
(1976) 09 CAL CK 0018
In the Calcutta High Court
Case No : A.O.D. No. 333 of 1973

Padma Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-09-1976

Acts Referred:

Companies Act, 1956 — Section 51

Constitution of India, 1950 — Article 14, 19, 226(1), 31

Land Acquisition Act, 1894 — Section 20, 35C(1)(a), 37, 43, 45

Citation : 81 CWN 285

Hon'ble Judges : S.P. Mitra, C.J.; S.K. Datta, J

Bench : Division Bench

Advocate : Bankim Chandra Dutt and Samarjit Gupta, for the Appellant; P.P. Ginwalla and Tarun Chatterjee for Respondents No. 2 and 2A, Moni Bhusan Sarkar for Respondents No. 1 and 3 and Malay Bose for Respondents No. 20 and 21, for the Respondent

Final Decision : Dismissed

Judgement

Salil Kumar Datta, J.—This is an appeal against the judgment and order of Chittatosh Mukherjee, J. dated March 12, 1973 whereby the connected Rule was discharged. The relevant facts are as follows: On or about March 30, 1963 the Board of Trustees for the Improvement of Calcutta, in pursuance of an earlier proposal, and, after considering the Inspection Report of its Alignment Committee, at their meeting on March 30, 1963 resolved that a street scheme for widening of Prince Anwar Shah Road from its junction with Russa Road to its junction with Raja Subodh Mullick Road (Gariahat Road) be prepared as recommended by the Committee. It was further resolved that survey be made for framing a General Improvement Scheme for the areas situated on either sides of Prince Anwar Shah Road for purpose of improvement. Thereafter on December 14, 1963 the Board after considering the joint report of the Chief Valuer and the Chief Engineer decided that General Improvement Scheme be framed for (i) the improvement of communications by widening Prince Anwar

Shah Road to a width of 100 ft. except near junction of Subodh Mukherjee Road where the width was to vary from 84 ft. to 90 ft. on account of substantial pucca-built houses; (ii) the improvement of the areas situated on either side of Prince Anwar Shah Road by widening of the existing roads and provision of new roads for improving access and communications to such localities, provision for parks and open spaces; and the development of vacant and lowlying lands. Under this scheme known as Scheme No. 114B (Prince Anwar Shah Road), the entire premises No. 357, Prince Anwar Shah Road was notified for acquisition.

2. Notice u/s 43 of the Act was published in the Calcutta Gazette, and local newspapers in March 1967 in respect of the said scheme No. 114B (Prince Anwar Shah Road). Thereafter in or about March 16, 1971 notices u/s 45 of the Act were issued to the respective owners and occupiers of the concerned premises inviting objections to the proposed acquisition of lands, including land of premises No. 357, Prince Anwar Shah Road. No objection was received from the petitioner but objections filed by others were considered by the Objection Committee appointed for the purpose. The recommendation of the Committee was considered by the Board which adopted the scheme with modifications suggested by the Committee and the particulars and estimate prepared by their Chief Valuer and Chief Engineer were approved by the Board and Government thereafter was moved for sanction of the Scheme. The Government of West Bengal u/s 49(1) of the Act sanctioned the said Scheme known as the General Improvement Scheme No. 114B Prince Anwar Shah Road as submitted by the Board as aforesaid subject to the modification that width of the road was not to be reduced below 60 feet at any point. The sanction of Government dated March 12, 1970 was published in the Calcutta Gazette extra-ordinary on March 13, 1970.

3. The petitioner company, the appellant before us, had its registered office at 357, Prince Anwar Shah Road Calcutta where it has been carrying on business as a lessee under its landlords at a monthly rent of Rs. 225/- only. According to its case, the Company has constructed new structures thereon and it is said that its business had grown to a considerable extent, the area being about 31/2 bighas-encircled by a boundary wall constructed by it. It is also stated that in the said premises covered under the said General Improvement Scheme there about 17 companies carrying on their business by installation of costly machinery and providing employment to a considerable number of persons.

4. According to the petitioner company, it never had any knowledge of the scheme and the acquisition of the premises therefor as per notification mentioned earlier. It came to know of the acquisition the aforesaid premises from a notice served on it u/s 9 of the Land Acquisition Act dated October 25, 1971 inviting" it to submit its claim for the said acquisition of its premises aforesaid comprised within the scheme for the General Improvement of Calcutta under CMDA Scheme No. 114B. The petitioner submitted its claim under protest and challenged the validity and legality of the scheme by an application under Article

226(1) of the Constitution moved on August 18, 1972.

5. The petitioner company contended in its application that no notice as required u/s 45 of the Calcutta Improvement Act, 1911 was never served on it even though it was the recorded occupier of the premises. Thereby the petitioner was deprived of its statutory right to object to the proposed scheme as also the right conferred u/s 78 of the Act. Further the scheme of the Board was not prepared in accordance with law said the sanction of the State Government was obtained on the basis that a substantial portion of the costs and expenses of the scheme would be re-coverable from inter alia betterment fee in respect of land comprised in the scheme but not required for the execution thereof. In a recent Bench decision of this Court, imposition of betterment fee had been held to be illegal. Accordingly the scheme in absence of further sanction of the State Government was no longer a scheme valid in law and no further sanction was obtained. The petitioner further submitted that proposed acquisition was discriminatory and unreasonable as adjacent lands abutting on the road belonging to others were left out of acquisition offending a rights guaranteed under -Articles 14 and 19 of the Constitution. It was lastly contended that the proposed acquisition of the entire premises 357, Prince Anwar Shah Road was without any purpose connected with the scheme excepting in respect of a strip of land on the north required for widening the said street as indicated in published plan of the Board which indicated non-application of mind and thus a mala fide and colourable exercise of power by the Board. The back portion thereof constituting the major area of the premises was not required for any of the avowed purposes of the acquisition. The petitioner had always been ready and willing to surrender the rectangular front portion of the said premises required for widening the road. The petitioner accordingly prayed for issuance of appropriate writ restraining the respondents from proceeding further with the scheme and quashing the scheme and proceedings in connection therewith in so far as it relates to the aforesaid premises.

6. The Board as also the State of West Bengal opposed the Civil Order arising from the said application under Article 226(1) and in the affidavit-in-opposition filed on behalf of the Board by Arun Kumar Ghosh affirmed on September 18, 1972 it was stated that the notices u/s 43 in respect of the Scheme No. 114B Prince Anwar Shah Road was duly published in the local newspapers, while notices u/s 45 was duly served on the owners and also on occupiers of the premises concerned and notice on the occupier of the said premises was served on one K.P. Ghosh on April 27, 1967. It was stated that while owners submitted objections to the acquisition the occupiers did not file any objection to the scheme or acquisition. The Committee appointed to hear the objection heard the objection of the owners on February 2, 1968 and referred back its recommendations to the Board over ruling the objection and suggesting modifications. The revised particulars and estimates were made thereon by the Chief Valuer and the Chief Engineer which was accepted by the Board by resolution dated July 6, 1968. The total costs of the Scheme as approved was Rs.

5.17 crores, out of which recovery from sale of old materials, sale of land, betterment levy would be Rs. 2.91 crores leaving Rs. 2.26 crores as net costs of the scheme. This scheme was forwarded to the State Government for sanction. The State Government sanctioned the scheme which was published in the Calcutta Gazette on March 13, 1970 with some modifications about the width of the road and thereafter land acquisition proceedings commenced.

7. It was denied that the scheme suffered from any infirmity-legal or otherwise or that the petitioner's rights under Article 14, 19 or 31 were violated and the petitioner not having availed of the opportunity as provided in law was not entitled to any further opportunity against the acquisition after the stipulated period prescribed by law. An affidavit-in-opposition affirmed by the Second Land Acquisition Collector was also filed supporting of the position taken by the Board. The petitioner filed his affidavit-in-reply thereto denying that K.P. Ghosh was ever its employee, and reiterating that no notice u/s 45 was served on the petitioner debarring it from filing objection u/s 45(2) or claim u/s 78. The petitioner also reiterated that it had no objection to an acquisition of the land required for widening the road while the acquisition of the entire premises would destroy a number of industries situate therein throwing a large number of people out of employment, apart from the huge loss of investments made therein.

8. Thereafter it appears a Civil Rule was issued on the above application calling upon the respondents to show cause why the writs as prayed for should not be issued. The Board thereafter filed another affidavit-in-opposition to the Rule verified by Arun Kumar Ghosh its Deputy Chief Valuer affirmed on November 22, 1972 containing similar averments as in the earlier affidavit-in-opposition, taking a further plea that there was inordinate delay in moving the application in August 1972 when the scheme was published on March 16, 1967 and there was no explanation for the delay. It was further, reiterated that notice u/s 45(1) was served on the petitioner and one K.P. Ghosh received the notice on behalf of the occupiers, copy of which was annexed. It was stated that no application u/s 78 within the stipulated time was filed by the owners so that the premises could not be abandoned from acquisition.

9. An affidavit-in-opposition to the said Rule was also filed on behalf of the owners of the premises No. 357, Prince Anwar Shah Road, affirmed by S.N. Ray Chowdhury on December 11, 1972 stating that said premises originally numbered as premises No. 108, Prince Anwar Shah Road, was leased to one Mandaram Agarwalla who assigned the lease in favour of the petitioner. The petitioner thereafter took a lease of the premises from April 1, 1956 for ten years and had been continuing in possession of the premises after the expiry of the lease. It was said that if there were industries in the said premises, they were there without lawful authority or right, title or interest in the premises as sub-letting was expressly prohibited under the lease. The allegations about construction of structures or investment of considerable amounts therein were denied and disputed. It was also stated that under the terms of the lease the

owners were entitled to compensation for land and structures while the lessee was entitled to compensation for loss of business. It was further stated that on their objection to acquisition they were duly given a personal hearing.

10. Affidavits were also filed on behalf of Arun Iron Works, an industry, carrying on business at the said premises who supported the case of the petitioners.

11. In its affidavit-in-reply affirmed on behalf of the petitioner by its director Ramprit Singh it was stated that the premises were not vacant nor undeveloped low lying lands but was already a developed land and no consideration was given as to whether the land would be necessary for the scheme or not. It was reiterated that K.P. Ghosh was never an employee of the petitioner and no notice u/s 45 was ever served on the petitioner. For the widening of the road only 20 feet wide strip on the land of the disputed premises abutting on the proposed road as per road widening scheme would only be necessary so that acquisition of entire premises was unnecessary and beyond any reasonable requirement. There was another affidavit-in-reply by the petitioner to the affidavit-in-opposition filed by the State containing similar averments. The petitioner also filed an affidavit-in-reply to the owners' affidavit-in opposition stating that the petitioner was given permission to construct structures in the said premises and considerable amount was invested accordingly. The lands were developed by the petitioner and other industries had been carrying on business with full knowledge of the owners.

12. The petitioner, it appears gave notice, with leave of Court of an additional ground contending that sections 78A to 78G were ultra vires Articles 14 and 19 of the Constitution.

13. It appears that a supplementary affidavit was affirmed on behalf of the Board and its Chairman by Arun Kumar Ghosh dated February 7, 1973 stating that notice u/s 45 was duly served on the petitioner as would appear from its letter dated April 20, 1967, which as follows:--

PADMA LTD. 108, Prince Anwar Shah Road, Tollygunj.

Ref: PL/CIT/67/967

Calcutta-1. 20th April, 1967.

To The Chairman, Office of the Board of Trustees for the Improvement of Calcutta, 10, Netaji Subhas Road, Calcutta-1.

Dear Sir,

Re: Premises No. 367 (now known as 108)

Prince Anwar Shah Road, Calcutta.

We as occupier of the above premises have received your notice served on us u/s. 45 of Bengal Act V of 1911 as amended by Bengal Act VIII of 1931 and West Bengal Act XXXII of 1955 about the acquisition of the said premises for General Improvement Scheme No. 114B, (Prince Anwar Shah Road).

As our industry is running, we will be the greatest sufferer and labour will be idle if at all the said premises is acquired and we strongly object to it. We will furnish you the full particulars of the losses at the time of hearing.

Yours faithfully, for PADMA LIMITED, Sd/- Illegible Director.

14. It was also said that the petitioner appeared before the objection Committee at the hearing of the objection in respect of premises No. 367 as mentioned in the letter through D.P. Chatterjee Administrative Officer as appearing from the minutes of the Objection Committee also produced before us.

15. To this affidavit there was an affidavit-in-reply by the petitioner affirmed through its director Ramprit Singh denying that the signatory to the said letter was ever a director of the petitioner at the material time. It was stated that D.P. Chatterjee was not an administrative officer of the petitioner at any point of time. It was reiterated that no notice u/s 45 was ever served on the petitioner company.

16. The rule came up for hearing before the learned Judge who held that in the instant case, a street scheme was originally proposed to be framed but subsequently a general improvement scheme was framed in accordance with provisions of section 36. It was further held that an improvement Scheme framed by the Board is not dependent upon imposition of betterment fee, so that even if section 78A is held ultra vires a scheme will be capable of being executed in absence of betterment fee which are severable from other parts of the scheme. It was also held that notice u/s 45 was served on the recorded occupier of premises No. 857, Prince Anwar Shah Road, and the letter of April 20, 1967 the original whereof was produced before and seen by the learned Judge, was in fact written by the petitioner which indicated service of the notice u/s 45. On the unrebutted presumption that official acts are duly performed, the learned Judge found that notice of hearing of objections was duly served by certificate of posting, and in view of the error of the petitioner in its letter mentioning the premises as bearing No. 367, the objection was docketed and heard in respect of that premises. Even so there was the old number and the petitioner's case of hardship was considered and disposed of so that the merits of the decision was also not affected by alleged irregularity in the matter of serving the notice. It was also held that there was delay in moving the application and for all the aforesaid reasons the Rule along with two are similar rules were discharged. The appeal is against this decision.

17. u/s 45 service of -notice on the owners and the recorded occupiers in respect of land which the Board proposes to acquire in executing the scheme is required to be made within thirty days of the publication of the notice u/s 43. Such notice is necessary to enable such person if he dissents from such acquisition or recovery of betterment fee, to state his reasons in writing within sixty days. After the expiry of the period, u/s 47, the Board shall consider the objection, representation or statement of dissent received in connection therewith and after

hearing all persons who may be desired to be heard, the Board may abandon the scheme or may refuse to sanction the scheme. Under sub-section 49 when the State Government sanctions an improvement scheme it shall announce the fact by notification and the Boards shall proceed to execute the scheme; sub-section (2) of section 49 provides that publication of a notification under subsection (1) shall be conclusive evidence that the scheme has been duly framed and sanctioned.

18. The petitioner's case is that no such notice was served on the petitioner even though it was the recorded occupier in the municipal records. u/s 49(2) as we have seen, the publication of a notice under subsection (1) shall be conclusive evidence that the scheme has been duly framed and sanctioned. There is no dispute that the notice of the sanction of the Scheme u/s 49(1) was duly published in the Calcutta Gazette Extraordinary on March 13, 1970 (annexure "A" to the petition). In view of the publication of the notification as aforesaid it is conclusive evidence of the scheme being duly framed and sanctioned. It could be contended, relying on *Smt. Somavanti and Others Vs. The State of Punjab and Others*, that no other evidence is permissible to dispute the conclusiveness about the framing and sanctioning of the scheme. In view however, of the evidence adduced by both parties in this respect we proceed to consider the same.

19. There can be little doubt that failure to serve notice on the recorded occupier as required u/s 45 (i) could be a fatal irregularity as such lapse may completely disable the interested party to file his dissent against acquisition of land or recovery of better fee and also disentitle him to a hearing of his objection to which he is otherwise entitled in law. According to the petitioner, as we have seen, no notice u/s 45(1) was at all served while according to the Board notice was served on the petitioner as unnamed occupier, there being no requirement in law to name the occupier (vide section 45 (i) (ii) in the notice and such notice was received by one K.P. Ghosh on its behalf. According to the earlier affidavits on behalf of the Board, no objection to the acquisition was filed by the petitioner. In a subsequent affidavit the Board produced a letter written by the petitioner signed by one of its director which is dated April 20, 1967 which we have quoted earlier. The Board has given sufficient explanation for its late production, as it was docketed with the records of the Objection Committee in respect of premises No. 367 mentioned in the letter. The letter was mislaid because of the error on the part of the petitioner and no contradictory position in the circumstances was taken by the Board. This letter however could not be produced before us but the learned trial Judge has himself seen the letter and has expressly mentioned so.

20. This letter clearly indicated that notice under 45 was served on the petitioner, but he lodged his objection in respect of premises No. 367 instead of 357, though the premises No. 108 as the new premises was also mentioned therein while the premises are recorded in all correspondence and records as

357. The petitioner stated in its affidavit that the person signing the letter was not its director at the material time. In view of the" conclusiveness attached to notification u/s 49(2), a heavy onus lay on the petitioner to establish that the letter was not issued by it nor signed by its director. Except mere denial as being true to information from record no papers or documents were produced to establish that such person was not the director of the petitioner or the letter was not of the petitioner though such letter was in its letter head even bearing a reference number. The petitioner should have produced its balance sheets or certified copies thereof or letter issue register and other relevant papers to establish its case that the person signing the letter was not its director nor was the letter issued from its office. For all these reasons it is not necessary for us to prove the matter further as to whether the notice was served as provided in section 166 of the Act as contended by Mr. Dutt or in Section 51 of the Companies Act, 1956 as contended by Mr. Ginwalla, learned Advocate appearing for the Board. On the materials on record we are satisfied, in agreement with the learned Judge, that notice u/s 45(1) was duly served on the petitioner.:

21. As to the hearing of the objection, it appears that the Objection Committee gave hearing to the petitioner in respect of premises No. 367 as prayed for and one D.P. Chatterjee Administrative Officer appeared on its behalf. The petitioner except bare denial did not produce any documents, salary register or other papers to establish that the said person was not in its employee at the material time. We have; seen the minutes of the Objection Committee which, in respect of premises No, 357 records the presence of the owners" representative and for premises No. 367 mentions the name of D.P. Chatterjee as appearing in support of the objection which was recorded "on ground of hardship". These records are kept and maintained in usual course of business, and, if no hearing was given to the petitioner for premises No. 357, it was due to its own error. Further section 160 (i) provides that no act done or proceeding taken under this Act shall be questioned on ground merely of, amongst others, failure to serve notice u/s 45 on any person when no substantial injustice has resulted from such failure or any omission defect or irregularity not affecting the merits of the case. We are also of opinion that no injustice has resulted in the circumstances or any act or irregularity has taken place which has affected the merits of the cases, as we shall presently see.

22. Mr. Dutt next contended that the notice under sub-section (1) or section 45 shall under sub-section (3) be signed by or by the order of the Chairman. The notice in the instant case was signed in the following manner.

"By order

Sd/- B.C. Mukherjee for Chairman".

The endorsement in our view clearly indicates that the signatory signed the letter for Chairman under his order. Such order need not be a written order and may be a verbal order as well, and as we "have seen from the minutes of the

Objection Committee, such notices extends to hundreds. There is really no question of any delegation or authority by the Chairman in this instance. It is true that no evidence has been adduced to establish that there was in fact any order of the Chairman calling upon the signatory to sign the order on behalf of the Chairman. It is however to be noted that there was no challenge in the petition or in affidavits on behalf of the petitioners to the said order not being signed by or by the order of the Chairman. In absence of such challenge in the petition or affidavits which it appears was made only in course of argument, there was no occasion for the Board to adduce evidence in support of the impugned order. As the words stand, we feel that they are in compliance with provisions of sub-section (3) of section 45 and there is no infirmity on that account.

23. It was next submitted that the scheme started as a street scheme but after some progress was made in respect thereof, the Board switched off to general improvement without authority of law. It is correct to say that originally in 1961 the Calcutta Improvement Trust Alignment Committee decided that the scheme for the widening of Prince Anwar Shah Road should be taken on a priority basis. The Board thereafter decided to appoint a Committee to examine the proposals for widening of Prince Anwar Shah Road and development of adjacent area. The Committee submitted its report and the Board by its resolution dated March 30, 1963 decided that a scheme for widening Prince Anwar Shah Road be prepared and the Scheme be also prepared for areas situated on either side of the said street for purpose of improvement. Finally after considering the joint report of the Chief Valuer and the Chief Engineer, the Board by its resolution of December 14, 1963 decided that a General Improvement Scheme to be known as 114B (Prince Anwar Shah Road) be framed for (i) improvement of communications by widening the Prince Anwar Shah Road between Deshpran Sasmal Road and Raja Subodh Mullick Road to a width of 100 ft. except in the section near its junction with Raja Subodh Mullick Road, the width is to vary because of existence of substantial pucca houses on both sides and, (ii) the improvement of the areas-situated on either side of Prince Anwar Shah Road by widening of the existing roads and provisions for new road for improving access and communications to such localities, provision of parks and open spaces and the development of vacant and low-lying lands. Notices accordingly were published in Calcutta Gazette u/s 43 of the Act in respect of the said Scheme 114B Prince Anwar Shah Road and the State Government by its order dated March 12, 1970 sanctioned the General Improvement Scheme 114B, Prince Anwar Shah Road with the modification that the total width of the road should never be less than sixty feet in any section.

24. It will thus be seen that the General Improvement Scheme launched by the Board consisted of two parts, street widening scheme and improvement of the area along both sides of the road. It was thus a composite scheme combining a street scheme with a general improvement scheme. Section 35 D provides: --

"35D. An improvement scheme may be one of the following types or a combination of any two or more of such types, or of any special features thereof, that is to say--

- (a) a general improvement scheme,
- (b) a street scheme,
- (c) a housing accommodation scheme,
- (d) a re-housing scheme."

The contention of the petitioner that a street scheme was switched over to a general improvement scheme is not based on fact as the impugned scheme was always a combination of a street scheme and a general improvement scheme which is warranted in law.

25. It was next contended that in view of the Bench decision in C.R. Nos. 4110-11 of 1964 Chandra Sekhar Mullick Vs. Trustees for the Improvement of Calcutta, decided on December 1, 1972 wherein it was held that imposition of betterment fee was unconstitutional, the present scheme was unworkable. Further, sanction of the State Government was obtained on the basis of recovery of costs of acquisition out of betterment fee to the extent about Rs. 2.91 crores which was no longer available to the Board for implementing the scheme and in the context of the changed circumstances further sanction from Government was necessary. We are informed that an appeal to the Supreme Court is pending against the aforesaid decision. Be that as it may, in agreement with the trial court, we are of opinion that the possibility of the recovery of the amount of betterment fee did not form an integral part of the scheme. The Board's estimate of recovery of costs for the total sum of Rs. 2.91 crores was from sale of old materials, sale of land and betterment levy, and betterment levy was not shown separately. Assuming that no betterment levy was available it will for the Board, to find out the necessary finance from its own resources for execution of the scheme or to abandon the scheme and the legal validity of the scheme is not in any way affected thereby. It will also be seen that there being no alteration of the scheme after Government sanction, no further sanction of Government is required u/s 50.

26. Mr. Dutt lastly contended that the scheme was a glaring instance of colourable exercise of power by the authorities without any application of mind, as the acquisition of the entirety of the premises No. 357 was not necessary for the purpose of the scheme. The scheme was as we have seen, apart from street widening, for widening of existing roads, provision of new roads for improving access and communication to such localities, provision for parks and open spaces and development of vacant and low lying lands, A perusal of the published plan, of the Board it is said indicates that for widening the street, a strip of land of about 20 feet wide on the northern part of the premises along the road would be required, for which acquisition proceeding was necessary. The petitioner never

objected to such acquisition and the Court's injunction did not extend to that strip of land in respect whereof the Board was at liberty to proceed with the scheme in accordance with law. But the balance area of the said premises, consisting of its major portion, was in no way required for the scheme, as the map indicates, either for road alignments for new roads, or provisions for parks or open space though any portion of the said land. There is also no dispute that the land of the premises was neither vacant nor low lying. So that it is obvious that no portion of the land thereof, except the portion required in the proposed extension of the road, was ever required for the general improvement scheme. The acquisition of this land was thus a colourable exercise of power without due application of mind by the authorities. The proposed acquisition of the rear portion of the premises should accordingly be quashed.

27. Mr. Dutt referred to several decisions in support of his proposition that even though a notification by the State Government u/s 49(2) is conclusive evidence that the scheme has been duly framed and sanctioned, such conclusiveness is subject to exceptions. In case of colourable exercise of power the sanction of the Government is open to challenge at the instance of the aggrieved party. In AIR 1937 265 (Privy Council) the Judicial Committee set aside the declaration of the Trust on the ground that the appellant's property was badly lighted and ventilated while the relevant law provided for demolition only if the dwelling place was of such construction or in such a condition as to be unfit for human habitation. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, it was held that the declaration u/s 6 of the Land Acquisition Act, 1894 made by the Government, that a particular land is needed for public purpose is conclusive but if it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all, the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration would be a nullity. Similar view was taken in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, . In *The Amritsar Improvement Trust Vs. Baldeva Inder Singh and Others*, , the Court observed that the power conferred on the Improvement Trust was not a plenary power. It is a power to be exercised in accordance with the conditions laid down in the Act. By resolving to frame a development-cum-housing accommodation scheme, the Trust could not provide for an expansion scheme of a municipality in a locality adjacent thereto without forming an opinion in respect thereof in accordance with the provisions laid down in the Act.

28. The Calcutta Improvement Act 1911 (Bengal Act V of 1911) is an Act to provide for the improvement and expansion of Calcutta. It is stated in its preamble:--

Whereas it is expedient to make provision for the improvement and expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, clearing bustees, executing housing schemes and

schemes for the rehousing of persons displaced by the execution of improvement schemes, acquiring land for the said purposes and all works relating thereto, and otherwise, as hereinafter appearing;

And whereas it is expedient that a Board of Trustees should be constituted and invested with special powers for carrying out the objects of this Act;

Chapter III provides for improvement schemes, Section 35A provides for undertaking of works by the Board and incurring of expenditure for development of areas. Relevant Sections are as follows:--

35A. The Board may, subject to the provisions of this Act, undertake any works and incur any expenditure for the improvement and development of any area to which this Act applies and for the framing and execution of such improvement schemes as may be necessary from time to time.

* * * *

35C. (1) An improvement scheme may provide for all or any of the following matters, namely:--

(a) the acquisition by the Board of any land in the area comprised in the scheme, which will in their opinion be required for or affected by the execution of the scheme.

(b) the laying out or re-laying out of the land comprised in the scheme;

(c) the demolition, alteration or reconstruction of buildings or portions of buildings situated on the land which it is proposed to acquire in the said area;

35D. An improvement scheme may be of one of the following types or a combination of any two or more of types or of any special features thereof, that is to say--

(a) a general improvement scheme,

(b) a street scheme,

(c) a housing accommodation scheme,

(d) a re-housing scheme.

36. Whenever it appears to the Board, whether upon official representation made u/s 37 or without such representation--

(a) that any buildings in any area which are used as dwelling places are unfit for human habitation, or,

(b) that danger to the health of the inhabitants of any area or of a neighbouring area is caused by--

(i) the narrowness, closeness and bad arrangement and condition of streets or buildings or groups of buildings in such area, or

(ii) the want of light, air, ventilation or proper conveniences in such area, or

(iii) any other sanitary defects in such area, or

(c) that any area is undeveloped or has been developed without a satisfactory plan or design and that it is necessary to develop or re-develop It on a better plan after incorporating all or some of the improvements mentioned in section 35C.

The Board may pass a resolution to the effect that a general improvement scheme ought to be framed in respect of such area and may then proceed to frame such a scheme."

29. The Calcutta Improvement Act is a Statute which is concerned with the improvement of Calcutta through execution of various types of improvement schemes or a combination of different types of scheme as may be considered fit and necessary by the Board. The Board consists of eleven Trustees as provided in section 4 and may appoint Committees u/s 20. Under chapter IV which provides for acquisition and disposal of land, the Board is empowered to acquire lands for the purpose of the Act by agreement (section 68) or tinder the Land Acquisition Act, 1894; the section 69 which is as follows :--

"69. The Board may, with the previous sanction of the State Government, acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act."

Under section 70 a Tribunal has also been constituted for performing the functions of the court in reference to the acquisition of land for the Board under the Land Acquisition Act. Section 78 provides for abandonment of acquisition of land not required for the execution of the scheme on application by the owner of land or any person having interest therein greater than a lease for years having seven years to run in consideration of a sum as may be determined by the Board.

30. Section 78A to 79A are concerned with betterment fees and those sections 78B to 78G have been declared ultra vires Article 14 and conferring arbitrary and uncanalised powers on Trust employees by the judgment referred to earlier and we are not concern with betterment fee in this appeal. Section 81 empowers the Board to retain or lease or sell any land vested in or acquired by them under this Act.

31. Section 35C (1) (a) provides inter alia for acquisition of land which may be affected by the scheme. There is no doubt and it has nowhere been disputed that the lands of premises No. 357 Prince Anwar Shah Road are affected by the scheme, and accordingly are liable to acquisition under the Act, even though such land may not be necessary for execution of the scheme. There is accordingly no illegality in the acquisition of the land of the said premises though it does not appear that the land comprised in disputed premises was required for any of the purposes of execution of the general improvement scheme except in respect of the front portion thereof which admittedly would be required for

widening the street.

32. The Calcutta Improvement Act provides, as we have seen, acquisition by the Board of land which may also be affected by the execution of the scheme and for sale of land vested in them obviously if not required for execution of the scheme. The Act in section 78 also provides for abandonment from acquisition of land, in any area comprised in any improvement scheme, which is not required for execution of the scheme. Such abandonment from acquisition of land can be made in consideration of the payment by the owner or any person interested of a sum as may be fixed by the Board in that behalf. It appears that such sales or consideration for abandonment from acquisition are also source of income to the Board which has to expend huge amounts for the purpose of the Act namely for the expansion and improvement of Calcutta and there is no reason why an owner of the land or person interested therein affected by the execution of any scheme of the Board should be blessed with the benefits arising out of the scheme without consideration. When the legislature has conferred powers on the Board for acquisition of land as may be affected by execution of any of its schemes, and the Board takes steps for acquisition of land in pursuance thereof, such acquisition can not be said to be without legal authority or without any purpose by colourable exercise of power as happened in the cases in the decisions cited above. Accordingly we are unable to hold that the acquisition of the disputed premises is a colourable exercise of power and without legal authority. On the contrary such acquisition is within the competence of the Board duly sanctioned by the State Government. Further, the petitioner, not having any interest in the land greater than a lease for years having seven years to run, was not competent in law to apply for abandonment from the acquisition of the disputed premises for consideration as provided in section 78(2) (b) of the Calcutta Improvement Act, 1911.

33. The petitioner company alleged in its grounds that lands belonging to others in the locality were left out of acquisition leading to discriminatory treatment on it. No particulars were furnished and the Act does not confer on the petitioner any right to plead for release from acquisition. Further in view of the emergency, the petitioner company gave up its challenge on ground of infringement of rights guaranteed by Article 14 and 19 of the Constitution. As all contentions raised by the appellant fail, this appeal is dismissed, without however any order as to costs. All interim orders are vacated.

Sankar Prasad Mitra, C.J.

I agree