
(1965) 05 CAL CK 0016
In the Calcutta High Court

Messrs. Harsookdas Balkisendas

APPELLANT

Vs

First Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 26-05-1965

Acts Referred:

Constitution of India, 1950 — Article 166, 166(1), 166(3), 226
Government of India Act, 1915 — Section 40(1)
Land Acquisition Act, 1894 — Section 18, 23, 23(1), 3(f), 49
West Bengal Land Development and Planning Act, 1948 — Section 4, 5, 6

Citation : 69 CWN 747

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

Bench : Division Bench

Advocate : Noni Coomar Chakravarty, Anil Kumar Sen and Mrs. Kanika Banerjee, for the Appellant;S.M. Bose, Advocate General and M. Sen for Respondents 1 to 3 and B.K. Chakravarty, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This is an appeal from a judgment and order of Banerjee, J., dated September 18, 1963, whereby a rule nisi obtained by the appellant was discharged.

2. The appellant is a partnership firm and is the sole owner of premises No. 2, Gariahat Road, now known as No. 2 Raja Subodh Mallick Road. According to the appellant, the area of the said premises originally was 23 bighas 9 katahs and 10 chhataks and 43 sq.ft. of land had been acquired by the Government of West Bengal for the State Transport Corporation. On February 8, 1960, a special Notice u/s 9 of the Land Acquisition Act, 1894, was issued by the respondent No. 1 for acquiring 7 bighas 4 kathas 9 chhataks and 10 sq.ft. out of the said premises. It is alleged in the petition that the land proposed to be acquired under the said Notice comprised the entire frontage of the premises. This land was required for the Calcutta Improvement Trust Scheme No. LXXII (Over-Bridge at Gariahat Level Crossing). The appellant was asked to appear before the respondent No. 1 on February 25, 1960, and was also asked to state in writing the nature of its

interest in the land, and other claims thereto. On February 25, 1960, the appellant submitted a petition before the respondent No. 1 in which it was alleged, inter alia, that the land proposed to be acquired covered the entire frontage of the premises, and if this acquisition was given effect to the remaining 16 bighas of land would be land-locked causing heavy severance and damage and would also injuriously affect the remainder of the land.

3. The appellant submitted a claim for Rs. 3,50,000/- for damages caused by severance and also other injuries to the remainder of the land.

4. The appellant received a second Notice dated September 19, 1960, u/s 9 of the Land Acquisition Act. On receipt of this Notice, the appellant preferred a second claim on the same terms as the first one mentioned above. Thereupon the respondent No. 2 wrote a letter dated September 5, 1962, to the respondent No. 1, in which it was stated that the claim advanced by the appellant under the third Clause of sub-section (1) of Section 23 of the Land Acquisition Act was unreasonable and excessive, and that the Governor had accorded sanction to the acquisition of the entire premises No. 2, Gariahat Road, Calcutta, u/s 49(2) of the said Act.

5. The appellant again unsuccessfully objected to the acquisition of the entire premises. Acquisition proceedings were completed, an award for compensation was made and a date was fixed for taking possession. The appellant thereupon applied to this Court for the issue of appropriate writs under Article 226 of the Constitution and obtained a rule nisi which was discharged by Banerjee, J., as hereinbefore stated.

6. Mr. N.C. Chakravarty, learned advocate for the appellant, contended that under the Land Acquisition Act, 1894, land could be acquired only for a public purpose. He referred to the preamble to the Act and also the definition of "public purpose" in Section 3(f) of the Act and submitted that the object of the Act, was to provide for acquisition, for public purpose only. He argued that the acquisition of an area of 7 bighas 4 kathas 9 chattaks and 10 sq.ft., under the Notice dated February 8, 1960, was for a public purpose as provided in the said Act, but the acquisition of the remainder of the land by the second special Notice dated September 19, 1960, was not for a public purpose. This acquisition of the remainder of the land under the said second Notice was made u/s 49(2) of the Land Acquisition Act, 1894. In support of this contention, Mr. Chakravarty referred to paragraph 3 of the affidavit-in-opposition affirmed by Harish Chandra Mukherjee on May 10, 1963 on behalf of the Trustees for the Improvement of Calcutta. It was argued that the statement in the said paragraph made it clear that the remainder of the land as acquired for schemes to be framed in future. It was argued that the statement in the said paragraph made it clear that the remainder of the land was acquired for schemes to be framed in future. It was argued that there was no provision in the Land Acquisition Act, 1894, for acquiring land in the manner in which it had been done.

7. The learned Advocate General appearing for the respondents Nos. 1, 2 and 3 contended that the acquisition under the Notification dated September 19, 1960, was made u/s 49(2) of the Act, and the question of public purpose was not a material question, when land was acquired under the powers conferred by Section 49(2) of the Act. He further argued that Section 49(2) of the Act had conferred powers on the Government to acquire land in the circumstances mentioned therein, and therefore it could not be urged that under the said Act land could be acquired only for a public purpose as indicated in the preamble to the Act. It was argued that the preamble to the Act no doubt provides a guide if there is any doubt or difficulty in interpreting the provisions of the Act. But where specific powers were conferred by a particular powers were conferred by a particular section it was not open to contend, that the powers so conferred, should be denied to the authority by reason of the objects specified in the preamble to the statute. In support of this contention, he referred to a passage in Maxwell on Interpretation of Statutes, 7th Ed., p. 45. This contention of the learned Advocate General is well founded. Section 49(2) of the Act has conferred upon the appropriate Government powers to acquire land, if in the opinion of the Government a claim made under the provisions of the third Clause of Sub-section (1) of Section 23 of the Act was unreasonable or excessive. The power to acquire land u/s 49(2) is not confined to land required for public purpose. Indeed the Government is not at all required to consider if the land is needed for public purpose. If it is satisfied that the claim under the third clause of Section 23(1) is unreasonable or excessive, it is competent to acquire the land in respect of which such a claim is made.

8. It was next contended by Mr. Chakravarty that Section 49(2) of the Act could not be invoked for the purposes of the impugned acquisition. He argued that Section 49 dealt with the question of acquisition of part of a house or building. It had, therefore, it was argued, no application to the case of acquisition of land. That being so, it was contended the acquisition under the Notification dated September 19, 1960, was altogether bad and must be quashed.

9. The learned Advocate General on the other hand contended that while Section 49(1) of the Act dealt with the acquisition of part of a house or building, Section 49(2) of the Act dealt with acquisition of land and this Sub-section had nothing to do with the acquisition of part of a house or a building. Sub-sections (1) and (2) of Section 49 are altogether independent of each other, one dealing with the question of acquisition of part of a house or building, the other with the question of acquisition of land Sub-sections (1) and (2), it was further argued, were parts of the same section, namely, Section 49. But, it was argued, the nature of the property dealt with by the two sub-sections was altogether different. While Sub-section (1) dealt with the acquisition of part of a house or building which might include land, sub-section (2) dealt with acquisition not of building or house, but of land. It was further argued that in interpreting the two sub-sections, plain meaning must be given to the terms used. The learned Advocate General continued that the appellant had come to this Court with a case of acquisition of

vacant land and Section 49(2) of the Act quite plainly dealt with this question.

10. In order to appreciate the rival contentions of the parties on this question, it is necessary to consider the terms of Section 49(1) and Section 49(2) of the Act. But before doing so, it is to be noticed that there is a marginal note to Section 49(1) which is as follows:-

Acquisition of part of house or building.

11. The first paragraph of Section 49(1) prohibits putting into force of the Act for acquiring part only of a house manufactory or other building for the reasons mentioned therein. The second paragraph gives the owner the option to modify or withdraw his express desire that the whole of such house, manufactory or building shall be so acquired. The third paragraph provides that in the event of a dispute on the question, if land proposed to be acquired under the Act does or does not form part of a house, manufactory or building, the Collector shall refer the determination of such question to the Court. The fourth paragraph provides that the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or the building. It is thus clear that Section 49(1) contemplates a property comprising both house, building or manufactory on the one hand and land on the other. The third and fourth paragraphs clearly indicate that both building and land attached to the building are contemplated by the sub-section.

12. Section 49(2) provides that where a claim is made by the owner under the third Clause of Section 23(1) on account of severance of the land to be acquired from other land, and the appropriate Government forms the opinion that such claim is unreasonable or excessive, it may, before the award by the Collector, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part. The entirety of the property contemplated by sub-section (2) is land. There is thus a clear difference in the nature and character of the property contemplated by sub-section (1) and sub-section (2) of Section 49 of the Act. The severance contemplated by sub-section (2) is severance of the land which was first sought to be acquired, from the land which is ordered to be acquired upon the State Government's coming to the conclusion that the claim is under the third Clause of Section 23 of the Act. The last few lines of the section, namely, "order the acquisition of the whole of the land of which the land first sought to be acquired forms a part", makes it quite clear that a house or building or manufactory is not contemplated under sub-section (2) as under sub-section (1) of Section 49.

13. It seems therefore that the appellant's contention that Section 49(2) could not be invoked for the purpose of the acquisition under the second Notice cannot be sustained, as this contention was based on an assumption that Section 49 and the sub-sections thereunder dealt with the question of acquisition of a house or building.

14. In support of this contention, Mr. Chakravarty relied upon a decision of the

Supreme Court in (1) State of Bihar and Another Vs. Kundan Singh and Another, . In this case the property sought to be acquired was land and a part of the buildings thereon. A space of 50 ft. in width together with the out-houses was sought to be acquired for the electric wire to run over a portion of the open space as also the out-houses on the land. Compensation was fixed by the Land Acquisition Officer at Rs. 4451/5/6. Dissatisfied with the award the respondents sought a reference u/s 18 of the Act. One of the grounds of objection of the respondents was that by reason of acquiring a portion of the land and building and not acquiring the entire area of the land and building, the respondents had to suffer a huge loss and the respondents claimed compensation in Rs. 21,765/8/- which was spent by them on the construction of the principal building. There was also a claim for loss of rent of Rs. 160/- per month which was received from the tenants from the main building. The District Judge, Hazaribag, who dealt with the reference directed that in addition to the amount of Rs. 4451/5/6 which was determined as the compensation, a further sum of Rs. 1000/- should be paid to the respondents. An appeal was taken to the High Court, Patna and thereafter to the Supreme Court. Mr. Chakravarty strongly relied upon the following observations of the Supreme Court at page 354 of the report :-

Sub-s. (2) of Section 49 seems to contemplate that where land is acquired and it is shown to form part of a house, it would be open to award to the owner of the house additional compensation under the third clause of Section 23, and so, this sub-section dealt with cases where the claim made by the owner of the house under the third clause of Section 23 is excessive or unreasonable, and provides that the appropriate Government may decide to acquire the whole of the land of which the land first sought to be acquired forms a part rather than agree to pay an unreasonable or excessive amount of compensation as claimed by the owner.

15. Relying upon these observations it was argued that Sub-section (2) of Section 49 also contemplated a property comprising of a building and land together, and not land alone, as was the case in this appeal. This contention of Mr. Chakravarty is not justified by the observations of the Supreme Court quoted above. It is true that the Supreme Court stated that sub-s. (2) of Section 49 contemplated cases where land was acquired and it was shown to form part of a house. But it had not been held that sub-section (2) does not apply to cases where the entire property comprises of land and there was no building on such land. Besides, it has not been held by the Supreme Court, as was argued by Mr. Chakravarty, that acquisition Rule sub-section (2) of Section 49 cannot be ordered by the State Government where the entire property comprised of land. It cannot be overlooked that the observations of the Supreme Court were made in the background of the facts of that case, in which the property comprised of both land and buildings and the property sought to be acquired was partly land and partly building. The said decision of the Supreme Court does not, therefore, uphold the appellant's contention that Section 49(2) cannot at all be invoked in a case where the property comprised entirely of land.

16. The next contention of Mr. Chakravarty was that the appellant's claim with regard to compensation was under the provisions of both the third and the fourth clauses of sub-section (1) of Section 23 of the Act. The provision under the third clause relates to damage sustained by the interested person at the time of the Collector's taking possession of the land by reason of severance of such land from other hand. The provision under the fourth clause of sub-section (1) of Section 23, on the other hand relates to damage sustained by the interested person at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting other property, movable or immovable in any other manner or the earnings of the interested party. It was argued that acquisition u/s 49(2) could be done only if a claim under the third clause of Section 23(1) appeared to be unreasonable or excessive. In this case the appellant's claim was a composite claim, which came both under the third and the fourth clauses of sub-section (1) of Section 23 of the Act. That being so, it was argued, Section 49(2) had no application. This contention on behalf of the appellant, however, cannot be accepted. Admittedly it had made a claim on the basis of the provisions in the third clause of sub-section (1) of Section 23 of the Act. Merely because it added a further claim under the provisions of the fourth clause, it cannot be said that by reason of such claim the power of the Government to acquire land u/s 49(2) of the Act stands defeated. If this contention is to be upheld, then in every case where a claimant advances a claim on the basis of any or all of the Clauses under sub-section (1) of Section 23 of the Act other than the third clause, the Government must be denied the right to acquire land u/s 49(2) of the Act. That plainly is not the import of Section 49(2).

17. The learned Advocate-General, however, contended that the terms of the fourth clause of sub-section (1) of Section 23 of the Act would not be attracted because the entire premises were acquired u/s 49(2), and therefore there could be no question of injuriously affecting other property of the appellant. This contention on behalf of the respondents, was sought to be repelled by Mr. Chakravarty by contending that what was challenged in this petition was not the first acquisition of 7 bighas 4 kathas 9 chhataks & 10 sq.ft. of land under the Notification dated February 8, 1960, but what was challenged by the appellant was the acquisition of the remainder of the land under the second Notification dated September 19, 1960. It was argued by Mr. Chakravarty that if this second acquisition was bad, then certainly there would be other property of the appellant which would be injuriously affected by the acquisition under the first acquisition by the Notification dated February 8, 1960. This contention of Mr. Chakravarty seems to be well founded. But there is no force in his contention that the power to acquire u/s 49(2) cannot be invoked and exercised as his client has advanced a composite claim under the third and fourth clauses of sub-section (1) of Section 23 of the Act.

18. The next contention of Mr. Chakravarty was that the opinion mentioned in Section 49(2) of the Act was the opinion of the State Government. If the opinion was formed that the claim of a party was unreasonable or excessive, than the

State Government might order acquisition of the whole of the land. It was argued that there was no evidence that the Minister-in-charge of the department which dealt with the acquisition of land was satisfied about the necessity of acquiring the land. The opinion contemplated by Section 49(2) must be the opinion of the Minister-in-charge. In paragraph 8 of the petition, it is alleged that the sanction of the Minister-in-charge was never obtained, nor was the matter ever placed before the Minister-in-charge before action u/s 49(2) of the Act was taken and for that reason the action was invalid, wrong and illegal.

19. Mr. Chakravarty argued that the letter dated September 5, 1962, from the Joint Secretary to the Government of West Bengal to the First Land Acquisition Collector showed that the opinion that his client's claim was unreasonable or excessive, as contemplated by Section 49(2) was not the opinion of the State Government, but that of A.K. Dutta, Joint Secretary. The matter was never placed before the Minister-in-charge and therefore, he argued that the acquisition could not be sustained and must be quashed.

20. In support of this contention, Mr. Chakravarty relied upon a decision of this Court in (2) Bejay Laxmi Cotton Mills Ltd. Vs. The State of W.B. and Others, . In that case land was sought to be acquired u/s 4 of the West Bengal Land Development and Planning Act, 1948, for the establishment of an agricultural colony and for creating better living conditions. The Land Planning Committee constituted under the said Act recommended that the development scheme should be approved and a declaration made u/s 6 of the said Act. The recommendation of the Land Planning Committee was approved by the Assistant Secretary to the Government of West Bengal in the Land and Land Revenue Department. A declaration u/s 6 of the Act was issued in respect of 21.63 acres of land. u/s 6 of the Act, when a development scheme is sanctioned u/s 5, the State Government has to be satisfied that the land in the notified area was needed for the purpose of executing the scheme. It was contended on behalf of the petitioners that the Government neither sanctioned any scheme nor was it satisfied before issuing a declaration u/s 6 of the Act. It appeared from the affidavits that the scheme was sanctioned by the Assistant Secretary to the Government and the declaration was issued upon his satisfaction. It was contended that the Assistant Secretary had no power to sanction the scheme nor could a declaration be issued on his satisfaction as such satisfaction was not the satisfaction of the Government. Rules of Business had been framed under Article 166(3) of the Constitution. Under Rule 19, of the Constitution. Under Rule 19, cases are ordinarily to be disposed of by or under the authority of the Minister-in-charge who may issue standing orders giving such direction as he thinks fit for the disposal of the cases in the department. Under Rule 20 each Minister shall by means of standing orders arrange with the departmental Secretary what matters or classes of matters are to be brought to his personal notice. Pursuant to these Rules, standing orders had been made by the Minister-in-charge in the department of Land and Land Revenue Under standing order N. 2(18) all cases proposed to be taken up by the Land Planning Committee set up under the Land

Development and Planning Act were to be brought to the notice of the Minister. Under standing order No. 5 the Secretary may permit the Deputy or Assistant Secretary to dispose of or submit to the Minister such cases as the Secretary may be general or special order direct with the approval of the Minister-in-charge. It was in these facts that Sinha, J., held that the standing orders meant that where the Land Planning Committee set up under the said Act took up a case or where the case had to go through the Land Planning Committee, such a case should be brought to the notice of the Minister before the issue of orders. It was held that the acquisition was covered by standing order No. 2(18) mentioned above and that the matter was never placed before the Minister either before or after it came to be taken up by the Land Planning Committee. It was because the matter was not placed before the Minister that the Notification and the entire proceedings were quashed. In my opinion, this decision does not assist the appellant inasmuch as land was sought to be acquired under the said Act which provided that the acquisition proceedings must go through the Land Planning Committee and a particular standing order, namely, standing order No. 2(18) required that the matter must be placed before the Minister. In the appeal now before us land was acquired under the Land Acquisition Act, 1894 and under the standing orders framed under Rules 19 and 20 of the Rules of Business, it has been provided by Clause (3) thereof as follows:-

All other cases or classes of cases shall subject to the provision of the order hereinafter following be disposed of by the Joint Secretary, provided that the Joint Secretary may at his discretion bring any such case at any stage to the personal notice of the Hon"ble Minister.

21. Under this standing order a Joint Secretary has been authorised to deal with the mater and therefore the satisfaction of the Joint Secretary should be treated as the satisfaction of the Minister-in-charge who had delegated his authority to the Joint Secretary.

22. Mr. Chakravarty, however, raised another contention namely that although the respondents" contention was that the satisfaction of the Government of West Bengal was expressed to be made in the name of the Governor of West Bengal in fact the said letter dated September 5, 1962, made it plain that the sanction was not expressed to be made in the name of the Governor. I must at once point out that this case has nowhere been made out by the appellant in its petition. The only contention raised in the petition regarding the sanction of the scheme was that in order to be a valid sanction, it must be sanction by the Minister-in-charge of the department and that the satisfaction of the Government must be the satisfaction of the Minister-in-charge and further that such sanction was not obtained. The contention raised by the appellant before the trial Court and also before us, however, is founded on the allegations in paragraph 9 of the affidavit-in-opposition affirmed by Sukhamoy Roy on March 4, 1963. In my opinion, the appellant is not entitled to raise this contention at all. It is not open to a petitioner, who has not made out a particular case in the petition to raise a

contention on the averments in the affidavit-in-opposition. In a petition under Article 226 of the Constitution the grounds on which the relief is sought must be made out in the petition itself and the petitioner cannot be allowed to make out a case on the averments in the affidavit-in-opposition. But since this point has been raised in the trial Court and also before us in this appeal. I should deal with the appellant's contention mentioned above.

23. The learned Advocate General repelled this contention raised on behalf of the appellant by contending that the provisions in Article 166(1) of the Constitution are not mandatory but directory. He referred to a decision of the Federal Court in (3) J. K. Gas Plant manufacturing Co. Ltd. and ORs. v. The King Emperor, 52 CWN (F.R.) 25, in which the Federal Court considered the similar provisions in Section 40(1) of the Government of India Act, 1915. In that case dealing with the same provision the Federal Court held that Section 40(1) of the Government of India Act, 1915, which is almost identical as Article 166(1) of the Constitution, was directory and not mandatory. It was further held that Section 40(1) of the Government of India Act, 1915, required that all orders of the Governor General in Council were to be expressed to be made by the Governor General in Council, but it did not define how orders were to be made but only how they were to be expressed. Therefore, the process of making an order preceded or was something different from the expression of it. The learned Advocate General contended that in this case in the letter dated September 5, 1962, it was stated that sanction of the Governor was thereby accorded to the acquisition of the entire premises No. 2, Gariahat Road. These terms in the letter, it was contend, were sufficient compliance with Article 166(1) of the Constitution. There is good deal of force in this contention of the learned Advocate General. the contents of the letter make it plain that the sanction of the Governor was accorded to the acquisition of the premises. But the order was not expressed to be made in the name of the Governor. If the requirement of Article 166(1) of the Constitution is held to be directory, as it should be the failure or omission to indicate the Governor's sanction or approval by addition of the words "by order of the Governor", cannot vitiate the proceedings.

24. The learned Advocate General also referred to a decision of the Supreme Court in (4) Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, , in which dealing with the same question namely, an omission to make and authenticate an executive decision in the form mentioned in art 166 of the Constitution the Supreme Court followed the decision of the Federal Court in (3) J.K. Gas Manufacturing Co. Ltd. v. Emperor, (supra) and held that an omission to express an executive order in the form required by Article 166(1) of the Constitution did not render the executive action a nullity. For these reasons the contention of Mr. Chakravarty that the failure or omission to comply with Article 166 vitiates the proceedings, cannot be accepted.

25. The next contention raised by Mr. Chakravarty was that his client was entitled to be heard with regard to its objections regarding the acquisition proceedings.

Such hearing was not given to the appellant and therefore the acquisition proceedings must be held to be bad. There is hardly any force in this contention. Section 49(2) of the Land Acquisition Act, 1894, does not require the State Government to proceed judicially or to take evidence or to give a hearing to a party whose land was sought to be acquired. As to whether a claim for compensation made by the owner of the property is excessive or unreasonable is entirely a matter for subjective satisfaction of the State Government. The statute does not confer upon the owner of the property a right to make any representations nor does it impose upon the State Government an obligation to entertain or deal with such representation before forming an opinion that the claim for compensation is excessive or unreasonable. This contention on behalf of the appellant, therefore, must fail.

26. The last contention on behalf of the appellant was that the letter dated September 5, 1962, made it clear that the land was required by the Calcutta Improvement Trust for execution of its scheme No. LXXII. Mr. Chakravarty also referred to paragraph 9 of the affidavit-in-opposition affirmed by Sukhamoy Roy on March 4, 1963, in which it was stated that the acquisition was for the purpose of Calcutta Improvement Trust and it was for a public purpose. He also referred to paragraph 8 of the affidavit-in-opposition affirmed by Harish Chandra Mukherjee on May 19, 1963, on behalf of the respondent No. 4. Relying upon this statement in the said affidavits and also in the said letter dated September 5, 1962, Mr. Chakravarty argued that before land could be acquired for the purpose of Calcutta Improvement Trust various provisions in Chapter III of the Calcutta Improvement Act, 1911, must be complied with. There was nothing on record to show that any improvement scheme had been framed under the Calcutta Improvement Act, 1911, and therefore, no land could be acquired by the State Government for the Calcutta Improvement Trust as alleged in the said paragraph 9 of the affidavit of Sukhamoy Roy.

27. This contention again has not been raised by the appellant either in the petition or in the grounds set out under paragraph 15 thereof, nor has this case been made out in the petition of objection filed by the appellant on November 5, 1962. There is no reference to this contention in the letter addressed by the appellant's advocate on October 4, 1962, to the First Land Acquisition Collector. This point does not appear to have been canvassed before the trial Court, but has been raised for the first time in this appeal. As there was no mention of this contention in the petition the respondents had no occasion to deal with the same. Mr. Chakravarty, however, strongly relied upon paragraph 8 of the said affidavit affirmed by Harish Chandra Mukherjee and argued that there was no existing scheme and that it was plain that schemes are to be framed in future. He, therefore, argued that no land could be acquired for a future scheme under the Calcutta Improvement Act, 1911, and in any event before such acquisition could be made there must be compliance with the various provisions in Chapter III of the Calcutta Improvement Act, 1911.

28. Mr. B. K. Chakravarty, learned counsel for the respondent No. 4, submitted that the land acquired would be needed for a scheme of improvement as mentioned in paragraph 8 of the affidavit of the said Harish Chandra Mukherjee.

29. The learned Advocate General, however, contended that the State Government was in no way concerned with any scheme for the improvement of Calcutta under the Calcutta Improvement Act, 1911. He further argued that in proceedings u/s 49(2) of the Land Acquisition Act, 1894, it was not necessary for the State Government to be satisfied that land was needed for a public purpose or for any scheme for the improvement of Calcutta. He argued that all that was to be considered in the acquisition proceedings was to see if the requirement of Section 49(2) of the Land Acquisition Act, 1894, had been satisfied. If the State Government had formed an opinion that the appellant's claim for compensation was unreasonable or excessive, it was not incumbent upon it to produce evidence to show the purpose for which the land was required. Section 49(2) of the Act did not impose any such obligation on the State Government, nor was it a condition of acquisition of land u/s 49(2) that it must be proved to the satisfaction of the Court that the land in question was required for a particular purpose. This contention of the learned Advocate General appears to be well founded. The requirement of a public purpose u/s 4 of the Act cannot by implication be imported into proceedings u/s 49(2) of the Act. This contention of Mr. Chakravarty, therefore, also must fail.

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

31. The operation of this order will remain in abeyance for three weeks from today, as prayed for.

Bose, C.J.

32. I agree.