

(1977) 05 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jur. Case No's. 545 and 1074 of 1969

Kaushlendra Prasad Narain Singh and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-05-1977

Acts Referred:

Constitution of India, 1950 — Article 131A(2)

Land Acquisition Act, 1894 — Section 23(1), 4, 49, 5A

Trusts Act, 1882 — Section 11, 37

Citation : AIR 1978 Patna 64 : (1977) 10 PLJR 603

Hon'ble Judges : K.B.N. Singh, C.J;Uday Sinha, J;Shambhu Prasad Singh, J

Bench : Full Bench

Advocate : Basudeva Prasad, Awadh Kishore Prasad, Radha Mohan Prasad and Renuka Sharma, in C.W.J.C. 545/69 and Basudeva Prasad, Narendra Prasad, Radha Mohan Prasad and Renuka Sharma, in C.W.J.C. 1074/69, for the Appellant; T.K. Jha, General and P.N. Jha, J.C. to A.G. and A.K. Sinha for Central Govt. for Respondent No. 4 in C.W.J.C. No. 545/69, for the Respondent

Judgement

Shambhu Prasad Singh, J.—These two civil writ jurisdiction cases were referred to Full Bench by a Division Bench by its order dated 18th of Dec., 1969, on the ground that these cases involve the same question of law as was involved in civil writ jurisdiction case No. 384 of 1967 which had earlier been referred to Full Bench and that the three cases should be heard together. Civil writ jurisdiction case No. 384 of 1967 has been disposed of earlier as it was not pressed without deciding the question of law for the decision whereof it was referred to Full Bench. These two cases, however, have been heard together and are being disposed of by this judgment

2. The question of law to be decided to these cases is whether Section 23(1) (first) of the Land Acquisition Act (hereinafter referred to as "the Act") is ultra vires. Section 23(1) (first) reads as follows:--

"In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration-- first, the market value of

the land at the date of the publication of the notification u/s 4, Sub-section (1);"

According to learned counsel for the petitioners of the two cases, the determination of the amount of compensation with reference to the date of publication of the notification u/s 4(1) of the Act is unreasonable leading to discrimination between different citizens of the country, for the Act does not provide any time limit within which the possession of the land is to be taken and compensation is to be paid to the owner. According to him, there is no market left for the land after the publication of the notification u/s 4(1) of the Act and in some cases possession is taken and compensation paid within a short period while in other cases it takes even 10 to 20 years. He has contended that obviously the owners of land in those cases where possession of the land is taken and compensation paid after a longer period are losers while those owners whose possession of whose lands is taken and compensation paid soon are gainers and thus there is a discrimination between them. Though in the writ petitions vires of only Section 23 of the Act was specifically challenged (except in C. W. J. C. No. 545 of 1969 where vires of Section 5 -- mistake for 5-A -- was also challenged), learned counsel for the petitioners has contended that the whole Act is ultra vires. In that connection he has also referred to Sections 9, 11 and 12 of the Act, specially Section 11, which also states that the Collector has to enquire into the value of the land at the date of the publication of the notification u/s 4(1). It has been pointed out that no maximum time limit has been provided anywhere in the Act for making an award by the Collector.

3. It may be advantageous to state here and now substance of some of the provisions of the Act (as they apply to this State after amendments made by this State) which will help in appreciating the contention of learned counsel for the petitioners, as stated above, and that of learned counsel for the State which will be mentioned hereafter, Section 4 provides that a notification stating that some land is needed or likely to be needed for any public purpose shall be published in the official gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the locality where the land is situate when it appears to the appropriate Government that such land is needed or likely to be needed for any public purpose. Publication of such a notification entitles any officer either generally or specially authorised by such Government in this behalf and his servants and workmen to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches, and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle. Seven days' notice in writing is needed for entry as aforesaid into any building or upon any enclosed court or garden attached to a dwelling house unless consent of the occupier has been taken. Section 5 lays

down that at the time of the entry as aforesaid the officer so authorised shall pay or tender payment for all necessary damage to be done as aforesaid. In case there is any dispute as to the sufficiency of the amount so paid or tendered, the officer shall at once refer the dispute to the decision of the Collector or other Chief Revenue Officer whose decision shall be final as to the quantum of damages. Section 5-A entitles any person interested in any land which has been notified u/s 4(1) as being needed or likely to be needed for a public purpose or for a company to object to the acquisition of the land or of any land in the locality as the case may be within thirty days after the publication of the notification u/s 4(i) at some conspicuous place in the village in which the land is situate or of the service of the copy thereof on him whichever is later. The objection has to be made in writing to the Collector who must give the objector an opportunity of being heard either in person or by a pleader and the Collector shall after hearing all such objections and making such further enquiry, if any, as he thinks necessary, shall decide the objection. In some cases the appropriate Government may itself call for the record of the proceeding held by the Collector and pass such order as it may think fit. As required by Section 6, after considering the Collector's report, if any, u/s 5-A, the appropriate Government, if satisfied, or the Collector himself, if satisfied, after hearing the objection, if any, u/s 5-A, that any particular land covered by the notification u/s 4(1) is needed for a public purpose or for a company shall make a declaration to that effect in writing. This is subject to the provisions of Part VII of the Act. Every such declaration must be published in the official gazette stating the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected. The Land Acquisition (Amendment and Validation) Act (13 of 1967) added a proviso to Sub-section (1) of Section 6 of the Act that no declaration in respect of any particular land covered by a notification u/s 4(1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication. After these formalities are over and in cases where the declaration is made by the appropriate Government, it directs the Collector to take order for the acquisition of the land as required by Section 7.

4. The Collector u/s 9 of the Act shall cause public notice to be given at convenient places on or near the land to be taken stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. Section 9 also provides as to what such notice should contain and that the Collector shall also serve such notice on the occupier, if any, of such land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested. Section 11 authorises the Collector to proceed to enquire into the objections, if any, made pursuant to the notice u/s 9 and into the value of the land at the date of publication of the notification u/s 4(1) on the date fixed for the purpose in the

notice or any other day to which the enquiry has been adjourned and to make an award under his hand of (i) the true area of the land; (ii) the compensation which in his opinion shall be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. Section 12 lays down that such award shall be filed in the Collector's office and shall be final and conclusive evidence as between the Collector and the persons interested subject to the provisions of the Act. The Collector is also required to give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. According to Section 15, in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24. Section 16 provides that when the Collector has made an award u/s 11, he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Section 17 authorises that in cases of urgency, if directed by the appropriate Government, the Collector may on the expiration of 15 days from the publication of declaration u/s 6 or with the consent in writing of the person interested at any time after the publication of the notification, u/s 4 can take possession of any waste or arable land even before making of the award and on taking possession the land shall vest absolutely in the Government free from all encumbrances. In such cases of taking possession compensation for the standing crops on such land and for any other damages caused by such sudden dispossession and not excepted in Section 24 has to be offered by the Collector to the person interested and in case such offer is not accepted, the value of such crops and the amount of such other damage shall be allowed for in awarding compensation for the land in the award. It also lays down that in case of any land to which, in the opinion of the appropriate Government, the provisions of this section are applicable, the provisions of Section 5-A shall not apply where the appropriate Government so directs or where possession of the land has been taken with the consent of the persons interested.

5. Section 18 gives a right to any person interested who has not accepted the award to make a written application to the Collector requiring him that the matter be referred by him for the determination of the Court. Section 19 lays down what the Collector shall state for the information of the Court in making the reference. Section 23 enumerates matters to be considered in determining the compensation. Sub-section (1) thereof has got six clauses the last one, i.e. the sixth being--

"the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land."

Sub-section (2) of Section 23 provides that in addition to the market-value as determined under Sub-section (1) of Section 23, the Court shall in every case

award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition. Section 24 enumerates matters to be neglected in determining compensation. Section 28 provides that if the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court. Section 34 lays down that when the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereof at the rate of six per centum per annum from the time of taking possession until it shall have been so paid or deposited. Section 48 confers liberty on the Government to withdraw from acquisition of any land of which possession has not been taken. It further provides that whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land. Section 49 says that provisions of the Act are not to be put in force for the purpose of acquiring a part only of any house, manufactory or other building if the owner desires that the whole of such house, manufactory or building shall be so acquired.

6. It has been contended on behalf of the State that so long possession of the land is not taken the occupier is in enjoyment of usufruct thereof and suffers no damage so far return from the land is concerned and the Act makes full provisions for compensating the occupier or any person interested in the land for all kinds of damages which may be sustained by him. Such persons are also compensated for the delay in the payment or deposit of compensation by award of interest on such compensation. It has been submitted that in the circumstances it cannot be said that on account of any delay in making the award there may be discrimination between different persons. According to learned counsel appearing for the State, the challenge to the vires of Section 23 or any provision of the Act on the ground that absence of any time limit for making of the award by the Collector may lead to discrimination between two persons one in whose case the award is made quickly and another in whose case the award is delayed for a considerable time and, therefore, these provisions are violative of Article 14 of the Constitution is nothing but a legal jugglery. In substance the argument--assuming that the basis for it, namely, that a person in whose case the award is made after considerable time is a loser for he does not get adequate compensation is correct -- is that the compensation paid to him is not adequate for it is paid after a long time with reference to the date of the notification u/s 4 of the Act, and that such an argument challenging the vires of Section 23 of the Act was rejected by the Supreme Court in *Aflatoon and Others*

Vs. Lt. Governor of Delhi and Others, .

7. Prima facie, it appears that a person whose land is acquired is not likely to suffer much on account of delay in making the award, for so long he is in possession he enjoys the usufruct of the property and is also entitled to get compensation under clause sixthly of Section 23(1) of the Act for the damage, if any, bona fide resulting from diminution of profit of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land and he gets interest u/s 34 of the Act on the amount of compensation if it is not paid or deposited on or before taking possession of the land. The time lag between the notification u/s 4(1) of the Act and declaration u/s 6 of the Act is not very material, for it is only after notification u/s 6 of the Act that the Collector starts with the acquisition proceeding. The notification u/s 4(1) merely entitles any officer of the appropriate Government to do certain acts as provided for in Sub-section (2) of Section 4 and the person whose land is acquired is entitled u/s 5 to get in advance payment for all necessary damages for the acts to be done by the officer of the appropriate Government or his men u/s 4(2) of the Act. The notification also affords an opportunity to such person to file an objection u/s 5-A of the Act that the land should not be acquired. After the amendment of Section 6 of the Act by the Amending Act of 1967, in cases where notification u/s 4(1) of the Act is published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, the time lag between that notification and declaration u/s 6 of the Act cannot be more than three years. Of course, in the two cases before us, the notifications u/s 4(1) of the Act were published before the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967. In C. W. J. C. 545 of 1969 it was dated 22nd of Jan., 1966 and published in the Gazette on 6th of April, 1966. The declaration u/s 6 was on 8th of March, 1967, within one year from the date of publication in the Gazette of the notification u/s 4(1). In C. W. J. C. No. 1074 of 1969 the notification u/s 4(1) is dated 13th of July, 1965. An objection u/s 5-A of the Act was filed on behalf of the petitioner of that case on 8th of Sept., 1965 (Annexure 2). It can safely be presumed that the publication in the Gazette of the said notification was some time in the month of August and the objection u/s 5-A was filed within 30 days from that date. The objection was rejected in absence of the petitioner on 1st of November, 1968. On 12th of Dec., 1968, the petitioner filed an application, (Annex. 4) for rehearing of the objection. On July 31, 1969, the objection was again rejected after hearing the petitioner, vide order at annexure 6. Thereafter the present writ application was filed in the year 1969 for quashing the notification u/s 4(1) of the Act and for restraining the State from dispossessing the petitioner from the lands which were notified and also for staying the operation of annexures 1 and 6. In this case there has been no declaration u/s 6 so far and in the circumstances stated above the respondent-State cannot be said to be responsible for delay in making the declaration.

8. Prima facie, the provision in the Act for determination of the compensation with reference to the date of notification u/s 4(1) of the Act also cannot be said

to be unreasonable. In some cases if the prices go up it may be advantageous to the State, in cases where prices go down after the notification it may be advantageous to the person whose land is acquired. When the Act was passed the framers of the Act would not have thought that a time may come in future where prices will only rise and will not fall down. Even in recent years prices have fallen down from what they were a few years ago. Therefore, it will be mere chance whether the provision will act to the advantage or disadvantage of the person whose land is acquired. There may be also cases where price of land in the vicinity may go down on account of the purpose for which the land is acquired, such as for preparing compost of nightsoil or processing of raw skin and in such cases if compensation is to be determined with reference to a date later than the date of notification u/s 4(1), the person whose land is acquired may be a loser. It is also now well established by judicial decisions that while determining the compensation with reference to the date of notification u/s 4(1) of the Act, the potential value of the land under acquisition has to be taken into consideration except the increase in its value on account of the scheme for which it is acquired. I do not consider it necessary to examine these matters in any further detail, for if determination of the question raised by learned counsel for the petitioners is really necessary for the disposal of the cases, then that question cannot be determined by this Court and the matter shall have to be referred to the Supreme Court under Article 131A(2) of the Constitution.

9. In *Mahabir Tea Company v. State of Bihar* (Civil Writ Jurisdiction Case No. 151 of 1977 and its analogous cases--disposed of on 30th of March, 1977) (Pat) myself (S. K. Choudhary, J. concurring) while referring a matter to a Bench of five Judges under Article 228A of the Constitution rejected the argument that as a result of insertion of that Article in the Constitution if the validity of State Act is challenged on constitutional grounds the matter has to be heard by five or more Judges of the Court even though there are earlier Bench decisions holding the Act to be intra vires. The reasons for taking that view apply with equal force to cases where vires of a Central Act or some provision thereof is challenged. If there is an earlier decision of the Supreme Court holding the Act or the provision vires of which has been challenged to be intra vires, that decision being binding on us, the determination of a question relating to the constitutional validity of such a Central law is not necessary for the disposal of the case by the High Court. It is only where the High Court is satisfied under Article 131A(2) that the determination of such question is necessary for the disposal of the case, it has to refer the question for decision of the Supreme Court. In the instant cases, I am of the opinion that the question as to the vires of Section 23 of the Act stands decided by the decision of the Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, and, therefore, determination of that question is not necessary for the disposal of these cases.

10. Learned counsel for the petitioners has placed reliance on an order of a Bench of this Court in *Bipin Bihari Sinha v. Union of India* dated 26th April, 1977 in C.W.J.C. No. 2146 of 1976 (Pat) by which a question was referred for the

decision of the Supreme Court under Article 131A(2) of the Constitution. In that case there was no earlier decision of the Supreme Court on the question and, therefore, that is not contrary to the view taken above. Learned counsel for the petitioners has also placed reliance on the decision of the Supreme Court in *Raja Ganga Pratap Singh Vs. The Allahabad Bank Ltd., Lucknow*, where that Court interpreted the expression "determination necessary for disposal of case". That is also not a case where there was an earlier decision on the question under consideration and in spite of that it was held that determination of that question was necessary for disposal of that case.

11. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, the vires of Section 23 of the Act was challenged. While dealing with the question. Mathew, J. speaking for the Supreme Court observed as follows (at pp. 2081 and 2082):--

"14. Linked with the above contention was the argument that the provisions of Section 23 of the Act impose unreasonable restrictions upon the fundamental right of the appellants and writ petitioners to hold and dispose of property under Article 19(1)(f) of the Constitution as compensation is awardable only with reference to the value of the property on the date of notification u/s 4 however long the proceedings for acquisition may drag on and not with reference to the market value of property when it is taken possession of. It was submitted that compensation, should be paid with reference to the value of the property as on the date when possession of the property is taken and the section, as it lays down that compensation should be fixed with reference to the market value as on the date of the notification u/s 4, abridges the fundamental right of a citizen under Article 19(1)(f). We find that the argument is not persuasive. Article 31(5) (a) provides:

"(5) Nothing in Clause (2) shall affect--(a) the provisions of any existing law other than a law to which the provisions of Clause (6) apply."

15. The Land Acquisition Act is a Pre-Constitution Act. Its provisions are not, therefore, liable to be challenged on the ground that they are not in conformity with the requirement of Article 31(2). What the appellants and writ petitioners complain is that their properties were acquired by paying them compensation computed with reference to the market value of the land as on the date of the notification u/s 4 and that Section 23 is, therefore, bad. This, in substance, is nothing but a challenge to the adequacy of compensation. Such a challenge is precluded by reason of Article 31(5). In other words, the appellants and the writ petitioners cannot challenge the validity of Section 23 on the ground that compensation payable under its provisions is in any way inadequate, because, such a challenge would fly in the face of Article 31(5).

16. It is noteworthy that Section 4(3) of the Land Acquisition Amendment and Validation Act, 1957 provides for payment of interest at 6 per cent of the market value after the expiry of 3 years from the date of the notification u/s 4 to the date of payment of compensation. Section 24 of the Act provides that any outlay

or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification u/s 4(3) shall not be taken into consideration by the Court in awarding compensation. This provision means that any outlay or improvement made with the sanction of the Collector after the date of the notification will be taken into consideration in awarding compensation.

17. In *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, , this Court has observed that although a law for acquisition of property must pass the test of Article 19(5) the challenge to the law would ordinarily be limited to the question of procedural unreasonableness. This is what the Court said:

"..... Where the law provides for compulsory acquisition of property for a public purpose, it may be presumed that the acquisition or the law relating thereto imposes a reasonable restriction in the interest of the general public. If there is no public purpose to sustain compulsory acquisition, the law violates Article 31(2). If the acquisition is for a public purpose, substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be presumed, but enquiry into reasonableness of the procedural provisions will not be excluded. For instance, if a tribunal is authorised by an Act to determine compensation for property compulsorily acquired, without hearing the owner of the property, the Act would be liable to be struck down under Article 19(1)(f)."

"18. It follows that although Section 23 of the Act can be challenged on the ground that it violates the fundamental right of a citizen to hold and dispose of property under Article 19(1)(f), the challenge would practically be limited to the question of procedural reasonableness. But Section 23 does not deal with procedure and cannot, therefore, suffer from any procedural unreasonableness. When it is seen that Section 23 is not liable to be challenged on the ground that the compensation provided by its provisions is inadequate in view of the provisions of Article 31(5), there is no point in the contention that it can be challenged for that very reason on the basis that it imposes unreasonable restriction upon a citizen's right to hold and dispose of property. "

It is manifest that the learned Judge rejected the argument that Section 23 of the Act was ultra vires for, according to it compensation was to be determined with reference to the date of notification u/s 4(1) of the Act. Learned counsel for the petitioners has submitted that while in that case the vires of Section 23 was challenged on the ground that it contravened Article 19(1)(f) of the Constitution, in the present cases the vires is challenged on the ground that it contravenes Article 14 of the Constitution and. therefore, it cannot be said that the Supreme Court has already decided the question raised in these two cases- As will appear from the passage quoted above the vires was challenged on account of contravention of Article 19(1)(f) of the Constitution, but the learned Judge found that really the vires of Section 23 of the Act was being challenged on the ground that compensation payable under its provisions was inadequate and as such the challenge would fly in face of Article 31(5) which could not be entertained.

Learned counsel for the petitioners has attempted to couch his arguments carefully in such a language as to avoid reference to Article 19(1)(f) and Article 31(5) of the Constitution and to refer to Article 14 of the Constitution, but, in my opinion, in substance it is the same argument which was advanced before the Supreme Court in Aflatoon's case. The basis for the discrimination alleged is inadequacy of the compensation. While disposing of a question raised, one has to look at the substance of it and not only on the form, In this connection it may be desirable to refer to the grounds as raised in the two writ applications In the writ petition of C. W. J. C. No. 545 of 1969 as originally filed after para 21 in ground No. (I) vires of Section 5-A of the Act was challenged on the ground that it contravenes Articles 19(1)(f) and 14 of the Constitution, In ground No. (III) it was stated that the impugned notification, declaration and the notices were ultra vires Article 31(1) of the Constitution as they amount to illegal deprivation of the petitioners' right to property. In ground No. (VI) vires of Section 23 was challenged on account of contravention of Article 14 but how it contravened Article 14 was not stated. It is manifest, therefore, that though Article 14 was referred to, vires of Section 23 was challenged only on the ground of illegal deprivation of the petitioners' right to property, a ground which was raised before the Supreme Court in Aflatoon's case and rejected. In C. W. J. C. No. 1074 of 1969 in paragraph 12 of the writ petition as originally filed it was said that Section 23 of the Act clothes the authorities concerned with arbitrary power to discriminate between persons equally placed by paying more compensation to one and less to the other just by way of favour. In para 13 it was said that Section 23 of the Act being ultra vires Article 14 of the Constitution of India, the entire Act is unconstitutional and void. In para 19 it was said that the impugned notice was ultra vires under Articles 31(1) and 19(1)(f) of the Constitution of India. In this case it is also manifest that though reference was made to Article 14, the vires of Section 23 or the Act as a whole was challenged only on the ground of deprivation of a citizen's right to hold property and likelihood of acquisition thereof on payment of inadequate compensation.

12. Learned counsel for the petitioners has placed reliance on the decision of the Supreme Court in P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, . In that case Section 3 of the Land Acquisition (Madras Amendment) Act (23 of 1961) was declared to be ultra vires for the reason that the said Act provided for acquisition of land for housing schemes and laid down principles for fixing compensation different from those prescribed in the principal Act. The facts of that case are quite different and the ratio decidendi has no application to the facts of the cases before us. Learned counsel for the petitioners also referred to the decisions of the Supreme Court in Smt. Tribeni Devi and Others Vs. Collector of Ranchi, and The State of Orissa Vs. Sudhansu Sekhar Misra and Others, . These decisions are not relevant to the point under consideration. On a careful consideration of the entire matter I hold that as the question raised is covered by the decision of the Supreme Court in Aflatoon and Others Vs. Lt. Governor of Delhi and Others, determination of that question is not necessary for disposal of

the cases before us and it is not necessary for this Court to refer the question for decision of the Supreme Court.

13. I would now take up for consideration other questions raised in the two writ applications which are to be decided for disposal of these cases I would first take up C. W. J. C. No. 1074 of 1969. The only other question which has been urged in this case, apart from the vires of Section 23 and of the Act as a whole, is that the property being a trust property it cannot be acquired under the Act. It has been submitted that acquisition of trust property will lead to a conflict between provisions of the Trusts Act prescribing duties of the trustee and that of the provisions of the Act. It has been submitted that in case of such conflict the provisions of the Trusts Act, which is an earlier Act, will prevail. In support of the proposition that where there is conflict between the provisions of two Acts, the earlier Act will prevail, learned counsel for the petitioner had placed reliance on English and Indian decisions, namely, (i) *Mary Seward v. Owner of the "Vera Cruz"* (1884) 10 AC 59 at p. 68), (ii) *Corporation of Blackpool v. Starr Estate Company Ltd.* (1922) 1 AC 27), (iii) *Barker v. Edger* (1898) AC 748 at p. 754) and (iv) *Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Deo and Others*, . The contention that where there is conflict between two statutes of the same law making body, the earlier one will prevail is well recognised one and its correctness has not been challenged by learned Advocate General appearing for the State. It is also not in dispute that the property under acquisition which is situate in village Manpur in the district of Sitamarhi is a trust property. The trust was created by a registered will dated 9th of April, 1914 executed by Chaudhri Mahadeo Prasad, proprietor of the Nanpur Estate. But the learned Advocate General has submitted that the petitioner of this case cannot derive any advantage from the aforesaid proposition of law for two reasons, firstly that Trusts Act applies only to private trusts and there being no averment in the writ petition that the trust to which the property under acquisition belongs is a private one, there is no basis for the argument, and secondly, there is no conflict between the provisions of the Trusts Act and those of the Act. Our attention was drawn to Section 37 of the Trusts Act from which it appears that the trustee cannot sell any trust property unless he is empowered by the trust deed to sell the trust property and Section 11 of that Act which lays down that the trustee is bound to fulfil the purpose of the trust and to obey the direction of the author of the trust given at the time of its creation except as modified by consent of all the beneficiaries being competent to contract. The restrictions imposed on the trustee by the Trusts Act in regard to sale or other transfers are restrictions on voluntary transfers. They do not, in my opinion, apply to involuntary transfers where in spite of the objections raised by the trustee a sale or transfer takes place under orders of a court of law or any competent authority. In *Khajamian Wakf Estates etc. Vs. State of Madras and Another*, it was held that certain Madras Acts were not invalid on the ground that they provide for acquisition of properties belonging to religious denomination. This decision shows that trust property can be acquired by the State. After having carefully considered the

provisions of the Trusts Act I am of the opinion that all that the trustee is required in cases of involuntary transfers is to take such steps in the proceeding which may be reasonably requisite for the preservation of the trust property (vide Section 13) and to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own (vide Section 15). Section 15 expressly lays down that in absence of a contract to the contrary a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust property. Therefore, even assuming that the trust to which the property under acquisition belonged is a private trust, in my opinion, there is no conflict between the provisions of the Trusts Act putting restrictions on the trustee to sell the trust property and his other duties as a trustee under the Trusts Act and the provisions of the Act for acquiring all kinds of immovable property (which included immovable property even of trust).

14. Learned counsel for the petitioner in the beginning himself contended that the trust was a public trust, but later on being confronted with the argument of the learned Advocate General appearing on behalf of the State that the Trusts Act does not apply to private trust, he submitted that the trust in question was a private trust and placed before us an English translation of the trust deed (the will by which the trust was created). The translation is a printed booklet and a supplementary affidavit has been filed stating that the translation was made under orders of the Allahabad High Court. Since I have already held that there is no conflict in the provisions of the Trusts Act and the Act in the matter of acquisition of trust property, it is not necessary to decide whether the trust is a private trust or a public trust. As already indicated earlier, I have proceeded on the assumption that it is a private trust. It may be stated here that this very deed of trust was considered by the Privy Council in AIR 1937 4 (Privy Council) and it was held that except some of the objects of the trust others were ordinary forms of private benevolence towards relations and friends. The argument of learned counsel for the petitioner that the property under acquisition being trust property cannot be acquired must fail for the reasons aforesaid.

15. It has also been contended by learned counsel for the petitioner that part of the trust property under acquisition is a temple, a shed attached to a temple and Bhinda and tank used for the purposes of temple and these properties should not be acquired by the State Government. Learned Advocate General wanted some time to get a report from the authorities concerned as to the nature of the land and time was allowed to him for that purpose. He has placed before us a report from the Collector, Sitamarhi, addressed to the Additional Secretary-cum-Director, Revenue and Land Reforms Department, Directorate of Land Acquisition, Government of Bihar, Patna, which shows that there was a temple on old survey plot No. 1482 on an area of 50" X 50" which is in a dilapidated condition, but this area is not subject-matter of acquisition. The report further states that after the notification u/s 4(1), a shed (Mandap) has been constructed in the year 1969 in old plot No. 1480, 16" X 16" in area. No idol of any God or Goddess has been installed in this shed on permanent basis but image of

Goddess Durga is kept therein on the occasion of Bashara festival and a mela is held there. Learned Collector has indicated that this area of 16" X 16" on which the shed stands and a road 150" long and 15" wide for reaching that shed may be left out from acquisition. Survey plot No. 1481 is a tank measuring 2.18 acres, survey plot No. 1480 was Bhinda of that tank but it has now become plain and measures 5.10 acres. In the opinion of the Collector, there is no justification for releasing the tank and the area around it which was once its Bhinda from acquisition. In my opinion also the petitioner is not justified in claiming release for the land around the tank which was once its Bhinda. However I am of the opinion that as stated by the Collector the question of acquisition of the land on which the temple stands measuring 50" X 50" does not arise as it is not subject-matter of acquisition and the land on which the shed (Mandap) in an area of 16" X 16" stands and land for a road 150" long and 15" wide as stated by the Collector for reaching the Man-dap should be released from the acquisition. So far as 2.18 acres of land on which the tank is situate is concerned, I personally feel that the State should also release that from acquisition, but I do not propose to pass any order in respect thereof and leave the matter to the discretion of the State Government. This writ application must fail except with regard to the land on which the Mandap stands measuring 16" X 16" and land for road 150" long and 15" wide for reaching that Mandap as conceded in Collector's report. A writ only to the release of these two lands should issue in favour of the petitioner.

16. In C. W. J. C No. 549 of 1969 the land which is sought to be acquired is situate in the town of Gaya. It is portion of land measuring 7.69 acres containing a double storeyed residential building which the petitioners claim to have purchased from their mother in the year 1950 by a registered sale deed. The residential building is in an area about 0.30 acre. The house is known as Lal Kothi and the Government have acquired land measuring 4.05 acres in the compound of that Lal Kothi. By notification u/s 4(1) of the Act as contained in annexure 1 they propose to acquire further land measuring 0.92 acre. According to petitioners' case, the land sought to be acquired is just by the side of the portico of the residential building. The petitioners filed an objection u/s 5-A of the Act but that was rejected without affording an opportunity to the petitioners of being heard in support of that objection. It is further alleged that the land is acquired for victimisation of the petitioners and it is mala fide. Learned counsel appearing for the petitioners in this case has advanced four arguments, besides the one relating to the vires of Section 23 and of the Act as a whole; viz., (i) that the State Government cannot acquire only a portion of the land of the compound; if at all, they should have acquired the entire land of the petitioners in accordance with the provisions of Section 49 of the Act; (ii) that the acquisition is bad as- it is mala fide, (iii) that the petitioner No. 2 has already been informed by a letter that the Government no longer propose to acquire the land and that should be given effect to and the proceeding should be quashed; and (iv) that the declaration u/s 6 and subsequent steps in the proceeding are bad in law as the objection of the petitioners under S- 5 A of the Act has been

rejected without affording an opportunity to the petitioners of being heard in support thereof.

17. Section 49 of the Act has got not application to the case. That would have applied only if the petitioners should have expressed their desire to the Collector that whole of the compound including the building should be acquired. There is nothing on the record to indicate that the petitioners expressed such a desire to the Collector. It is not, therefore, open to them to contend that the portion of the land cannot be acquired in view of the contravention of provisions of Section 49 of the Act.

18. There is also no substance in the contention of the petitioners that the acquisition is bad as it is mala fide. The petitioners have not placed sufficient materials on the basis of which it can be held that the acquisition is mala fide. A bare statement that the acquisition is for victimising the petitioners is not sufficient.

19. In order to decide the point raised on behalf of the petitioners that in view of the intimation given to one of the petitioners that the land would not be acquired, the proceeding should be dropped, it was considered necessary that General Manager, Tele-Communication, Bihar Circle, Patna, should be added as a respondent and be heard in the matter for the land is being acquired for telephone exchange at Gaya. Accordingly, General Manager, Tele-Communication, Bihar Circle, Patna, was added as a respondent and a counter-affidavit has been filed on his behalf. It is claimed by the petitioners that in the communication received by petitioner No. 2 from the State Government it has been stated that the General Manager, Tele-Communication, Bihar Circle, has also agreed to the release of the land of the petitioners. In reply to that in the counter-affidavit it has been stated that it was false to say that General Manager, Tele-Communication, Bihar Circle, has agreed to such a term. A draft of a compromise petition, according to the General Manager, Tele-Communication, Bihar Circle, was sent to him for his consent and he has not consented as yet to it. Learned Advocate General also stated that the State Government also have not taken any final decision in the matter so far. In the circumstances, it is not possible to order release of the land under acquisition on the basis of the aforesaid claim of the petitioners.

20. However, there appears substance in the contention of the petitioners that declaration u/s 6 of the Act and subsequent steps in the proceeding are bad in law on the ground that the petitioners were not afforded an opportunity of being heard in support of objection filed by them u/s 5-A of the Act. Learned counsel for the petitioners relied on a decision of the Supreme Court in Abdul Husein Tayabali and Others Vs. State of Gujarat and Others, in support of his contention that the petitioners were entitled to a hearing in support of their objection u/s 5-A of the Act. Apart from the said decision, Sub-section (2) of Section 5-A, as it stands after amendment of the State Government, itself provides that the Collector should give the objector an opportunity of being heard either in person

or by pleader and after hearing all such objections and making such further enquiry, if any, as he thinks necessary, decide the objection. Learned Advocate General appearing for the State was not in a position to dispute the claim of the petitioners that they were not afforded an opportunity of being heard in support of their objection u/s 5-A of the Act. However, he submitted that as the notification u/s 4(1) was published in the Gazette on 6th of April, 1966, the objection of the petitioners purporting to be u/s 5-A of the Act filed on 20th of Feb., 1966 was premature having been made before the publication of the notification in the Gazette. According to learned Advocate General, it was not really an objection u/s 5-A of the Act and the petitioners were not entitled to be heard in support of such an objection. He contended that in the circumstances of the case it should be held that the petitioners did not file any objection u/s 5-A of the Act.

21. It appears that the notification, u/s 4(1) of the Act (annexure 1 to the writ application) is dated 22nd of Jan., 1966. The objection of the petitioners u/s 5-A of the Act (annexure 2 to the writ application) was filed within 30 days after the issue of the notification u/s 4(1) as required by Section 5-A of the Act. Section 4(1), as it stands amended by the State of Bihar does not require publication of the notification only in the Gazette but also its publication at the office of the Collector, the office of the Sub-divisional Officer, the office of the smallest revenue administrative unit and Gram Panchayat, if any, constituted under the Bihar Panchayat Raj Act and at some conspicuous place in the village within which the land is situate. The Collector is also required under the said section to cause copies of the notification served on all persons known or believed to be interested in the land. It is not the case of the State that there was no publication of the notification at other places or no copy thereof was served on the petitioners before they filed the objection on 20th of Feb., 1966. In the circumstances, the objection cannot be held to be premature as contended by learned Advocate General. Even if there would have been no publication of the notification at other places and service of copy thereof on the petitioners but only publication thereof in the official Gazette on 6th of April, 1966, I would have rejected the contention, of learned Advocate General which is technical one. If an objection is filed by a person, interested in the Land before the publication of the notification in the Gazette, that has to be treated as a valid objection as soon as the notification is published in the Gazette. This writ application, therefore, must succeed on the aforesaid ground and the declaration u/s 6 of the Act (annexure 5), the notice u/s 9 of the Act (annexure 6), the notice of the award u/s 12 of the Act (annexure 10) and another notice calling upon the petitioners to take compensation money deposited (annexure 11) should be quashed. However, the notification u/s 4(1) of the Act (annexure 1) cannot be quashed on this ground.

22. In the result, C. W. J. C. No. 545 of 1969 is allowed in part and annexures 5, 6, 10 and 11 of the writ application are quashed. The prayer for quashing of annexure 1 is rejected. The Collector now must proceed with the land acquisition afresh from the stage of hearing of objection of the petitioners (annexure 2) u/s

5-A of the Act. After giving an opportunity to the petitioners of being heard in support of their objection he should dispose of that objection in accordance with law and thereafter if the objection is not accepted, he may take other steps in the proceeding in accordance with the provisions of the Act. C. W. J. C. No. 1074 of 1969 is also allowed in part only in respect of land 16" X 16" on which the Mandap stands and land for a road 150" long and 15" wide for going to the said Mandap. It is dismissed in respect of other lands but subject to observations made in respect of the land on which tank is situate. There will be no order as to costs in either of the two cases.

K.B.N. Singh, C.J.

23. I agree.

Uday Sinha, J.

24. I agree.