquisition for the declared purpose. In the instant case the first test may have been satisfied but the second test remains unsatisfied, so far as the necessity for establishment of a drug manufacturing factory, on the acquired plots of land is concerned.

29. Faced with this difficulty, Mr. Hemendra Chandra Sen, learned Advocate for the respondents 1 and 2, contended that the establishment of the drug preparatory factory was auxiliary or subsidiary to the establishment of the slaughter house and the auxiliary or subsidiary purpose need not have been separately declared. This, in my opinion, is an attempt to get rid of the difficulty much too easily. The words auxiliary and subsidiary purpose have similar meaning and mean a subordinate purpose. The blood and glands of the slaughtered animals may be utilised in manufacturing hormone drugs but such utilisation is not necessarily a purpose subordinate to the running of a slaughter-house. Had that been so, the running of a tannery or a bone-mill or a fertiliser factory might all have been subordinate purposes of a slaughter house and thus a world of industries might have been included in the establishment of a slaughter house. The establishment of a drug preparation factory may have a remote connection with the establishment of a slaughter house but the former cannot be described as a purpose subordinate to the purpose of the establishment of a slaughter house. For the reason aforesaid I hold that the explanation tendered does not really explain why the satisfaction of the Government was not declared in respect of the establishment of the drug preparation factory.

30. The position therefore, comes for this that the acquisition of such a large tract of land, as in the declaration u/s 6 of the Land Acquisition Act, cannot be justified only for the public purpose of the establishment of a slaughter house. The vast land acquisition scheme was sought to be justified on the ground of an undeclared public purpose, namely, establishment of a drug factory along with the slaughter house. Since in the absence of a declaration of the satisfaction of the State Government for the establishment of a drug factory, I should not take notice of the same, I hold that the declared public purpose, namely, establishment of a slaughter-house, does not justify acquisition of such a large tract, as mentioned in the declaration made u/s 6 of the Land Acquisition Act. For the aforesaid reason I quash the declaration u/s 6 of the Land Acquisition Act and command the respondents not to give effect thereto.

31. Nothing contained in this judgment, however, shall preclude the State Government from proceeding afresh according to law in the matter of the land acquisition.

32. This Rule is made absolute to the extent indicated above. Let a writ of Mandamus issue commanding the respondents to cancel the impugned decoration and not to give effect thereto.

33. I make no order as to costs.