
(1976) 10 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 448 of 1974

Rajasthan Udyog	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 05-10-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 1(2)
Rajasthan Land Acquisition Act, 1953 — Section 38, 4, 4(1), 4(5), 55
Rajasthan Land Acquisition Rules, 1956 — Rule 32, 32(1), 32(2)

Citation : AIR 1978 Raj 31 : (1976) 9 WLN 835

Hon'ble Judges : V.P. Tyagi, Acting C.J.; M.L. Shrimal, J

Bench : Division Bench

Advocate : M.B.L. Bhargava, C.K. Garg and S.N. Bhargava, for the Appellant;
S.K. Tewari, Addl. Advocate-General, L.R. Mehta, for the Respondent

Final Decision : Allowed

Judgement

Shrimal, J.—This special appeal is directed against the old D/- 23-7-1974 of the learned single Judge of this court, whereby he dismissed the writ petn. No. 389 of 1974 wherein the validity of the order dated March 13, 1973 issued by the State Government u/s 4(1) of the Rajasthan Land Acquisition Act, 1953 (hereinafter referred to as "Act No. XXIV of 1953") was challenged and it was also prayed that the Land Acquisition Officer (Sub-divisional Officer). Bharatpur be prohibited from taking further action in the matter.

2. By a notification dated March 13, 1973 the respondent No. 1, the State of Rajasthan u/s 4 (1) of the Act No. XXIV of 1953 proclaimed that the lands specified in the schedule attached to the said notification were needed or likely to be needed for public purpose, that is, for General Engineering Works, Bharatpur. The notification further stated that u/s 4 (1) of the Act No. XXIV of 1953 the Government was pleased to authorise the Tehsildar, Bharatpur, to discharge the functions envisaged by Section 4 (1) and submit a report u/s 4 (4) of the Act No. XXIV of 1953. The respondent No. 3, Land Acquisition Officer (Sub-divisional

Officer), Bharatpur, issued a notice-Annex. 1, u/s 4 (5) (1) of the Act No. XXIV of 1953 on April 30, 1973. The appellant filed objections-Annex. 2, dated May 22, 1973. The respondent No. 3 fixed July 20, 1973 for recording the evidence, but owing to general strike of the clerical staff, the case was adjourned to August 31, 1973. On this date the petitioner-appellant filed an application for determining certain preliminary objections challenging the jurisdiction of the respondent No. 3 to make the enquiry. The Land Acquisition Officer, (Sub-divisional Officer), Bharatpur, refused to consider the objections piecemeal. Instead he decided to dispose of the preliminary objections along with others at the time of submitting a report to the State Government. Being aggrieved by that, the appellant moved this court to exercise its powers under Article 226 of the Constitution of India. He challenged the Notification issued u/s 4 (1) of Act No. XXIV of 1953 on the grounds: (a) that the State Government failed to apply its mind to the facts of this case before issuing a Notification u/s 4 (1) of the Act. Although Section 4 as amended had made a significant departure from the old phraseology and has purposefully substituted the word "consider" in place of the word "appear", yet in the impugned order dated March 13, 1973 issued u/s 4 (1) the State Government used the word "appear" and thus the notification is bad in law; (b) that the purpose of acquisition has not been particularised and is wholly vague; (c) that the provisions of Section 38 (2) of the Act were not complied with; (d) that the land was being acquired for Hindustan Development Corporation Ltd., but in the notification dated March 13, 1973, it has been mentioned that it was being acquired for public purpose, that is, for General Engineering Works, Bharatpur which is not a Company in itself, (e) that the provisions of Chapter VII were not complied with; and (f) that Rule 32 of the Rajasthan Land Acquisition Rules, 1956 was not complied with.

3. The State Government and the respondent No. 6, the Hindustan Development Corporation Ltd., contested each and every ground raised by the petitioner.

4. The learned single Judge dismissed the writ petition vide his order dated July 23, 1973; hence this special appeal.

5. The learned counsel, Mr. Mukatbeharilal Bhargava, appearing for the appellant, has challenged the order of the learned single Judge on a number of grounds, which will be dealt with at seriatim.

6. The first contention of the learned counsel for the appellant is that Act No. XXIV of 1953 was amended by Act No. XXII of 1966 whereby the present Section 4 was substituted. The effect of the amendment was that before issuing the order dated March 13, 1973, it became necessary and obligatory for the Rajasthan State to consider whether it was necessary or expedient to acquire the land, but in the impugned order published u/s 4 (1) of the Act No. XXIV of 1953 the State Government of Rajasthan has used the word: "appear" in contradistinction to the word "consider". This shows that the Government did not apply its mind for determining whether it was necessary or not to acquire the land in dispute belonging to the Rajasthan Udyog, It was also urged that the

learned single Judge failed to appreciate the crucial importance implicit to the amendment of Section 4.

7. In the present case no doubt the Impugned order u/s 4 has been issued in the phraseology as it existed in the unamended Section 4 and not in accordance with the phraseology of the amended section, but, nevertheless, it substantially complied with the requirement of Section 4. In our opinion, the mere use of the words contained in the unamended section in the order issued u/s 4, dated March 13, 1973, is not sufficient to invalidate the order. Simply because the word [^]^izhr** has been used in the impugned order it cannot be said that the order is bad in law or that the State Government did not apply its mind before issuing the impugned order u/s 4 (1) of the Act No. XXIV of 1953. All that the section requires is that before issuing an order u/s 4 (1) the Government should be satisfied that the land is needed for the purpose mentioned in the Act. The contention of the learned counsel for the appellant that there was no material before the Government to base its order u/s 4 is without any foundation. It is not necessary to make a mention in the order made u/s 4 (3) and "published in accordance with the provisions of sub-sec. (4) of Section 45", all the material which was available with the Government before issuing the order u/s 4 (1). Moreover, from the documents filed by the State Government with the application dated July 19, 1972 it appears that the Hindustan Development Corporation Ltd., submitted an application dated July 25, 1972, praying to the Government to hand over the land after acquiring 100 acres of land belonging to the Rajasthan Udyog lying adjacent to their unit, and the Collector, Bharatpur, after enquiring into the matter recommended for the acquisition of the land in dispute. The State Government after perusing the record issued the impugned order dated March 13, 1973. In the totality of the circumstances there is no justification for the appellant to urge that the Government had not applied its mind before issuing the impugned order. We agree to the reasons advanced by the learned single Judge while disposing of this argument.

8. The second submission made by the learned counsel for the appellant is that the State Government erred in authorising the Tehsildar, Bharatpur, to perform the functions u/s 4 (1) of Act No. XXIV of 1953. The learned counsel for the appellant tried to contend that since the acquisition of the land in this case was admittedly for the company, Section 38 of the Act No. XXIV of 1953 applied and the State Government could not have authorised the Tehsildar, Bharatpur, to perform the functions mentioned in the order dated March 13, 1973. We do not find any substance in this contention of the learned counsel. Section 38 is only an enabling provision. It does not take away the power vested in the State Government u/s 4 (1) of Act No. XXIV of 1953.

9. The third contention raised on behalf of the appellant is that the impugned order does not particularise the purpose for which the land was needed.

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10. The purpose mentioned is too vague to give any idea to the person interested in the property for the purpose of preferring objections effectively u/s 5-A of the Act. The learned counsel urged that Law makes a clear distinction between an acquisition for a public purpose in contradistinction to an acquisition for a Company registered under the Indian Companies Act, 1956. In the case on hand it was not in dispute that no part of the compensation was to come out of the public revenue or from the local authority. On the other hand, the whole compensation was to be paid by the Company. Therefore, the notification dated March 13, 1973, published u/s 4 (1) of the Act, if it was to be valid in the circumstances, ought to have declared that the land WAS needed for the Hindustan Development Corporation Ltd. The impugned order purported to have been made u/s 4 (1) cannot be said to have been validly made and published, in the circumstances, because the order issued reads that the land was needed for public purposes, that is, for General Engineering Works:

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The Company for which the land, in fact. in this case being acquired is the Hindustan DEVELOPMENT Corporation Ltd., which is a public limited concern. There is nothing in the order dated March 13, 1973, that the land was needed for the Company. All that the impugned order reads is that the land was needed for public purpose. The public purpose mentioned therein was that the land was required for General Engineering Works. It is not impossible for the Government or the local authority to own an Engineering Works. From the impugned order it cannot necessarily be concluded that the land was needed for a company. The General Engineering Works can also be a factory owned and solely managed by the State Government or by a public authority. It was urged that when the State wants acquisition of land to be made for third party, it is its bounden duty to mention in the order u/s 4 (1) that the land was being acquired for a party named in the notification. In the absence of that, the impugned order must be adjudged as bad in law. The definite averments were necessary to bring home the necessity of the public purpose to the objector and the appellant has been deprived of a valuable right to raise effective objections envisaged by Section 5-A of Act No XXIV of 1953. Reliance was placed on *Gyan Devi v. The State of Rajasthan* 1967 RLW 367 . *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*,

11. The learned Additional Advocate General urged that the effect of the amendment of Section 4 of Act No. XXIV of 1953 by Section 2 of the Rajasthan Act No XXII of 1966 is that the provision of Sub-section (1) of Section 4 is directory and its violation cannot annul the proceedings without proving prejudice to the affected party. He further urged that the General Engineering Works is a unit of the Hindustan Development Corporation Ltd., and this fact was known to the petitioner-appellant. The appellant knew it very well that the land was being acquired for the company viz. the Hindustan Development

Corporation Ltd. The appellant was not precluded from filing his objections, and detailed objections were filed by the appellant, which were considered by the Land Acquisition Officer u/s 5-A of the Act No XXIV of 1953 and were disposed of according to law.

12. We have given a careful consideration to the rival contentions of the parties. Now we will read Section 4 as it stood prior to the coming into force of the Amending Act No. XXII of 1966 as well as the amended Section 4, as it was in force when the impugned order dated March 13. 1973 was passed.

13. Section 4 as it stood prior to the coming into force of the Act No. XXII of 1966, reads as under:--

"4. Publication of preliminary notification and powers of officers thereupon.

(1) Whenever it appears to the Appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published In the Official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen.--

to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made thereon;

to make such levels, boundaries and line by placing marks and cutting trenches: and where, otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;" Section 4, as it stood on the date of the issuance of the impugned notification viz, after the coming into force of Act No. XXII of 1966, reads as under,--

"4. Preliminary proceedings preceding intended acquisition.--

(1) Whenever the State Government considers it necessary or expedient to acquire land in any locality, needed or likely to be needed for a public purpose, it shall by an order published in accordance with the "provisions of Sub-section (4) of Section 45, require any officer subordinate to it and generally or specially authorised in this behalf, to enter upon or into any land in such locality, accompanied by his servants and workmen, if any.--

(a) to survey and take levels of such land suitable for such purpose,

- (b) to dig or bore into the sub-soil thereof,
- (c) to set out the boundaries of such land and the intended line of the work, if any, proposed to be carried out thereon or therein,
- (d) where otherwise the survey cannot be completed or the levels cannot be taken or the boundaries or the line cannot be set out, to cut down and clear away any part of any standing crop, fence or jungle,
- (e) to mark the levels taken or the boundaries or the intended line of work by placing marks and cutting trenches,
- (f) to do all other acts necessary to ascertain whether land is suitable for such public purpose, and
- fg) to inquire into and ascertain the particulars of the persons interested in such land:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without giving such occupier at least seven days' notice in writing of his intention to do so.

(2) A copy of the order made under Sub-section (1) shall also be endorsed to the Collector of the district in which such locality is situated with the direction to take suitable action upon receipt of the report under Sub-section (4).

(3) The officer making an entry under Sub-section (1) shall, at the time of such entry, pay or tender payment for all necessary damages to be done to the land entered upon or into and, in case of dispute as to the sufficiency of the amount so paid or tendered he shall at once refer the dispute for the decision of the Collector, and such decision shall be final.

(4) Such Officer shall send to the Collector a report on the result of the survey, as to the other operations described in or carried on under Sub-section (1), as to the enquiries made thereunder and as to the particular land in that locality which may be acquired for the public purpose.

(5) The Collector shall, upon receipt of such report, cause to be given--

(i) to the head of the Government Department at whose instance the order under Sub-section (1) shall have been made and to all persons reported under Clause (g) of Sub-section (1) to be interested in the land proposed thereby to be acquired as being suitable for the public purpose, a notice in the prescribed form of the proposed acquisition, and

(ii) a public notice to the like effect at convenient places on or near about the land proposed to be acquired." Section 4 of the Central Act No. 1 of 1894 is parimateria to Section 4 of the unamended Act No. XXIV of 1953.

14. A close reading of the above-mentioned sections reveals that prior to the

Amendment of 1966, there was no provision in the old Act corresponding to Section 4 (5) of the new section substituted by Section 2 of Act No. XXII of 1906. The word "thereupon" appearing in sub-section (2) of Section 4 in the old section has also been omitted in the new section. By adding Clause (g) in Sub-section (1) of Section 4 a duty has been cast upon the Authorised Officer to enquire into and ascertain the particulars of the person interested in the land intended to be acquired. The purpose of Sub-section (1) of the amended Section 4 is to give a notice to the owner of the land that the Authorised Officer along with his servants and workmen shall enter his premises for performing the functions mentioned in Sub-section (1) of Section 4. Indeed the functions are of exploratory character and an order passed under this sub-section discloses a tentative intention that the lands specified may be ultimately acquired after service of public notice in the manner provided in Section 4 (5). Prior to the issuance of the notice u/s 4 (5) the Authorised Officer making an entry under Sub-section (1) is required to submit a report to the Collector on the result of his survey and the enquiry made thereunder. The purpose of such a report is to determine the suitability of the land for the purpose for which it is intended to be acquired. Thereafter, a notice under Sub-section (5) of Section 4 is required to be given to the persons mentioned in that sub-section. The purpose of such a notice is to afford an opportunity to the person interested in the land to be acquired to file objections u/s 5-A within 30 days of the service of the notice envisaged by Sub-section (5) of Section 4. Under the amended section it is the publication of the notice u/s 4 (5) which affords an opportunity to the owner of the land, to be acquired to file objections envisaged by Section 5-A and not the order issued and published u/s 4 (1). The effect of the amendment in Section 4 is that the limitation for filing objections which used to commence from the publication of the notification issued under the old Section 4 (1) now commences from giving and publication of the notice u/s 4 (5) of the Amended Section. The public purpose which was required to be particularised under Sub-section (1) of Section 4 is now required to be particularised in a notice to be given under Sub-section (5) of S- 4 in the prescribed form of the proposed acquisition. Thus the effect of the amendment in Section 4 of Act No. XXIV of 1953 is that the provisions of Section 4 (1) are directory and the provisions of Section 4 (5) are mandatory. Thus it can be safely said that the appellant cannot succeed on the ground of defect in the impugned notification issued under Sub-section (1) of Section 4, unless it is proved that the defect had the effect of causing prejudice to the case of the appellant.

15. The case: State of Mysore Vs. Abdul Razak Sahib, relied upon by the learned counsel for the appellant is of no help to it. In that case Section 4 of the Land Acquisition Act No. 1 of 1894 (Central Act) came up for interpretation. While interpreting that section, their Lordships of the Supreme Court observed as under:--

"The publication of the notice in the locality is a mandatory requirement. It has an important purpose behind it. In the absence of such publication the interested

persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided under S 5-A, which is very valuable right."

Section 4 of the Central Act is *pari materia* of the unamended Section 4 of Act No. XXIV of 1953. The required notice referred to in the aforesaid ruling is to be given and published in accordance with Sub-section (4) of Section 45 under sub-section (5) of Section 4 of the Amended Section of Act No. XXIV of 1953 (Rajasthan Act). Section 4 (1) of the Amended Act No. XXIV of 1953 does not create a right in the interested persons to file objections. Such a right is created only after the issuance of notice under Sub-section (5) of Section 4 of the Act No. XXIV of 1953. Thus, the scheme of the Rajasthan Act No. XXIV of 1953, as amended up to date being altogether different, the case relied upon by the learned counsel for the appellant does not improve the case of the appellant. This authority rather supports the contention of the respondents. The decision rendered in the case of *Gyandevi v. The State of Rajasthan* 19P7 Raj LW 367 is of no avail to the appellant. It is totally distinguishable both on facts and law.

10. In the notification issued in that case it was mentioned that the land was being acquired for public purposes by the Government out of public revenue. Any person reading that notification could not have possibly imagined that the land was being acquired for the purposes of respondent No. 3 of that case viz. Gosewa Sangh, because the notification specifically mentioned that it was acquired out of "public revenue". On the peculiar facts of that case it was held as under:--

"Reading Sections 4, 5-A and 6 together we have no hesitation in coming to the conclusion that where a State seeks to acquire the land of another under the Act, it must mention in the notifications both under Sections 4 and 6 whether it intends to do so for a company or otherwise and where it fails to mention to give this information and issues a notification which *prima facie* indicates as if it intends to acquire such land for its own purpose, though it really intends to do so for the purpose of a company, then such a notification would be bad in law and would lack the essential foundation for which acquisition under the Act could be undertaken."

17. In the case on hand it has been specifically mentioned that the land was likely to be acquired for public purpose, viz. for the use of General Engineering Works. Thus, in the impugned notification the name of the unit of the company for which the land was being acquired has been mentioned. For the reasons already mentioned and the averments made in the writ petition, it is abundantly clear that the appellant knew that the General Engineering Works was and is a unit of the Hindustan Development Corporation Ltd., Sir R.N. Mukherjee Road, Calcutta.

18. The other case relied upon by the appellant is *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*, This case relates to a declaration made u/s

6 of the Central Land Acquisition Act whereas in the case on hand the appellant rushed to this court even before his objections filed u/s 5-A were considered and decided. The other point of distinction is that in the declaration made and published u/s 6 in that case, though issued twice as notifications dated December 3, 1960 and April 19, 1971, there was nothing to show that the land was needed for a company whereas in the case on hand the name of the unit of the company for which the land was being acquired, was mentioned in the impugned notification issued under Sub-section (1) of Section 4 of the Act No. XXIV of 1953 as amended up to date.

19. Besides that, as already discussed in detail, the notification under Sub-section (1) of Section 4 of the Rajasthan Act No. XXIV of 1953 and the notification u/s 6 of the Act, serve altogether different purposes. In the case on hand, though it is true that the General Engineering Works referred in the impugned order itself is not a Company for which the land was being acquired, but is a Unit of a joint stock company viz. the Hindustan Development Corporation. The appellant knew this fact very well as is borne out from the objections dated May 22, 1973 submitted by the appellant in response to the notice dated April 20, 1973. It was categorically admitted therein that the General Engineering Works, Bharatpur, was a Unit of Hindustan Development Corporation Limited. Similar averments have been made in the writ petition itself, it cannot be said in the facts and circumstances of the case on hand that the appellant was put to a handicap in the matter of lodging objections, and, thereby, was prejudiced. In para No. 6 of the above referred objections the appellant has mentioned "that General Engineering Works is not a company but a unit, the proprietor of which is the Hindustan Development Corporation Ltd., Registered Office-27, Sir K. N. Mukherjee Road, Calcutta. As such by no stretch of imagination it can be said that the appellant thought at the time of filing objections u/s 5-A that the land was intended to be acquired for a factory owned by the State Government or a local authority. The purpose of an order u/s 4 (1) is to take preliminary proceedings preceding the intended acquisition with a view to finding after survey and taking levels and if necessary after digging and boring into the sub-soil. All this is done to ascertain the suitability of the land for which it was intended to be acquired. Indeed the order u/s 4 (1) is of exploratory character and discloses the tentative intention that the lands specified may be ultimately acquired subject to the consideration of the objections of the interested parties. After discharging the functions, the Authorised Officer is required to make a report u/s 4 (4) of the Act No. XXIV of 1953. After considering the said report a notice u/s 4 (5) is issued and published. On the publication of the notice the interested person is required to file an objection against the intended acquisition, within 30 days of the publication of such a notice. Every objector making an objection under Sub-section (1) of Section 5-A is given an opportunity of being heard. The officer concerned after hearing all such objections and after making such further enquiry as he deems necessary submits the case to the State Government for decision together with the record

of the proceedings held by him and the report containing his recommendation on the objections and thereafter the State Government is required u/s 6 to give a firm declaration that the land with proper description and area is needed for a public purpose or for a company. It is not correct to say that the defect pointed out by the learned counsel for the appellant regarding non-mention of the name Hindustan Development Corporation Ltd., in the impugned order dated March 13, 1973, made by the State Government was fatal to the proceedings or in any manner has prejudiced the case of the appellant. As already mentioned above, the appellant was in know of all the facts that the acquisition was for Hindustan Development Corporation Ltd. On the facts of the case on hand it cannot be said that prejudice has been caused to the appellant in filing the objections u/s 5-A of the Act. In *Munshi Singh and Others Vs. Union of India (UOI)*, the case cited by the learned counsel for the appellant, at page 1154, para 8, it has been observed by their Lordships of the Supreme Court as under:--

"If the Master Plan which came to be sanctioned on September 4, 1962 had been available for inspection by the persons interested in filing objections or even if the knowledge of its existence on the part of the appellants had been satisfactorily proved the position may have been different. In that situation the appellants could not claim that they were unable to file objections owing to the lack of any indication in the notification u/s 4 of the nature of development for which the area was being requisitioned."

20. Thus the prime importance is whether any prejudice was caused to the appellant. The question of causing prejudice to the appellant does not arise in this case for the reasons mentioned above, as the petitioner has not been deprived of his right of representation provided u/s 5-A of the Act No. XXIV of 1953. The case; *Munshi Singh and Others Vs. Union of India (UOI)*, relied upon by the learned counsel for the appellant is also of no avail to the appellant. The appellant has in hot haste invoked the extraordinary jurisdiction under Article 226 of the Constitution of India before the decision of the objections made by him, u/s 5-A of the Act No. XXIV of 1953 and has failed to state how his "case has been prejudiced. In *Gopal Singh and Another Vs. State of Rajasthan and Another*, a Division Bench of this court, in para No. 14 at page 273 has observed as under:--

"In a case where persons interested in the land come to know of the notification and they file their objections within time and the objections are decided by the Government u/s 5-A, absence of a public notice may not be considered a fatal defect for vitiating further proceedings."

In the same case it has been further observed,

"In the present case also, the absence of a public notice would not have assumed importance if the objections filed by the petitioners on 3rd November, 1960 u/s 5-A were forwarded by the Collector, to the Government and decided by the Government according to law."

21. We hold that the effect of substitution of Section 4 of Act No. XXIV of 1953 by Section 2 of the Rajasthan Act No. XXII of 1966 is that the provisions of Section 4 (1) of the Amended Act are directory and its violation, if any, has not prejudiced the case of the appellant u/s 5-A of the Act and the notification dated March 13, 1973 and the subsequent proceedings taken in the case do not stand vitiated, on this ground.

22. Fourthly, it has been urged that Law makes 0 clear distinction when an acquisition is made for a public purpose in contradistinction to an acquisition for a company registered under the Indian Companies Act, 1956. The acquisition should be for some work which is likely to prove useful for the public. The land in the case on hand is being acquired for the purpose of expansion of a unit of Hindustan Development Corporation Ltd. The Legislature intended that the work for which the land is acquired should be useful to the public directly, which means the public should have a right to use the work itself and not the product of it. It cannot be the intention of the legislature that the Government should be made an agent for the company to acquire land for it in order that the owners of the company may be able to carry on their activities for private profit. It can hardly be denied that a company which will satisfy the definition of the word in Section 3 (e) will be producing something or the other which will be useful to the public, and which the public may need to purchase. The contention of the respondent that the Company will provide employment to a large number of persons or it will produce the articles of great utility and national important cannot be a ground for acquisition of private property under the provisions of the Land Acquisition Act, We do not find any force in this contention. Admittedly Hindustan Development Corporation is a public limited concern. The argument advanced by the learned counsel is based on the case of R.L. Arora Vs. State of U.P., Section 40 of the Rajasthan Land Acquisition Act No. XXIV of 1953 was amended in the year 1966 and Clause (aa) was inserted vide S 18 of the Rajasthan Act No. XXII of 1966. The case : State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others, relied upon by the learned counsel for the appellant is of no avail to it because it is distinguishable on facts. The effect of insertion of Clause (aa) in Section 40 is that in addition to the purpose set out in clauses (a) and (b) the appropriate Government can give its consent if it is satisfied that a third purpose set out in the new clause (aa) exists. Clause (aa) newly introduced in Section 40 provided for acquisition of land needed for construction of some building or work for a company which is engaged in taking steps for engaging itself in an industry or work which is for a public purpose. It implicitly intends that the building or work which is intended to be constructed must be such, that which subserves the public purpose of the industry or work in which the company is engaged or is about to be engaged. The land which is being acquired in the case on hand is being acquired for Hindustan Development Corporation Ltd., which is engaged in an industry, which is for public purpose and the buildings and the work which the company is intended to construct is of the same nature.

This is a case of constructing some work which will be useful to the public and will subserve the public purpose of production of machinery parts for the use of general public and railway. In these circumstances, we are of the opinion that there being a definite public purpose behind the acquisition in the case the acquisition is justified under the Act. Reference may be made to R.L. Arora Vs. State of Uttar Pradesh and Others,

23. Fifthly, it was urged that owing to the non-compliance of the provisions of the Land Acquisition (Companies) Rules, 1963 the notice issued under Sub-section (1) of Section 4 of the Act No. XXIV stood vitiated, and the further proceedings taken thereafter are also liable to be quashed. The Central Government framed and enforced Land Acquisition (Companies) Rules, 1963 with effect from June 24, 1963. Rule 3 of the Rules provides for the constitution of a Land Acquisition Committee for advising the Government on matters relating to and arising out of acquisition of land under Part VII of the Land Acquisition Act. Under Rule 4 the Government before initiating land acquisition proceedings at the instance of Hindustan Development Corporation Ltd. which is a company, the Government ought to have obtained a report with regard to the matters enumerated in Sub-rule (1) of Rule 4. As neither the committee envisaged by Rule 3 was constituted, nor the report under Rule 4 was called from the Collector, the proceedings for acquisition taken so far are illegal, void and are liable to be quashed.

24. Suffice it to say that the Land Acquisition (Companies) Rules, 1963 have been framed by the Central Government u/s 55 of the Land Acquisition Act, 1894 (Act No. 1 of 1894). Sub-section (2) of Section 1 of this Act provides that the provisions of the Act extend to the whole of India except the territories which immediately before Nov. 1, 1956 were comprised in Part B States. Thus, as the Act No. 1 of 1894 is not applicable to the State of Rajasthan. Non-compliance of the provisions of the Land Acquisition (Companies) Rules, 1963 which have been framed u/s 55 of that Act cannot affect the merits of the case in any way.

25. Sixthly, it was urged that even if the Land Acquisition (Companies) Rules, 1963 are held to be not applicable, yet it will not make any difference because Rule 32 of the Rajasthan Land Acquisition Rules, 1956 is *pari materia* to Rule 4 of the Land Acquisition (Companies) Rules, 1963. Non-compliance of this rule has the effect of vitiating the entire proceedings. Before initiating the land acquisition proceedings at the instance of the Company namely the Hindustan Development Corporation Ltd. the State Government ought to have directed the Collector, Bharatpur to submit a report on the matters mentioned in Rule 32 of the Rajasthan Rules. The learned counsel urged that D. O. letter No. BO (71) Ind/72 Jaipur (Rajasthan), dated Nov. 15, 1972 issued by Shri N.S. Sisodia, Deputy Secretary, Industries, to Mr. Anil Kumar, the then Collector, Bharatpur, and the reply by the Collector to the Secretary vide his letter No. 133 dated 8/17th January, 1973 can by no stretch of imagination be termed to be a compliance of Rule 32 of the Rajasthan Rules. The Collector for doing such an enquiry is required to apply certain objective test before expressing opinion on various

matters referred to in Sub-clauses (i) to (vi) of the Rule 32. He was bound to proceed in a quasi-judicial manner and should have given a reasonable opportunity to the appellant. It is a requirement of law that the owner of the land to be acquired is entitled to be heard and the non-compliance of this rule has the effect of vitiating the notice issued under Sub-section (1) of Section 4 and the subsequent proceedings. In support of the above contention reliance was placed by the appellant on State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others,

26. In order to appreciate the rival contentions advanced by the learned counsel for the parties it would be proper to refer to the relevant provisions of (i) the Rajasthan Land Acquisition Rules, 1956 and (ii) the Land Acquisition (Companies) Rules, 1963. The relevant provisions of both the Rules read as under:--

RULE 4 OF THE LAND ACQUISITION (COMPANIES) RULES, 1963

"4. Appropriate Government to "ba satisfied with regard to certain matters before initiating acquisition proceedings:

(1) Whenever a Company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely:--

(i) that the Company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

(ii) that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable area can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an enquiry into the matters referred to in Sub-rule (1) and while holding such enquiry he shall;

(i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the Company; and

(iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation:-- For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under Sub-rule (2) the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government u/s 6 of the Act unless:--

(i) the appropriate Government has consulted the committee and has considered the report submitted under this rule and the report, if any, submitted u/s 5-A of the Act; and

(ii) the agreement u/s 41 of the Act has been executed "by the company."

27. Rule 32 of the Rajasthan Land Acquisition Rules, 1956 reads as under:--

"32. State Government to be satisfied with regard to certain matters before initiating proceedings:--

(1) Whenever a Company makes an application to the State Government for acquisition of any land the Govt. shall direct the Collector to submit a report to it on the following matters, namely:--

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

(ii) that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the Company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to in Sub-rule (1) and while holding such enquiry he shall--

(i) in any case where the land proposed to be acquired is agricultural land,

consult the District Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Sections 23 and 24 of the Act the approximate amount of compensation likely to be payable in respect of the land which, in the opinion of the Collector, should be acquired for the Company; and

(iii) ascertain whether the Company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation:-- For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above-average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under Sub-rule (2), the Collector shall submit a report (in duplicate) to the State Government.

(4) No declaration shall be made by the State Government u/s 6 of the Act unless the agreement u/s 41 of the Act has been executed by the Company."

28. From a comparative study of both the Rules mentioned above, we find considerable force in the contention of the learned counsel for the appellant, that if the non-compliance of Rule 32 of the Rajasthan Land Acquisition Rules, 1956 is held to be proved then it would have the effect of vitiating the impugned notification dated March 13, 1973 and subsequent proceedings taken thereafter. On July 25, 1972 the respondent No. 6 Hindustan Development Corporation Ltd., submitted an application (shown at page 134 of the paper book). The respondents are not in a position to show as to what happened to this application up to November 1972. The only document relating to the subject-matter of the application on the record is a D. O. letter No. 4 (71) Jnd/72, dated November 15, 1972 addressed to Shri Anil Kumar, the then Collector, Bharatpur, in response to which he sent D. O. letter No. 133, dated 8/17th January 1973. This letter was accompanied with a detailed note. Besides the copies of these three documents, there is nothing on record to support the contention that an enquiry envisaged by Rule 32 of the Rajasthan Land Acquisition Rules, 1956 was made. The appellant in para No. 19 of the writ petition specifically challenged the holding of such an enquiry by the Collector. The State Government did not choose to give a pointwise reply of the writ petition in their return. They preferred to make a reply to the averments made from para 20 onwards. - In the reply filed by the respondent No. 6 the facts mentioned in para No. 19 of the writ petition have not been specifically denied. Only a general denial of the contents of para No. 19 has been made. It is not in controversy between the parties that the Collector, Bharatpur, before submitting his recommendation dated 8/17th January, 1973 vide his D. O. letter No. 133, gave neither any notice to the appellant nor any opportunity to the owner of the land to be heard. Faced with this situation the

learned counsel for the respondents raised two-fold contentions. The first contention is that the enquiry under Rule 32 of the Rajasthan Land Acquisition Rules, 1956 and Sub-section (1) of Section 4 of the Act No. XXIV of 1953 are of administrative nature. The non-compliance of Rule 32 does not, in any way, effect the vested rights of the parties to the litigation and so the impugned notification issued under Rule 4 (1) and the subsequent steps taken thereafter, cannot be termed to be bad for the following reasons:--

(1) The purpose of an inquiry under Rule 32 of the Rajasthan Rules, 1956 is to enable the Government to obtain sufficient data for determining whether to acquire the proposed land or not. In the case on hand the Government felt satisfied with the report of the Collector and it did not require further information, As such the appellant can have no legitimate grievance.

(2) The purpose of an enquiry under Rule 32 was to determine the bona fides of the Company.

(3) The purpose of issuing an order end notifying it under the amended Section 4 (1) of the Rajasthan Land Acquisition Act, 1953 is to make known to the public at large and to the persons of the locality in particular that the land in the locality is or likely to be needed for a public purpose. It is also to enable the authorised officer to do certain acts specified in Section 4 (1), so as to decide which particular land is to be acquired. After an enquiry under Rule 32, the Government was not bound to issue a notification u/s 4 (1). After the publication of the impugned notification dated May 13, 1973 and the enquiry u/s 4 (1), a notice in the prescribed form was given to the appellant u/s 4 (5). The appellant submitted his objections u/s 5-A. He had the opportunity to convince the Government that the proposed land should not be acquired and as such the appellant is not entitled to any relief on the ground that an opportunity to be heard was not given to him in an enquiry made under Rule 32.

29. A bare perusal of Rule 32 reveals that the Collector under Sub-rule (2) of Rule 32 is required to determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation payable in respect of the land intended to be acquired. In the report required to be submitted to the State the Collector is also required to mention among other matters: (i) that the Company has made all reasonable efforts to get the land by negotiations and offered a reasonable price not being less than the compensation so determined to the persons interested in the land proposed to be acquired, and (ii) that all efforts to purchase the land by negotiations have failed. Thus the Collector is bound to give an opportunity to the owners of the land for the purpose of proving of " disproving the reasonable efforts of the Company to gel such land by negotiations. The owner of the land is further entitled to be heard that the price offered was much less than the price awardable under the provisions of the Land Acquisition Act. The contention of the learned counsel for the respondents that because a notice u/s 4 (5) of the Act was given to the appellant and an enquiry u/ s 5-A of the Act was made, the appellant is not entitled to any relief is unsound.

In exercise of the powers conferred u/s 55 of the Act the Rajasthan Government has made the Rules for the guidance of its officers. The nature of the objection which can be raised in response to a notice u/s 4 (5) of the Act has been enumerated in Rule 4.

30. Rule 4 of the Rajasthan Land Acquisition Rules, 1956 reads as under:--

"4. Statement of objections:--

(1) The statement of objections u/s 5-A is to be in writing.

(2) In the enquiry into the objections, the Collector shall "particularly investigate--

(a) whether the objector is in actual possession of the interest;

(b) whether the objector can show some specific ground, such as these--

(i) the notified purpose is not genuinely or properly a public purpose;

(ii) the land notified is not suitable for the purpose for which it is notified;

(iii) the land is not so well-suited as other land;

(iv) the area proposed is excessive;

(v) the objector's land has been selected maliciously or vexatiously;

(vi) the acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort, will take away important public rights of way or other conveniences or will desecrate religious buildings, graveyards and the like."

31. A close comparison of the Rules 4 and 32 of the Rajasthan Land Acquisition Rules, 1956 clearly reveals that the nature of enquiry u/s 5-A of the Act and Rule 32 of the Rules of 1956 is altogether different. The matter which is to be enquired into under Rule 32 and in particular the point that the Company made all reasonable efforts to get the land by negotiations and the price offered to the person interested in the land was a fair price is beyond the scope of the enquiry u/s 5-A of the Act. For the reasons mentioned above, we hold that the enquiry contemplated under Rule 32 is not of administrative nature.

32. The other contention raised by the learned counsel appearing on behalf of the respondents is that there is nothing in Sections 4, 39, 40, 41 of the Act and Rule 32 of the Rules of 1956 under which it is not feasible or possible for the Rajasthan Government to obtain a report under Rule 32 after the issuance of the notice u/s 4 (1) of the Act and before the issuance of the notice u/s 6 of the Act. The appellant in hot haste has invoked the extraordinary jurisdiction of this court under Article 226 of the Constitution of India, even prior to the determination of the objections filed by the appellant u/s 5-A and as such he cannot be allowed to make a grievance about the non-compliance of Rule 32 of the Rules of 1956.

33. We have given our earnest consideration to this line of reasoning, but we regret to state that we are unable to agree to the submissions made by the respondents on this point. The heading of Rule 32 reads: "State Government to be satisfied with regard to certain matters before initiating proceedings." The heading of a section can be properly termed to be the key to the interpretation of the section unless the wordings of the section are inconsistent with such interpretation. An inquiry under Rule 32 is required to be made so that the Government may be satisfied regarding the matter enumerated in Sub-rules* (1) and (2) of Rule 32, before initiating the proceedings.

34. The word "initiate" has been defined in various dictionaries as under:--The Shorter Oxford English Dictionary:

"To begin, commence, enter upon, to introduce, set query, originate." "Black's Law Dictionary, Fourth Edition":

"commence, inchoate." "Webster's Third New International Dictionary":

"to begin, or set going; making a beginning of; perform or facilitate the first action; steps or states of; established as an institution; originate, to mark the beginning."

"Words and Phrases, Permanent Edition, 21A":

"initiate means an introductory step or action, a first move, beginning; start. The person who initiates the civil proceedings, is the person who sets the machinery of law in motion whether he acts in his own name, or that of a third person, or whether the proceedings are brought to enforce a claim of his own or that of a third person." Keeping in view the meaning of the word "initiate" a close reading of Rule 32 reveals that the enquiry under Rule 32 is a condition precedent for initiating the proceedings under the Land Acquisition Act. The proceedings under the Land Acquisition Act are initiated by the publication of a notice under Sub-section (1) of Section 4 of the Act.

35. In Abdul Husein Tayabali and Others Vs. State of Gujarat and Others, Rule 4 of the Land Acquisition (Companies) Rules the language of which is in pari materia with the language of Rule 32 came up for interpretation before their Lordships of the Supreme Court. In that case it was contended on behalf of the appellant of that case that the enquiry under Rule 4 ought to have been held after the notification u/s 4 was issued and not before; and therefore the enquiry held was not valid. Their Lordships of the Supreme Court repelling that contention observed as under (at p. 437):--

"Next it was urged that the inquiry under Rule 4 has to be held after the notification u/s 4 is issued and not before and therefore the inquiry held by Master was not valid. We do not find anything in Rule 4 or in any other Rule to warrant such a proposition. The inquiry, the report to be made consequent upon such inquiry, obtaining the opinion of the Land Acquisition Committee, all these are intended to enable the Government to come to a tentative conclusion that

the lands in question are or are likely to be needed for a public purpose and to issue thereafter Section 4 notification."

36. Thus it can be safely said that the requirement of law is that the enquiry under Rule 32 should be made prior to the issuance of notification u/s 4 of the Act.

37. Considered from another angle, the argument that the inquiry can be made under Rule 32 after publication of notification u/s 4 (1) is of no "avail to the respondents in the case on hand, because it is not the case of the respondents that an enquiry envisaged by Rule 32 was made by the Collector and a report in the terms of the Rule was made to the Government by the Collector, Bharatpur, after the issuance of the impugned notification dated March 13, 1973, issued under Sub-section (1) of Section 4 of the Act. The case of the respondents throughout has been that substantial compliance of Rule 32 was made prior to the publication of the notification dated March 13, 1973. For the reasons mentioned above, we hold that the compliance of Rule 32 has not been made because the owner of the land who is the appellant was given no notice or opportunity to represent his case to the Collector, at any stage of the alleged enquiry under Rule 32. We further hold that the owner of the land is entitled to an opportunity of being heard in an enquiry under Rule 32. The learned single Judge has erred in holding that substantial compliance of Rule 32 was made.

38. The case on hand is squarely covered by the ratio decidendi of the case: State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others, . The learned counsel for the respondent urged that the ratio decidendi of the above referred case is not applicable to the facts of the case on hand, because that case was decided on the special provisions of the Land Acquisition Act No. 1 of 1894, adopted in Gujarat with certain amendments by Gujarat Act No. 20 of 1965. In Section 39 of the principal Act for the figure V figure "4" was substituted and consequential amendments in Sections 40 and 41 of that Act were also made. The net result of the amendment in the Gujarat Act is that the proceedings under Sections 4 to 37 of the Land Acquisition Act could not be initiated unless the agreement envisaged by Section 39 was executed.

39. The distinction tried to be drawn by the learned counsel is without any difference. The scope of an enquiry u/s 5-A and Section 40 of the Act No. XXIV of 1953 is altogether distinct from that of the scope of enquiry under Rule 32 of the Rajasthan Land Acquisition Rules, 1956. Neither in an enquiry held u/s 5-A nor u/s 40 the enquiry officer is required to inquire whether the company had made reasonable efforts to get the land by negotiations and had offered reasonable price to the person interested or not. The provisions of Rule 4 of the Companies Acquisition Rules are *pari materia* to Rule 32 of the Rajasthan Land Acquisition Rules, 1956. While interpreting these rules the Hon'ble Chief Justice speaking for the Court observed in State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others, "that the owners of the lands sought to be acquired for a company are entitled to an opportunity of being heard in an enquiry under Rule 4

of the Rules, and in an enquiry u/s 40 of the Act. In the absence of such an enquiry the acquisition proceedings are vitiated." The law laid down by the Supreme Court of India is binding on all courts. On the parity of reasoning of the case the State of Gujarat v. Chaturbhai we hold that the compliance of Rule 32 of the Rajasthan Land Acquisition Rules, 1956 has not been made in the case on hand.

40. The net result of the above discussion is that this appeal is accepted and the judgment of the learned single Judge dated July 23, 1974 is set aside. The writ petition No. 369 of 1974 is allowed. The impugned notification dated March 13, 1973 and all the proceedings taken thereafter are quashed. In the facts and circumstances of this case the parties will bear their own costs.