

(1963) 01 CAL CK 0006
In the Calcutta High Court
Case No : Civil Revn. No. 680 (W) of 1962

Pramatha Nath Talukdar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-01-1963

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 40, 40(1), 41, 6(3)

Citation : AIR 1963 Cal 554 : (1963) 1 CALLT 101 : 67 CWN 387

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

Bench : Single Bench

Advocate : B.C. Dutt and Bratendra Narayan Banerjee, for the Appellant; A.C. Mitter, Ajoy Basu and Harinarayan Mukherjee for Respondent No. 6 and J. Majumdar and Smriti Kumar Roy Chowdhury for Respondents Nos. 1 to 5, for the Respondent

Judgement

B.N. Banerjee, J.—The petitioner, Pramatha Nath Talukdar, is the owner of Plot No. 125, measuring .16 acres, in Mouza Ukhila-Paikapara, District 24-Parganas.

2. By a notification, dated July 22, 1961, about 14.11 acres of land, including the aforesaid plot belonging to the petitioner, was notified for acquisition, u/s 4 of the Land Acquisition Act (1 of 1894). A material portion from the said notification is set out below :

"Whereas it appears to the Governor that land is likely to be needed for a public purpose not being the purpose of the Union, namely, for construction of staff quarters, hostel building and play ground of the Ramkrishna Mission, in the village of Ukhila Paikapara, jurisdiction list No. 56, Police Station Sonarpur, District 24-Parganas, it is hereby notified that a piece of land comprising Cadastral Survey plots (numbers of plots set out in the notification omitted) and measuring more or less 14.11 acres, is likely to be needed for the aforesaid public purpose at the expense of the Ramkrishna Mission, within the aforesaid village Ukhila-Paikapara."

3. Ram Krishna Mission (hereinafter referred to as the Mission) is a society registered under the Societies Registration Act (21 of 1860) and the object of the society, inter alia, is to impart and promote the study of Vedanta and its principles as propounded by Sri Ramkrishna and of Comparative Theology in its widest form and also to propagate religious, social and educational teachings and activities for the benefit of the public. It is undisputed that of late the Mission has acquired, by private purchase or by acquisition under the Land Acquisition Act, a very large tract of land at a place called Narendrapur, almost contiguous to the plots under acquisition in the present proceeding, and has already utilised part thereof in the construction of educational institutions and play grounds etc.

4. The petitioner objected to the notification, u/s 5-A of the Land Acquisition Act, inter alia, on the grounds that the proposed acquisition was unnecessary for the alleged purposes of any of the purposes mentioned in the notification and was solely for the private purposes of the Mission. The other objection urged by the petitioner was that the Mission possessed other lands at its disposal in Village Ukhila-Paikpara and in contiguous villages, not as yet utilised, and it was unnecessary to acquire other plots of land for its purposes.

5. It is alleged, in paragraph 5 of the petition, "that an undated notice was issued by the respondent Land Acquisition Collector calling upon the petitioner to be present on the spot, on November 11, 1961, for the purpose of an enquiry but there was no enquiry held and no hearing was given to the petitioner in respect of his objections against the proposed acquisition. Thereafter, there were published "in the Calcutta Gazette (Extraordinary), dated October 4, 1962, an agreement, u/s 41 of the Land Acquisition Act, in respect of the proposed acquisition, and also a declaration u/s 6 of the said Act.

6. On coming to know of the publication of the notification and the declaration in Calcutta (Gazette (Extra-ordinary)), the petitioner caused a "notice, dated November 8, 1962, being sent to respondents Nos. 1 to 5 demanding cancellation and withdrawal of the notification and declaration, but without any effect. On the other hand the respondent Land Acquisition Collector fixed November 11, 1962 as the date for possession and payment of compensation.

7. In the aforesaid circumstances, the petitioner moved this Court, under Article 226 of the Constitution, praying for the quashing of the notifications and declaration referred to above and for an order on the respondents Nos. 1 to 5 commanding them to cancel or revoke the said notifications and declaration and obtained this Rule.

8. When this matter" was taken up for hearing on December 18, 1962, Mr. Bankim Chandra Dutt, learned Advocate for the petitioner, began with the contention that no opportunity had been given to the petitioner of being heard on his objections to the Land Acquisition notification. He drew inspiration for this argument from the following statement in paragraph 6 (b) of the affidavit-in-opposition by S. K. Bhattacharya, Land Acquisition Collector, affirmed on

December 5, 1962 :

"The petitioner, Sri Pramatha Nath Talukdar filed an objection. There were about 19 other objection petitions also filed. Sri S. N. Ganguli, Land Acquisition Officer, 24-Parganas, my predecessor-in-office, fixed the date of hearing on 11-11-61 and subsequently the date was changed and the hearing u/s 5-A was fixed on 17-11-1961. Notice to that effect was published on 17th November, 1961. The petitioner's lawyer Sri B.N. Sanyal appeared and made his submissions. There was another lawyer Sri S. N. Mukherjee, Advocate, who represented the 18 other objectors. I deny the allegation that the declaration was published without giving any hearing or without any enquiry u/s 5-A. * *"

Inasmuch as in the affidavit-in-reply, affirmed on December 11, 1962, the petitioner had generally denied the statements in paragraph 6 (b) of the affidavit-in-opposition, Mr. Dutt did not admit service of the notice of the adjourned date of hearing on the petitioner and put the respondents to strict proof of the publication of the notice. He contended further that no hearing on the objections had been given to the petitioner even on the 17th November, 1961.

9. Mr. Jajneswar Majumdar, learned Advocate for the respondents Nos. 1 to 5, thereupon asked for opportunity to file a supplementary affidavit-in-opposition in elaboration of the statements in paragraph 6 (b) of the affidavit-in-opposition and the hearing was accordingly adjourned in order to enable him so to do. In the supplementary affidavit-in-opposition the following statement was made by Sudhindra Nath Ganguli, Additional Land Acquisition Collector, who claimed to have heard the objections u/s 5-A:

"On 11-11-1961 the above programme of enquiry and hearing of objections was cancelled by me and I again fixed 17-11-1961 for such enquiry and hearing. As I cancelled my programme I at once sent a peon of my office to the spot on that date with- a hand written notice for informing the local people about the shifting of the date.

The said peon went to the locality on that date and intimated the persons who were found to be present there about the shifting of the date and came back after taking signature of some persons including that of the postmaster on the said hand written notice.

A true copy of the said hand written notice is annexed hereto and marked annexure "X".

That individual notices were also sent to the objectors including Sri P. N. Talukdar, the petitioner, intimating the date of hearing u/s 5-A of the L.A. Act on 17-11-1961. From the peon's return it appears that the petitioner Sri P. N. Talukdar received the said notice on 15-11-1961 and, accepted the same by putting his signature on the said notice. All the notices in respect of 18 objectors filed, by Sri Sambhu Nath Mukherjee were received by Nawab Ali Molla on behalf of all the said objectors. True copies of the notices with the endorsements of Sri

P. N. Talukdar and Nawab Ali Molla are annexed hereto and marked annexures X(1) and X(2) respectively.

On 17-11-1961 -- the date fixed for enquiry and hearing u/s 5-A of the L. A. Act -- I reached locality just before the time mentioned in the notice. After reaching there I inspected the notified area and during my inspection a good number of local people followed me. After inspection of the site I came back to a very conspicuous place near the post office where I found the lawyers of the objectors waiting for me. I found also the lawyer, of the Mission there. Sri B.N. Sanyal represented the petitioner Sri P. N. Talukdar, Sri Sambhu Nath Mukherjee represented 18 objectors and the mission was also represented by Sri J. Sen Gupta Pleader. Some local people were also present at the time of hearing. Full opportunity was given to the lawyers of the objectors to put forward their cases before me on that date and I heard them. I carefully considered the objections of the objectors and also the case of the mission and I submitted by report u/s 5-A on 22-11-1961, which is annexed to the previous affidavit. I say that full opportunity was given to the petitioner Sri Talukdar and other objectors (petitioners in Civil Rule No. 681 (W) of 1962) of being heard after service of notice upon them as contemplated u/s 5-A of the Act."

A copy of the notice served on the petitioner was annexed to the supplementary affidavit. The petitioner affirmed a supplementary affidavit-in-reply to the above-quoted affidavit, in which he relied upon the following two orders appearing in the order-sheet of the Land Acquisition Case, namely:

"Order No. 20 -- Programme on 11-11-1961 cancelled

14-11-1961

due to some other work in connection with the possession of A. K. Sana Industries and also for my own health reasons. The programme cancelled with the permission of A. D. M. (G).

Fix 17-11-1961 at 11.30 A.M. for hearing. Inform all concerned.

Sd/- S. N. Ganguly.

Order No. 21. Heard the objections,

22-11-1961

Save objector in Sl. No. 11 (who-?) did not turn up. Report u/s 5-A has been prepared.

Place before A. D. M. (G) through Special L.A.O. for favour at perusal and order.

* * * Sd/- S. N. Ganguly.

* *(The objector, who is serial No. 11, is named Sm. Sailaja Ghosh).

10. The petitioner further stated in the said affidavit:

"I say that it will appear from the said order-Sheet that there was no hearing on 17-11-1961 and that the alleged Report was prepared even before any alleged hearing of the objectors."

Along with the Supplementary Affidavit-in-reply, the petitioner also filed a supporting affidavit by B. N. Sanyal, his lawyer, who stated as follows :

"On instructions received, from mv client Sri P. N. Talukdar, I attended at Ukhila Paikpara on the 17th November, 1961 and no hearing was given in respect of the objections filed by my client. I deny that any hearing took place on the said date as alleged or at all."

11. When the matter was taken up for hearing again on January 9, 1963. Mr. Dutt gave up the point that no notice of the adjourned date of hearing had been given to the petitioner. He had to do that because In the face of the supplementary affidavits and the supporting affidavit by B.N. Sanyal, that point turned out to be wholly without substance. Mr. Dutt, however, stuck to his argument that no opportunity had been given to the petitioner to urge his objections. He tried to develop this argument by contending that the order-sheet ex facie showed that there was no hearing of the objections on November 17, 1961 and that it was nobody's case that there was any hearing on November 22, 1961. He, therefore, urged that there was no hearing of the objections on November 17, 1961, as the order-sheet itself showed, and also no hearing on November 22, 1961, even on the case sought to be made by respondents Nos. 1 to 5.

12. Mr. Jaineswar Majumdar, learned Additional Government Pleader, appearing for respondents 1 to 5 and Mr. A.C. Mitra, learned Standing Counsel, appearing for respondent No. 6 Ramkrishna Mission, strongly relied on the following passage from the report under Sec. 5-A of the Act (Annexed to the affidavit-in-opposition by respondents Nos. 1 to 5):

"During hearing of the objections, the objectors in sl. No. 1 and 16 above were represented by Sri B.N. Sannyal, Pleader and Sri S. N. Mukherjee, Advocate, represented the objectors in sl. No. 2 to 10, 12 to 15 and 17 to 21. The objector in sl. No. 11 did not attend the hearing. As the grounds on which the objections are put, are common and similar, the petitions are not dealt with separately.

The arguments, put forth by the two pleaders, on behalf of their clients, are summed up as follows :

(1) That the Ramkrishna Mission has sufficient vacant land either through L. A. proceedings or through private purchases which were made either in own name or in the name of their own men like Sri Amar and Sri Yadav Chaitanya.

The point was raised previously in case No. 4/14 of 60-61 and in case No. 4/8 of 59-60.

The point was discussed in detail in the report u/s 5-A in the said two cases. The

vacant land, owned by R. K. Mission, is kept for future expansions of the institution like Dairy, Commercial School etc. but in the report u/s 5-A in case No. 11A 4/8 of 59-60, it was suggested that the vacant block of land (near the main gate and an entering throughout) lying on the right of the road leading to Brahmananda Bhawan may be utilised for the students' Home, as stated previously by R. K. Mission in their lay out plan and if so utilised, the acquisition of land under the said case (Case No. 4/8 of 59-60) may not be necessary.

Regarding the lands, alleged to be purchased by the Mission in the name of their own men like Sri Amar and Sri Yadab Chaitanya, it was stated by the Advocates of Sri Ramkrishnadeb like Sri N. Bhattacharjee, M.L.C. and other like persons that the lands have been purchased by their money in the name of said two persons (Amar and Yadab), who will give them after development and it is also endorsed by Swami Lokeswarananda; as such it is presumed that the lands are not owned by the Mission. The point is therefore disallowed.

(2) That the Mission has no master plan of Scheme at all. The Mission under the guise of acquisition for public purpose, is grabbing land to mitigate their land-hunger.

Sri J. Sen Gupta, R. M.'s representative, off being asked about the master-plan or the scheme told that the Mission, of course, has the plan. The Mission will raise 78 quarters and playground. In reply, the objector's lawyers contended that the Mission has already five play-grounds and has no need tot more grounds. Sri Sen Gupta corrected them saying that the Mission has only four play grounds. The Lawyers by way of illustration stated that the Calcutta Colleges and Schools where thousands of students are being educated, possess only a single play-ground. Why then, four or five grounds will not be sufficient for the Mission? They were told that the illustration is not correct as it is a fact that the students of the Calcutta Colleges and schools cry for ground to play but land is not found to provide them with a field; so they are suffering the want. If the Mission can provide the students of their institution with requisite number of fields, it is certainly well-come.

This indicates that the Mission attempts to educate the mind as well as the body of the students so the point about the construction of the play ground is disallowed.

Lawyers then contended that the land to the extent of about 53 bighas covered by the case No. 4/14 of 60-61 and the case No. 4/48 of 60-61 (3.44 acres and 14.11 acres) as out-required for the purpose. They argued that to raise 78 quarters, land will be acquired whether 12 bighas (taking 3 kotta for each plot and rest for development like road, park or play-ground) or 30 bighas (taking 5 kotta for each plot and 10 bighas for development like road, park and play ground). So there is a clear excess of 23 bighas.

They were told that they had forgotten that the Mission would get the land under an agreement with the Government in which there would be a term that they

would utilise the land within a certain period. If the land is not so utilised within the said period, the land will be resumed. So Government will look after the excess unutilised land. Next, they were told that the land, which now transpires to them to be in excess, would fully be utilised in a year or so, because the Mission mainly progresses with leaps and bounds and the Mission will get no chance to keep the land unutilised. Thus I find nothing tenable to entertain the points.

(3) That most of the C. S. Plots, which are notified for the present case, were notified and declared for acquisition under Act 31 of 1948 (case No. L.D. 39 of 49-50), but considering the hardship of their clients, the plots were withdrawn from the acquisition. On examination (case No. L.D. 39 of 49-50) it is found that the plots were withdrawn from the acquisition considering the local opposition and agitation and also because of an injunction order in respect of some plots issued by Hon"ble High Court restraining the Government to take possession of those plots, but not on the ground stated by them. So their contention fails.

The above are the common grounds which both the lawyers argued for their clients.

Sri B. Sanyal who represented the objector in sl. No. 16 (Sm. Belarani Majumdar and 2 others), contended that they had come down from Assam after the last Assam incident to be settled here and with this view they had purchased the land. So acquisition of their land will tell very adversely upon them. He was told that for a greater cause a lesser interest is to be suffered. As the purpose for this acquisition will serve greater cause, the education of the new generation, his clients interest to be sacrificed and the acquisition of their land is imperative."

They contended, relying on the passage above-quoted, that B.N. Sanyal did not affirm a truthful affidavit, when he stated that no hearing had taken place on November 17, 1961. The report showed, they further contended, an elaborate consideration of the different points urged by B.N. Sanyal and that on the face of the report it was idle to contend that he had been given no hearing.

13. In my opinion, there is considerable force in the argument advanced by Mr. Majumdar and Mr. Mitra. It is nobody's case that there was any hearing of the objections on November 22, 1961. Therefore, if there was any hearing given, that must have been on November 17, 1961. The report shows what Mr. Sanyal did on the 17th, when he represented the petitioner and a number of other objectors. I have no reason to hold that the report contains certain imaginary arguments by B.N. Sanyal, which he never made and had no opportunity to make.

14. The order-sheet no doubt contains the statement -- "Heard objections" against the date November 22, 1961. That merely proves that the order-sheet was not maintained properly. When the hearing of the objection was postponed on November 11, 1961, the order of adjournment was noted in the order-sheet on November 14, 1961. The fact that objectors were heard on November 17,

1961, was recorded in the order sheet on November 22, 1961, when the report was prepared. On the line of argument adopted by Mr. Dutt himself, that there was no hearing given to the petitioner's lawyer on November 22, 1961, the order-sheet turns out to have been improperly maintained. Relying on an order-sheet so improperly maintained, the report cannot be condemned as an untruthful report. On the report it appears that the petitioner's lawyer was fully heard on the objections, on November 17, 1961, when admittedly he was present before the Land Acquisition Collector and, therefore, the first branch of the argument of Mr. Dutt must fail.

15. Although I hold that, I express my strong disapproval of the manner in which the order-sheet was maintained. Entries in an order-sheet require to be made at the time when an event takes place and not subsequently from memory, say, as in this case, three to five days after the event. An order-sheet so improperly maintained invites inaccuracies and considerably reduces its value. The respondent Land Acquisition Collector should do well to take notice of this expression of disapproval.

16. Mr. Dutt next argued that there was no public purpose behind the land acquisition and the purpose was really the private purpose of the Mission. The way in which Mr. Dutt developed this argument was :

(a) The Mission has a large tract of land at its disposal, contiguous to the area of the land under acquisition. That tract of land is sufficient for its requirement and that it is not necessary to acquire more land.

(b) Assuming that the Mission requires the land under acquisition for its development programme, the acquisition is not for a public purpose, that is to say the public would not be benefited but the Mission may.

(c) The Land Acquisition proceedings were bad because the agreement between State Government and Mission was invalid inasmuch as the terms on which the public would be entitled to use the constructions and works to be done on the acquired land were not set out in the said document.

(d) Assuming that the terms were incorporated in the agreement by the expression "The public shall be entitled to use the land subject to the Rules and Regulations of the Ramkrishna Mission, "the Rules and Regulations were liable to change curtailing the user of the constructions and works by the public and as such those were not to be treated as terms within the meaning of Section 41(5) of the Land Acquisition Act.

The argument is interesting but on ultimate analysis loses substance.

17. Ramkrishna Mission is a Society registered under the Societies Registration Act and is, therefore, a company within the definition of "Company" in Section 3(e) of the Land Acquisition Act. Acquisition of land for companies is dealt with in Part VII, Sections 38 to 44-B of the Act. Section 39 of the Act provides that the provisions of the Land Acquisition Act shall not be put in force to acquire land for

any company unless with the previous consent of the appropriate Government, nor unless the Company have executed an agreement in terms of Section 41 of the Act.

18. Section 40 (as it now stands amended) provides that consent by the appropriate Government is not to be given unless the Government is satisfied,

"(a) that the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith.

(aa) that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose.

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public."

Section 41 of the Act (as it stands amended) gives particulars of the matters which the agreement, mentioned in Section 39, shall provide, namely:

"(1) the payment to the appropriate Government of the costs of the acquisition;

(2) the transfer, on such payment, of the land to the company;

(3) the terms on which the land shall be held by the company;

(4) where the acquisition is for the purpose of Erecting dwelling house or the provision of amenities connected therewith, the time within which the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided; (4A) where the acquisition is for the construction of work or building for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, and the conditions on which, the building or work shall be constructed or executed; and (5) where the acquisition is for the construction of any other work the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work."

Section 44-B of the Act (introduced by the amending Act 31 of 1962) provides :

"Notwithstanding anything contained in this Act, no land shall be acquired under this Part, except for the purposes mentioned in Clause (a) of Sub-section (1) of Section 40, for a private company, which is not a Government Company, Explanation -- "Private Company" and Government Company shall have the meanings respectively assigned to them in the Companies Act, 1956."

That being the scheme of the Act, I have to see whether the State Government properly arrived at the necessary satisfaction envisaged in Section 40 of the Act. The innuendo in the argument of Mr. Dutt is that the State Government was overweighed by some sort of zeal to help the cause of the Mission and its saffron-robed monks and too freely gave the required consent. This argument ultimately

boils down to mala fide grant of consent, without keeping in view the provisions of Section 46 of the Act.

19. In my opinion, the materials on record do not support this contention of Mr. Dutt. From the affidavit-in-opposition affirmed by Swami Vireswarananda, General Secretary of the Mission, it appears that on the plot of land at Narendrapur, measuring about 129 acres, the Mission has established (i) a residential degree college with hostel building and staff quarters etc., (ii) a residential multipurpose school with hostel building and staff quarters, (iii) a residential senior basic school with hostel building and staff quarters etc., (iv) an institution for the blind with hostel building and a staff quarters etc., (v) a students' home for residence of students studying in Universities and Colleges, (vi) an institution for promotion of adult and social education with hostel etc., (vii) a school of shorthand and type-writing, (viii) a dairy farm for training purposes, (ix) a poultry farm for training purposes, (x) a fishery for training purposes, (xi) an apiary for training purposes, (xii) a centre for training in carpentry, book-binding and tailoring, (xiii) a fully-equipped hospital, (xiv) an isolation" block, (xv) a gymnasium, (xvi) several play-grounds, (xvii) a central library, (xviii) a shrine, (xix) an assembly hall, (xx) an open-air theatre, (xxi) a central office, (xxii) water reservoirs, (xxiii) workshops for boys of sch"ools and colleges, (xxiv) buildings containing laundry, students' bank, bookshops etc. (xxv) quarters for menials, (xxvi) agricultural farm for multipurpose school and (xxvii) workers' residence. He says that about 1500 persons, including students, members of the staff and workers, have taken accommodation in the different buildings already constructed but that there is a pressing demand from more candidates desiring admission and that there is need for more accommodation. He says that the land at Narendrapur has been fully utilised. He says further that more land is necessary for expansion of Blind Boys' School and Senior Basic School and for construction of staff quarters, hostel-buildings and play-grounds. In my opinion it may be just possible that the Mission has not wholly utilised the land in its possession. The affidavit-in-reply merely admits that in the tract of land in possession of the Mission, there are a school, a hostel, four or five play-grounds and staff residential quarters but alleges that the greater portion of the land is lying unutilised. That some part of the land, in possession of the Mission, was lying unutilised also appears from the report made by the Land Acquisition Collector, u/s 5-A of the Act, to the effect that the excess unutilised land will be fully utilised in a year or so, because the Mission mainly progresses with leaps and bounds. Be that as it may, the existence of some unutilised, land, which is part of a large scheme, may not necessarily be a complete answer to the necessity of acquisition of further land in furtherance of the scheme. It appears from the map attached to the affidavit-in-opposition by Swami Vireswarananda that the plot of land, belonging to the petitioner, is being sought to be acquired for the establishment of married teachers' quarters, detached from the area where the school, colleges and other works have been constructed or erected or are intended to be constructed or erected. There is nothing on the record which

goes to show that the Mission will not construct the houses and the buildings and other works in accordance with its plan, although it may not have already completed all the constructions. If in furtherance of a public benefit plan it requires other lands, it is not the law that no further acquisition shall be made for it until and unless the plots of lands, already acquired by the Mission, have been fully developed and utilised. I am, therefore, unable to hold that the acquisition of the plot of land, belonging to the petitioner, is actuated by any land grabbing programme of the Mission, unconnected with any public purpose. The Land Acquisition Collector made an enquiry and reported that the acquisition of the plots of land and implementation of the scheme would serve larger public interest. If on that report, the State Government was satisfied that the acquisition of the plot of land, belonging to the petitioner, was necessary in furtherance of a public benefit scheme, namely, in aid of the Narendrapur Educational and Vocational Training Institutes, it cannot be said that the consent given by the State Government was much too readily given.

20. I now take up for consideration the argument that the acquisition would not serve any public purpose or would not benefit the public. The word "public purpose" has been defined in the Land Acquisition Act in an inclusive manner and merely says :

"The expression public purpose includes the provision of village-sites in districts in which the appropriate Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision."

Explaining the definition, the Supreme Court observed, as follows, in the case of Babu Barkya Thakur Vs. The State of Bombay and Others, :

"It will thus be noticed that the expression "public purpose" has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited."

The expression "public purpose" has been taken to mean "a purpose, that is an object or aim in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned (vide *Hamabai Framji v. Secretary of State* 42 I A 44 ; (AIR 1914 PC 20)). And recently in the case of *Smt. Somavanti and Others Vs. The State of Punjab and Others*, , the Supreme Court observed :

"Public purpose is bound to vary with the times and the prevailing conditions in a given locality and therefore, it would not be a practical proposition even to attempt definition of it. It is because, of this the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for public purpose."

Further the Supreme Court emphasised on the declaration and on Sub-section (3) of Section 6 of the Land Acquisition Act, which made the declaration conclusive evidence of the fact that land was. "needed for a public purpose or for

a company" and observed:

"When, the law says that a particular kind of evidence would be conclusive as to the existence of a particular fact, it implies that that fact can be proved either by that evidence or by some other evidence which the Court permits or requires to be advanced. Where such other evidence is adduced it would be open to the Court to consider whether upon that evidence, the fact exists or not. Where, on the other hand, evidence which is made conclusive is adduced, the Court has no option but to hold that the fact exists. If that were not so, it would be meaningless to call a particular piece of evidence conclusive evidence once the law says that certain evidence is conclusive, it shuts out any other evidence which would detract from the conclusiveness of that evidence."

That being the position in law, the declaration under the Land Acquisition Act must be taken as conclusive proof of the fact that the acquisition was being made to serve a public purpose and would prove beneficial to the public. The need for educational and vocational training institution is a public need in every, civilized country and this country, with all its welfare programme, needs such institutions all the more. If the State Government, being satisfied as to the need, gave its consent to the acquisition of the disputed land in furtherance of the aforesaid objects and made the declaration, there is no reason why such declaration should not be treated as conclusive evidence of the need for public purpose.

21. Mr. Dutt realised the difficulty in the way of wholesale condemnation of the purpose of the acquisition as unconnected with any public purpose. He, therefore, introduced a refinement in his argument and contended that the word "work" in Section 40(1)(aa) of the Land Acquisition Act must be read in ejusdem generis sense and must be taken to include only the words preceding it. In other words, he contended that "building or work" in Section 40(1)(aa) must mean no other work which is not a building and the words "industry or work" in the same section must not mean any work other than a work which is industrial in character. On that assumption, he contended that the laying of play grounds would not be construction of buildings and the Mission not being a company engaged in industry would not come u/s 40(1)(aa) in respect of its social and educational works. I am unable to uphold this argument. Where general words follow the designation of particular things or classes of persons or subjects, the general words will usually be construed to include only those persons or things of the same class or general nature as those specifically enumerated. This is what is known as the ejusdem generis rule (vide Crawford on Statutory Construction). As a rule of construction, ejusdem generis rule must be applied with caution and subject to the primary rule that statutes are to be construed in accordance with the intention of the Parliament. The Parliament cannot be presumed to have used any word without intending that it means something. In my reading of Section 40(1)(aa), the word "work" in the expressions "building or work" and "industry or work" need not be read in an ejusdem generis sense. The word "work" appears

to have been used to mean other constructions or works which are neither buildings or industrial works. I need not however, consider this aspect of the argument further because even if the works, in which the Mission is taking steps to engage itself, do not fall within Clause (aa) Section 40(1), they fall within Clause (b) of Section 40(1), which uses the expression "some work". The works, in which the Mission is engaged, are beyond doubt "some work", and that Clause (b) in any event, makes Section 40 of the Act applicable.

22. Mr. Dutt lastly, argued that the procedure for land acquisition, as in Part VII of the Land Acquisition Act, was not followed in that the agreement did not contain the terms on which the public shall be entitled to use the work.

23. In order to examine the force of this argument it is necessary for me to refer to the relevant clauses in the agreement namely:

"4. The said land shall be held by the Society for the purposes of construction of staff quarters, hostel buildings and playground of the Ramkrishna Mission as hereinbefore mentioned and without the sanction in writing of the said Government of West Bengal first had and obtained for no other purpose whatsoever.

5. The said construction of staff quarters, hostel building and playground shall be completed and fully equipped in all respects ready for use within three years from the date on which possession of the said land shall have been given to the Society.

6. Should the said work not be completed and fully equipped in ail respects ready for use within the period stated in the last preceding clause or" within such further period as in its discretion may be prescribed or allowed by the said Government of West Bengal or should the said land at any time thereafter cease for a period of twelve consecutive months, to be held and used or cease to be required for the purpose or purposes provided for in the foregoing fourth clause then and in any such case the said Government may summarily re-enter upon and take possession of the said land together with all buildings thereon whether such "buildings" were erected before or after transfer of the land to the Society, and thereupon the interest of the Society in the said land and buildings shall absolutely cease and determine.

7. On taking such possession the said Government may sell or otherwise deal with the said land and buildings as it may think proper.

(i) Should the said Government sell the land with the buildings the said Government after deducting the expenses incurred in connection with the said taking of possession and with such sale shall pay the proceeds to the Society.

(ii) Should the said Government decide not to sell the land and buildings, the said Government shall retain the said land and buildings thereon in which case the Governor shall repay to the Society the market value as on the clay of re-entry of all the buildings erected by the Society and all sums received from the

Society in respect of all and every compensation as provided in the foregoing first Clause (less the statutory allowance of 15 per cent, and less any amount received on account of trees and buildings which are not in existence at the time of resumption), but will not repay any sums paid and received on account of costs, charges and expenses.

(iii) Should the said Government decide to sell the buildings only upon such sale, the Governor shall after deducting the expenses of taking possession and selling pay the balance of the proceeds of sale to the Society together with the sum received from the Society in respect of the compensation for the land (less the statutory allowance of 15 per cent, and less any amount received from the Society on account of trees and buildings which are not in existence at the time of resumption), but will not repay any sum paid and received on account of costs, charges and expenses.

(8) The public shall be entitled to use the land subject to the rules and regulations of the Ramkrishna Mission.

(9) Should any dispute or difference arise touching or concerning the subject-matter of this agreement or any covenant clause or thing herein contained the same shall be referred to the said Government of West Bengal and the opinion and decision of the said Government upon such dispute or difference shall be final and conclusive and binding on the parties hereto."

The agreement was not made an annexure to the petition or to any of the affidavits but a Gazetted copy of the agreement was produced in Court during the hearing of the Rule. I direct that the Gazetted copy of the agreement be marked as Exhibit I by consent.

24. A copy of the Rules and Regulations of Ramkrishna Mission, referred to in the agreement, was also produced in Court during the hearing of the Rule, which also I direct to be marked as Exhibit II by consent. All that appear from the said Rules and Regulation are as follows:

"1. The Association is established for the purpose expressed in the Memorandum of Association; and its Headquarters as well as the registered office is at Belur Math, District Howrah."

"2. (a) All followers whether lay or monastic of the Paramahansa Ramkishna may be members of the Association if elected at a meeting of the Association or nominated by the Governing Body hereinafter mentioned, provided that all the Trustees for the time being of the Indenture of Trust dated the 30th day of January, 1901, usually called the Trust Deed of the Belur Math, shall be ex-officio members of the Association."

"3. All persons irrespective of colour, creed or caste, sympathising with all or any of the objects of the Association may be associates if elected at a meeting of the Association or nominated by the Governing Body."

"20(a) All properties by way of gift, endowment, purchase or otherwise, shall be acquired in the name of the Governing Body For the time being or in the name of the Ramkrishna Mission, and all such properties when so acquired shall vest in the Governing Body of the Association.

(b) All properties acquired either for the Headquarters at Belur or for any branch center shall be utilised for the Headquarters or for that branch centre, as the case may be, and they shall be devoted to the general purpose or to any specific objects of such centres according to the intention of the donors or subject to any special direction by the endowers of the properties."

"26. (a) Institutions for philanthropic, charitable, educational or any other kind of work, started in furtherance of any of the objects of the Association by the Governing Body in any locality outside the registered office of the Association, shall be regarded as branch centres.

(b) Though the branch centres are all under the Governing Body, they shall be treated as separate entities for purposes of transactions among themselves and with the Headquarters, and separate accounts shall be maintained for each branch centre.

(c) If any branch centre closes down, or it becomes impossible to continue its work on account of circumstances over which the Mission has no control, the funds of such a branch centre after meeting its liabilities will be at the disposal of the Governing Body, who may utilise the same for such purposes within the objects of the Mission and in such manner as they may consider fit."

The purposes and objects of the Mission, referred to in the several Rules quoted above, and appearing in the Memorandum of Association include,

"(b) To impart and promote the study of the arts, sciences and industries.

(c) To train teachers in all branches of knowledge above-mentioned and enable them to reach the masses.

(d) To carry on educational work among the masses.

(e) To establish, maintain, carry on and assist schools, colleges, orphanages, workshops, laboratories, hospitals, dispensaries, houses for the infirm, the invalid and the afflicted, famine relief works, and other educational and charitable works and institutions of a like nature.

(f) * * *

(g) To carry on any other work which may seem to the Association capable of being conveniently carried on in connection with and calculated directly or indirectly to promote any of the before-mentioned objects."

25. Mr. Dutt criticised the agreement and the Rules and Regulations of the Mission therein referred to as vague and contended that the agreement offended against Clause (5) of Section 41 of the Act in that it did not contain the specific

terms on which the public shall be entitled to use the works. He drew my attention to Section 42 of the Act, which reads,

"Every such agreement shall, as soon as may be after its execution, be published in the Official Gazette and shall therefrom (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act",

and contended that preciseness as to the terms was sine qua non in the agreement and vagueness made the agreement a worthless document, offending against Section 41(5) of the Act, and that made the acquisition void and of no effect.

26. In trying to repel this argument, Mr. A.C. Mitter, appearing for Ramkrishna Mission, contended that the buildings or works to be constructed by the Mission fell within Clause (4A) of Section 41 and under that clause it was not necessary to set out, in the agreement, the terms on which the public shall be entitled to use the works. He further contended that after the inclusion of Clause (4A) in the Land Acquisition Act, by the amending Act 31 of 1962, Clause (5) of the original Act became redundant and superfluous. It is not necessary for me to go to the length, as contended for by Mr. Mitter, in this case. If Clause (5) of Section 41 of the Act applies to the agreement (and I do not hold that it does not) even then the agreement does not offend against the said clause. An agreement similar to the present one came up for consideration before Bosc, C.J. and G.K. Mitter, J. in Appeal No. 111 of 1958 (Ram Kumar Agarwalla and Others Vs. State of West Bengal and Others,) and his Lordship the Chief Justice, upheld the agreement with the following observations:

"It appears that the provision "according to the rules and regulations of the society" has been inserted in Clause (8) of the agreement for the purpose of vesting the society with control and power of regulation as to the extent of user by the public of the Students' Home, the Guest Houses and Panthasala to be set up by the Society. It is also clear from the report of the Second Land Acquisition Collector u/s 5-A of the Act which was placed before the Government before the requisite sanction or consent was given that the Sangha maintains Guest Houses and Panthasala at its branches but has been unable to provide any accommodation for such purpose at its headquarters for lack of space. It is also found in the report that Students' Homes are also being maintained by the Sangha at other centres and the Sangha also runs a publication department which needs expansion. Clause (8) is general in its nature and it provides that the public will have the benefit of the Students' Home and the other establishments mentioned in Clause 8. It is true that there is no provision which relates to the limits or extent of the user by the public of these establishments but it is clear from Clause (4) of the agreement that the acquired land is to be held and used by the Society only for the specific purposes mentioned in that clause and for no other purpose. In Clause 5 of the agreement the time within which the establishments have to be made fully equipped in all respects and

ready for use is fixed. In Clause (6) of the agreement it is provided that if the acquired land is not held for the specified purposes for which it is being acquired or is not used or cease to be used or required for the purposes mentioned, the Government will have the summary power of re-entering or taking possession of the land and building thereon and the interest of the Society in the land and building will absolutely cease and determine. In Clause (9) of the agreement it is provided that if any dispute or difference arises relating to any of the clause or covenant of the agreement or the subject-matter of the agreement such dispute or difference has to be referred to the decision of the Government of West Bengal and the opinion or decision of the Government will be final and conclusive and binding on the parties. This clause in the agreement makes it abundantly clear that if the rules and regulations are made in such a way as to frustrate the various purposes for which the acquisition is made and which are set out in Clauses (4) and (8) of the agreement the Government will be entitled to deprive the Sangha of the possession and interest of the Sangha in these lands. Just as Clause (8) of the agreement upon being published in the gazette becomes a part of the Land Acquisition Act u/s 42 of the Act so also Clause (9) as contained in the agreement so far as it relates to user becomes part of the Act and thus the Government retains full control over the acts and conduct of the Sangha in relation to the objects for which the acquisition is made.

It is true that if the details of the terms and conditions on which the public would be entitled to use or enjoy the benefit of the Students' Home, Publication Department, Guest Houses and Panthasala had been set out specifically or in a more concrete form in the agreement, no question could possibly be raised complaining that the requirements of Section 41(5) had not been complied with. In other words, a more elaborate scheme for the user by the public would have been a proper compliance of the provisions of Clause (5) of Section 41 of the Act. But the fact that Clause (8) of the agreement is couched in rather general terms and does not contain any detailed scheme as to the extent of the actual user by the public and the determination of the conditions on which the public will be entitled to have the benefit of the establishments is left to the discretion of the Sangha does not, in my view, make the agreement in question or the proceeding for acquisition bad. If the rules and regulations of the society which are subsequently framed after the establishments contemplated are, set up, do not confer sufficient benefit on the public and are not directly useful to the public or if the rules framed are such as to make the benefit intended to be conferred on the public by Clause (8) of an illusory nature, the Government will be entitled to take possession of the property acquired and to put an end to the interest of the Sangha. Then again, if any dispute arises on the question as to whether sufficient provisions have been made or not in the rules and regulations of the society for direct user by the public the decision of the Government on such question will be final and binding on the Sangha. Therefore, it cannot be said that by not making provision for an elaborate scheme of direct user in the agreement itself there has been violation of the provisions of Clause (5) of

Section 41 of the Act."

I am bound by the appeal Court judgment and for the reasons given in the said judgment, I repel the last branch of the argument of Mr. Dutt.

27. I desire, however, to add that agreements, couched in the language as in Clause (8) give rise to serious criticism as to vagueness of terms and require a long line of argument for salvage of the terms. The State Government should do well, if it makes the agreement self-contained and certain and not merely ascertainable by a process of inference from its other clauses or by reference to other documents.

28. In the view taken by me, all the arguments advanced by Mr. Dutt fail and this Rule is discharged with costs, hearing fee being assessed at 6 gold mohurs -- one-half of which shall be paid to respondents Nos. 1 to 5 together and the other half to respondent No. 6.