
(1969) 06 CAL CK 0041

In the Calcutta High Court

Case No : C.R. No's. 295 (W) of 1962 and 1140 (W) of 1967

Jatadhar Mitra and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-06-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 101, 102, 103, 104
Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 40, 5A

Citation : AIR 1970 Cal 90

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : A.D. Mukherjee and Subodh Kr. Bhattacharjee, for the Appellant;
N.C. Chakravarty, Rajeswar Dhar and Sushil Kr. Biswas for Respondents in C.R.
No. 295 (W) of 1962 and Nepal Chandra Sen, N.C. Chakravarty and Nirmala Kr.
Chaturvedi for Respondent in C.R. 1140 (W) of 1967, for the Respondent

Judgement

D. Basu, J.—These two Rules relate to the same proceeding for acquisition under the Land Acquisition Act. Though numbered later, C. R. 1140 (W)/67 is, in fact, earlier in point of time.

2. The two cases relate to proceedings for acquisition of the petitioners' land as described at Annexure A of the petition, under the Land Acquisition Act (hereinafter referred to as "the Act").

The notification u/s 4 was issued as early as the 2nd Feb. 1962 and is to be found at Annexure B to the Petition in C. R. 1140. Shortly after this notification was issued, on March 27, 1962, the petitioners moved this Court under Art 226 of the Constitution and obtained C. R. 204(W)/62. That petition was, however, withdrawn with liberty to bring a fresh one and by virtue of that liberty, the petitioners filed the petition on May 28, 1962, which was numbered 320(W)/62, but that was dismissed in limine. On appeal, that order of dismissal was set aside and a Rule was issued by the Appeal Bench, on July 3, 1967 and that Rule now

constitutes C. R. 1140(W)/67. As stated earlier, C. R. 1140 challenges the validity of the Section 4 notification only.

3. On May 16, 1962, the petitioners brought the next petition which has been numbered C. R. 295(W)/62, on the allegation that when they had brought the earlier application on March 27, 1962, they had no knowledge that a declaration u/s 6, too, had been issued in the Acquisition proceedings in respect of the disputed lands, but that they had since come to know of it from the copy of a petition of Respondent no. 4 (Konnagar Kalyan Parishad) served upon them on April 30, 1962. In this petition, therefore, the petitioners have challenged the validity of the declaration u/s 6, dated February 27, 1962, which is to be found at Annexure B of the petition in C. R. 295.

4. It would be useful to set out the text of the Section 4 notification:

"Whereas it appears to the Governor that land is likely to be needed for a public purpose for the construction of educational institutions, staff quarters and swimming pool etc. of the Konnagar Kalyan Parishad ... it is hereby notified that a piece of land comprising the survey plots as described in Schedules A and B below. . ., is likely to be needed for the aforesaid public purpose partly at the public expense and partly at the expense of the Konnagar Kalyan Parishad"

5. Schedule A includes certain "waste and arable lands" and specifies plots 1722, 1725 1727, 1728 and 1729.

6. Schedule B relates to "other than waste and arable lands" and mentions: (a) Plot 1723 in full and (b) 1850 in part.

7. Applying Section 17(4) to the lands included in Schedule A, the hearing of objections u/s 5A of the Act has been dispensed with, with respect to these lands.

8. The aforesaid notification is challenged on the grounds that -

(a) The purposes mentioned in the notification do not constitute a "public purpose."

(b) No part of the expenses for the acquisition is being paid by the Government.

(c) Respondent 4 (the Kannagore Kalyan Parishad), for which the lands are sought to be acquired is a "company" hence, the proceedings are not valid as there has been no compliance with the provisions of Part VII of the Act.

(d) The plots included in Schedule A are not "waste and arable" lands and, therefore, Section 17(4) of the Act is not applicable to them and the opinion of the Governor to this effect is not founded on any materials.

(e) The impugned proceedings are colourable and mala fide.

9. The declaration u/s 6 substantially reproduces the recitals in the Section 4 notification, substituting the word "needed" for the words "likely to be needed", and omitting the plots included in Schedule B of the Section 4 notification. The

grounds of challenge by the petitioner against the declaration are substantially the same as those against the notification.

10. I. Existence of a public purpose. Since the petitioners have come to Court after the issue of the declaration u/s 6, Sub-section (3) of that Section operates to make the declaration conclusive evidence that the disputed lands were required for a public purpose. But even then, it has been held that the petitioners shall be entitled to challenge the validity of the entire proceedings on the following grounds-

(a) That the proceedings are colourable or in fraud of the statutory power, Smt. Somavanti and Others Vs. The State of Punjab and Others, ; State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others, the real object being to acquire the lands for some "private purpose": R.K. Agarwalla and Others Vs. State of West Bengal and Others, .

(b) An acquisition for a public purpose cannot be sustained unless some part of the compensation money is payable out of the public revenues or from some fund controlled or managed by a local authority, Shyam Behari and Others Vs. State of Madhya Pradesh and Others, . A mere recital that the land is needed for a public purpose is not enough.

(c) But where the declaration recites that the land is needed for a "public purpose" and the compensation is payable out of the public revenues, in the foregoing sense, the acquisition would not be invalid even, though the acquisition is primarily for an individual or a company: Babu Barkya Thakur Vs. The State of Bombay and Others, . For, even where the acquisition is primarily for the purposes of an individual or a company it may at the same time serve a public purpose, in which case, of course, the compensation must be paid in whole or in part out of the public revenues: R.L. Arora Vs. State of U.P., : Where the foregoing tests are satisfied, the "company provisions" of the Act need not be complied with.

It follows from the Supreme Court decisions just cited that since the impugned notification states that the lands are needed for a "public purpose", the "Company provisions" of the Act need not be complied with in the instant case, even though the acquisition is for the benefit of a company, i.e., respondent no. 4, provided the other tests for acquisition for a public purpose are satisfied.

(a) So far as the payment of compensation is concerned, the recital in the notification u/s 4 is that it is to be partly at the expense of the Government and partly at the expense of the Parishad.

In the petition the only averment made is that the Government is not showing any intention of making any contribution towards the compensation money to be paid. Respondents produced the Notification no. 554/18-2-61 in support of para 7 of the counter-affidavit of respondents 2-3 in C. R. 1140, to show that the

Education Department has declared that a "token grant" of Rs. 10/- will be made by the Government towards the said acquisition, "in due course on finalisation". There is no reason to infer that such payment will not eventually be made nor is it necessary under the law that the contribution must be made prior to the proceedings under Sections 4 and 6. Such a contention had, in fact, been made in Smt. Somavanti and Others Vs. The State of Punjab and Others, but that was rejected by the Court. Even absence of a provision in the Budget was not considered material in this context: Smt. Somavanti and Others Vs. The State of Punjab and Others, .

(b) Mr. Mukherjee, on behalf of the petitioners, has next contended that the sum of Rs. 10 is so insignificant that it should be considered as no contribution on the part of the Government and the acquisition must therefore be held to be a colourable one or an acquisition for the purposes of the company and not for a public purpose.

This was indeed the argument on behalf of the petitioners in Smt. Somavanti and Others Vs. The State of Punjab and Others, , where the contribution proposed to be made by the Government was Rs. 100 out of a total expense of 4 1/2 lakhs. But though Subba Rao J., in the minority, expressed the view that where Government does not pay the whole of the compensation money, it must contribute a substantial portion of it; otherwise, it would be an abuse of the statutory power of the Government to compulsorily acquire private property; the majority, speaking through Mudholkar J. did not agree that in every case Government must make a substantial contribution; but where it makes a token contribution", it would be open to the party aggrieved to point out other circumstances, which, together with the fact of token contribution, might establish that the use of the power by the Government was colourable Smt. Somavanti and Others Vs. The State of Punjab and Others, .

In the instant case, neither party had originally brought before the Court any estimate of the amount of compensation money that may be eventually payable for the disputed lands, but the fact that the Government itself described the sum of Rs. 10 as a "token grant" indicates that Rs. 10 is not any substantial portion of the expenses of acquisition. In the supplementary affidavit in C. R. 295, the petitioner has stated that the value of the disputed lands would exceed Rs. 2 lakhs.

We have, therefore, to inquire whether there are any other circumstances which, along with this fact of token contribution out of the public revenues render the proceedings colourable or in fraud of the statute. The onus of showing such circumstances is, of course, upon the petitioner who alleges fraud or mala fides.

11. Petitioners seek to establish that the impugned orders are mala fide from different circumstances which, according to them, would go to show that the Government did not apply its mind to the need for acquiring the disputed lands for the purposes of the Parishad, and whether it would serve any public purpose:

vide Smt. Somavanti and Others Vs. The State of Punjab and Others, .

(a) Firstly, it has been contended that the Parishad has lands of its own and does not need any additional lands for the purposes alleged. Such a contention was made in the case of Abdul Husein Tayabali and Others Vs. State of Gujarat and Others, , but it was negated by the Supreme Court because the Company, for whose purposes the lands were proposed to be acquired, adduced materials to show why the existing lands were unsuitable and why the disputed lands were needed. These materials were, of course, considered, in that case, at the inquiry u/s 5A which has not been held in the case before me.

As observed by Mudholkar J. in Smt. Somavanti and Others Vs. The State of Punjab and Others, , in order to make a declaration u/s 6, Government must be satisfied about two things: (a) the need for acquiring the disputed land, and (b) that the need is for a public purpose.

The petitioner, in his petition, introduces facts to show that there was no need for acquiring lands for the construction of a swimming pool or staff quarters as mentioned in the declaration. Particulars of educational institutions were, of course, not given in the impugned declaration, but the need for such institutions has been elaborated in paras 15 and 24 of the affidavit-in-opposition of the Parishad in C. R. 295. In these paragraphs, it has been stated that owing to the influx of a huge refugee population and their settlement at Konnagar, the need for additional educational institutions was felt and that the Parishad was established in 1949 for setting up additional educational institutions for the public at Konnagar. In pursuance of this object, it is stated, the Parishad has since established three Primary Schools, one Secondary School under the name of the Rajendra Smriti Vidyalaya; a training School for women, known as the Arts & Crafts Centre; a pre-Basic Nursery School, known as Sishu-Siksha Sadan; a Junior Basic School named Siksha Sadan; a Girls' Senior Basic School called Balika Siksha Sadan; a Four-class Junior High School called Arabindo Vidyapeeth; two libraries and a Gymnasium, and it is stated in para 24 that additional lands are necessary for the expansion of the aforesaid institutions, such as --(a) to obviate teaching by shifts, which is now necessary for want of accommodation; (b) to provide open lands within the compound of the basic schools; (c) to provide separate accommodation for the Senior Basic School for Girls, which is now held in the premises of the Rajendra Vidyalaya, which is a Boys' School; (d) the last-mentioned purpose is all the more imperative because it is proposed to raise the Girls' School to the status of a Higher Secondary School.

As against this, it was stated in the affidavit-in-reply of December 14, 1962 that the institutions run by the Parishad are not popular and that there are a number of other institutions in the locality. This is, however, no ground for holding that Government did not apply its mind to the need for further land for the institutions run by the Parishad which was evidently formed, inter alia, for establishing educational institutions (vide Memorandum of Association), as early as 1949. The success or otherwise of the institutions established by the Parishad

is a matter for the Government, and not this Court, to determine.

But the petitioners, in their supplementary affidavit of July 4, 1968, introduced the fact that the Parishad owns a large plot, numbered 1857, out of which 2 bighas have been given over by the Parishad to the Rajendra Vidyalaya which was built only on a portion thereof and the rest of the land measuring .44 acres is lying vacant, within compound walls, while the Parishad is still retaining 1 bigha and odd of vacant land. The respondents had no further opportunity to rebut these statements, but from para 5 of the application for vacating injunction, filed by the Parishad on June 15, 1962, it would appear that the 44 of vacant land referred to in the petitioners' supplementary affidavit, has been allotted to the Gymnasium of the Parishad, This affidavit shows how the entire lands belonging to the Parishad have been utilised.

But it has been further contended, on the basis of the averments in the supplementary affidavit-in-reply of July 16, 1968 that the very fact that by a deed of gift of June 27, 1962, the Parishad could part with 2 bighas of land to the Rajendra Vidyalaya subsequent to the impugned declaration shows that there was no further need of any land for the said Vidyalaya. But a perusal of the recitals of the said deed at Annexure R to the supplementary affidavit-in-reply shows that this is not a new gift but that a formal deed had been resorted to in order to affirm the title of the Vidyalaya in respect of the 2 bighas which had previously been delivered to the Vidyalaya and upon which the Vidyalaya had built its existing structures.

If so, it is difficult to hold, with any amount of certainty that the alleged need of the Parishad for extending its existing institutions is fictitious.

(b) The petitioners, therefore, advert to the next branch, to show that the Government did not apply its mind to the question whether the disputed lands were needed for a public purpose.

(i) On this point, Mr. Mukherjee, for the petitioners, first drew my attention to the recitals in the impugned declaration to show that the very fact that the word "etc"., was used after mentioning educational institutions, staff quarters and swimming pool" shows that the declaration was vague and omnibus and that the Government did not apply its mind to the precise purposes for which the lands were needed.

(ii) It has next been contended that even though plot no. 1723 which is a tank has been excluded from the Section 6 declaration, the object of constructing a swimming pool still remains in the Section 6 declaration and that this shows that the Government did not apply its mind while issuing the declaration u/s 6.

(iii) As regards the construction of staff quarters, it has been contended that this is not a public purpose at law at all.

The use of the word "etc"., of course, shows some amount of carelessness on the part of those who drafted the impugned declaration, and, as my experience

in previous cases goes, this is not a solitary instance of such carelessness, I wonder when the officers who are responsible for exercising this potent instrument of compulsory acquisition will realise how it affects the citizens concerned who are expropriated thereby and how their carelessness gives rise to unnecessary litigation and embarrassment to the Government. It is also true that the construction of a swimming pool is not relied upon in the counter-affidavit of the Parishad (Paras 13, 15 of the counter-affidavit of November 30, 1962) as one of the purposes for which the disputed land are alleged to be needed.

But as has been rightly pointed out on behalf of the respondents, it is not necessary to recite the precise purposes in the declaration for acquisition, *Babu Barkya Thakur Vs. The State of Bombay and Others*, . If it transpires on the evidence that there was a public purpose behind the declaration, it cannot be held that there was no public purpose or that the declaration was colourable vide para 19 of *Smt. Somavanti and Others Vs. The State of Punjab and Others*, .

Now, in the instant case, it is fairly established that there are certain educational institutions set up by the Parishad for whose expansion, more lands are needed. As regards "staff quarters", in the declaration, of course, it is not mentioned for what staff the quarters are needed. But in para 14 of the counter-affidavit of the Parishad it is stated that the quarters are required for housing the teachers of the Schools mentioned in the counter-affidavit, within their campus. It is, however, contended, on the authority of some observations in the Supreme Court decision in *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, , that the housing of teachers would serve no public purpose.

In the case of *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, , it was of course held that the quarters meant for the individual members of the staff cannot be said to serve a public purpose.

On the other hand, in *R.K. Agarwalla and Others Vs. State of West Bengal and Others*, , the construction of quarters for "social workers", inter alia, was held to constitute a public purpose inasmuch as the memorandum of association of the Sangha, which was produced in Court, showed that the object of the Sangha was "to help the distressed, to nurse the sick, to feed the hungry, to clothe the naked" It was held that the accommodation of workers engaged in such purposes was itself a public purpose. The observations in *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, were distinguished on the ground that in that case, it was not disclosed by the Ramkrishna Mission, for whose purposes the land was required, either to the Government or to the Court, for what "particular work" the staff-quarters were required. In the case before me, however, it has been established from the Memorandum of Association of the Parishad that the creation of educational institutions like schools is one of the objects of the Society and the affidavits on record show that the Parishad has, in fact, set up a

number of institutions for boys, girls and others. There is little doubt that the housing of the teachers of the Schools will be conducive to better instruction and discipline in those institutions, thus serving a public purpose.

It thus appears that at least two of the purposes mentioned in the declaration exist in fact and that they are public purposes. The question remains what would be the legal effect where the acquisition is sought to be made for purposes two of which are public and one of which does not exist. In *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, , it was held that where the notification is composite and it is not known what particular parcel is required for the public and non-public purposes respectively, the whole of the notification must fail, where some of the purposes mentioned are held by the Court to be private purposes.

That decision, to my mind, is not applicable to the instant case. My finding is not that one of the purposes mentioned is not a public purpose, but that the construction of swimming pool has been retained in the declaration u/s 6 even after the tank plot which was included in the Section 4 notification, presumably for converting it into a swimming pool has been left out from the acquisition proceeding. This as I have held, is due to sheer inadvertence or carelessness. This fact, alone cannot condemn the declaration as colourable, when it is supported by two public purposes, in fact.

(c) Petitioners, accordingly, point out two other circumstances, from which the proceeding may be branded as colourable or collusive, namely,

(i) that the Parishad has not utilised the grant of money already made in its favour by the Government;

(ii) that the token contribution of Rs. 10/- towards the impugned acquisition has not been offered by the Government after a proper consideration of all relevant facts but merely because it has been sought for by the Parishad.

The first contention is in connection of the grant of Rs. 60,000 which was made by the Central Government on February 24, 1961, by the letter at Annexure A to the counter-affidavit of the Parishad. The grant was made for "the purchase of land required for the educational institutions run by the Parishad". It was argued, firstly by Mr. Mukherjee, that the grant was made for developing the existing institutions on the Parishad's own lands. But the words "purchase of land" indicate that additional lands were required to be purchased for developing the existing institutions. Failing in this, it was contended that the grant was made for private purchase and not for compulsory acquisition. But it would not be reasonable to restrict the word "purchase", which has been used in the generic sense, in this Departmental correspondence to voluntary purchase, to the exclusion of compulsory purchase. On the other hand, so far as the provisions of the Land Acquisition Act are concerned, it has been observed by the Supreme Court, *Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others*, that it is not a condition for compulsory purchase for public purposes that

attempts to purchase the land required by private treaty must have failed. On the other hand, the very fact that the sum of Rs. 60,000 was lying unutilised for over one year, that is, the time limited by the grant for utilisation of the money might have satisfied the State Government as to the need for utilising it by resorting to compulsory acquisition at an early date.

12. It was next urged that the very fact that the contribution of Rs. 10/- was agreed to be offered by the State Government at the request of the Parishad shows that the Government had no initiative in the matter and had not applied its mind to the need for the acquisition. On this point, reliance is made in the recital of the Government letter in question of February 18, 1961 which says that the contribution was being offered in pursuance of a letter received from the Parishad dated January 5, 1961. It is, however, now settled that provided there is a public purpose behind a proposal for acquisition it does not matter whether an individual or group of individuals are going to be proximately benefited by the acquisition or whether the move for the acquisition is initiated by such person or persons who are going to be immediately benefited. *The State of Bombay Vs. Bhanji Munji and Another*, . If that be so, it cannot be concluded that the Government, in making the order for acquisition, did not apply its mind to the need or the purpose for the acquisition merely because the proposal came from the Parishad which was going to be immediately benefited, for employment of the Governmental machine for the acquisition.

13. II. The next point urged on behalf of the Petitioner is more serious, namely, that Section 17(4) has been wrongly applied and the Petitioners have been wrongly deprived of the opportunity to object u/s 5A of the Act, inasmuch as the disputed lands are not "waste or arable". Upon a review of all the existing authorities, in *Abdul Jabbar v. State of West Bengal*, (1967) 71 Cal WN 129, I have stated the conditions for the application of Sub-section (4), read with Sub-section (1) of Section 17 of the Act which are:

(a) Satisfaction as to the urgency for the acquisition, which is a subjective condition of the State Government;

(b) The lands in question being "waste or arable", which is an objective condition. Section 17(4) cannot be applied to any land which is shown not to be arable or waste (vide *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*,).

Coming now to the nature of the plots included in the disputed declaration u/s 6, namely 1822, 1725, 1727, 1728, 1729, they are recorded in the C. S. records as "danga", which means high land.

In none of the affidavits it is stated that the lands are actually under cultivation. Government's case is that they are waste. In para. 4 of the Petition in C. R 1140 it is stated that the plots are situated within the residential area of the town of Konnagar and that the Petitioners have "effected various improvements on the said lands by spending huge amount of money and have made the said lands fit

for constructing residential buildings and industrial establishments on the same. The particulars of such improvements are, however, not given in the Petition and in the counter-affidavit of Respondents 2-3 it is stated that on inspection of the plots, "no tree nor any structure and no trace of any improvement could be detected" and that "the lands are near dumping ground". According to the Respondents, therefore, the disputed plots are "waste".

In paras 5-6 of the affidavit-in-reply in C. R. 295, it has been stated that the disputed lands are close to many brick-built buildings and that for municipal assessment, the disputed lands have been treated as building sites. In the affidavit in reply of the Petitioner in C. R. 1140 (Para. 7), it has been stated that "the lands and buildings of the Kalyan Parishad are much nearer to the trenching ground than the disputed land".

The conclusions that emerge from the foregoing affidavits are that the disputed lands are not under cultivation nor fit for cultivation; there are no trees or structures existing on them and no productive use is now being made. But buildings may possibly be constructed on such lands.

The question is, when land is at present empty and unoccupied, whether the fact that buildings may possibly be constructed on it is a ground for excluding it from the category of "waste" land within the meaning of Section 17(1) of the Act.

In the administrative instructions contained in the Bengal Land Acquisition Manual (1910, 89), it is the existing condition of the land which has been taken to be test as to whether a land is waste and it is laid down that Section 17 should not be applied to lands occupied by roads, tanks, buildings, gardens, orchards etc. Respondents have presumably acted according to these instructions.

But a different test of "waste" land has been adopted by the Bombay High Court in *Navnitlal Ranchhodlal Vs. State of Bombay and Another*, :

"..... so far as lands in the urban area are concerned, the expression "waste lands" may possibly be used with reference to pieces of land which are desolate, abandoned and not fit ordinarily for any use as building sites etc.

A building site which is quite suitable to be built upon cannot be regarded as a waste land simply because it is not put to any present use. It is its unfitness for use and not the mere fact that it is not put to any present use that must determine whether the land is waste or not"

The foregoing view of the Bombay High Court appears to find support from the observations of the Supreme Court in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, . In the Oxford Dictionary, "waste" is defined as follows :

"....uncultivated, incapable of cultivation or habitation; little or no vegetation; barren desert".

Following this Dictionary meaning the Supreme Court observed:

"The expression "waste land" as contrasted to "arable land" would, therefore, mean "land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation therein".

Lands which are fit for habitation after constructing buildings cannot, therefore, be classified as waste. The averment in the petition that the disputed lands are situated within the residential area is not controverted and the very fact that the Parishad wants to build its staff quarters on the disputed land shows that it is possible to construct buildings upon the lands and to occupy them. The vague statement in the counter-affidavit of the Government that the disputed lands are near the dumping ground is of no worth in view of the fact that the Parishad wants to accommodate its staff on the disputed lands.

Having regard to the foregoing circumstances, I am satisfied that the disputed lands are not "waste" lands within the meaning of Sub-sections (1) and (4) of Section 17, so that the inquiry u/s 5A could not lawfully be dispensed with. The declaration u/s 6 must, accordingly, be struck down as invalid.

Petitioners also rely on the other aspect of Section 17(4), namely that there was no satisfaction of the Government as to the "urgency" for the acquisition, u/s 17(1), which is a condition precedent for the application of Section 17(4). In *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, and *Jaichand Lall Sethia Vs. State of West Bengal and Others*, the Supreme Court has laid down that -

(i) It is not competent for the Court to inquire into the sufficiency of the grounds which led to the formation of the opinion of the Government that the need for acquisition was urgent and that, accordingly, the inquiry u/s 5A should be dispensed with.

(ii) Nevertheless, the Court can interfere if it is shown that the Government never applied its mind to the matter or that the action of the Government is mala fide.

There are decisions to the effect that where there is a recital in the impugned order that the Government was satisfied as to the urgency or other condition precedent for the exercise of the statutory power, such recital would, in the absence of any evidence as to its inaccuracy, be accepted by the Court as evidence that the necessary condition was fulfilled (*Jaichand Lall Sethia Vs. State of West Bengal and Others*,).

There is, however, no mention of "urgency" or the Governor's "satisfaction" as to that fact at all in the impugned declaration. It merely says -

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

But even if the foregoing words be held to be a recital that the Governor was satisfied that the instant case was a "case of urgency" referred to in Sub-section (1), which would brook no delay as would be caused by an inquiry u/s 5A, it is still open to the petitioners to show by evidence that the Governor did not apply his mind to the question of urgency or acted mala fides (Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others,). The broad fact in this case is that there were some existing educational institutions for which additional lands were needed, the question that additional lands were needed for their expansion or proper functioning is one thing and another thing to say that the need was so imperative that the lapse of time required for holding an inquiry u/s 5A could not be suffered. The use of the word "etc", "swimming pool", and the like show that this aspect of the matter was not fully attended to. There was no emergency, such as a natural calamity, to meet with which the lands were needed. To my mind the circumstances disclosed do not show that the Government applied its mind to the particular question, namely, whether the proceedings u/s 5A of the Act should be dispensed with. It is, however, not necessary to rest my decision upon this branch of the petitioner's case, because of my finding that the disputed lands not being "arable" or "waste" within the meaning of Sub-section (1) of Section 17, Sub-section (4) of that section could not be legitimately applied, to dispense with the proceeding u/s 5A.

My conclusions are -

(i) There is a public purpose to support the impugned acquisition. Hence, the notification u/s 4(1) cannot be quashed, but the last paragraph of the notification will be deemed to be cancelled.

(ii) But since the proceeding u/s 5A has been wrongly dispensed with, the declaration u/s 6 cannot be upheld; Government must make a fresh declaration, if any, only after hearing objections u/s 5A and after considering the Collector's report thereon.

In the result. C. R. 1140(W)/67 is discharged, excepting that the last paragraph of the notification at Annexure B to the petition in that case shall be deemed to be cancelled.

C. R. 295(W)/62 is made absolute and the declaration u/s 6 at Annexure B of the petition thereto is quashed. But respondents shall have the liberty to make a fresh declaration according to law after complying with the requirements of Section 5A of the Land Acquisition Act. Parties will bear their own costs in both the Rules.

14. III. Before parting with this case, another matter has to be disposed of, namely, as application u/s 476 of the Criminal Procedure Code, filed on behalf of the Parishad on account of certain statements made by Samar Mitra, the son of petitioner Jatadhar who had died during the pendency of the Rules, in the supplementary affidavit filed by him on July 16, 1968. The statements, it is urged, impute the criminal offences of misappropriation of money granted by the

Central Government and of cheating the Government by making false representations. I do not, however, consider that this is a fit case for sanction for prosecution by the Court u/s 476, for the following reasons:

(a) The statements in question are at best defamatory, for which the applicants may have redress by private complaint.

(b) The applicant is a collective body and the statements are not levelled against any named individual.

(c) The statements are in the nature of a comment on the facts disclosed by the materials on the record and, in all probability, the drafting of the statements is the work of the lawyer for the petitioner and not the petitioner himself. Much of the irritation has been caused by the language used in the statements in question.

But even though I refuse to accord sanction u/s 476. I would direct the opposite party, Samar Mitra, to pay the costs of the application, assessed at ten gold mohurs, for the language used is provocative enough to impel the applicants to bring this application. The application is accordingly rejected but Opposite Party Samar Mitra must pay a cost of ten gold mohurs to the Konnagar Kalyan Parishad.