

(1962) 12 CAL CK 0021

In the Calcutta High Court

Case No : A.F.O.O. No's. 111, 377 and 453 of 1958

Ram Kumar Agarwalla and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-12-1962

Acts Referred:

Companies Act, 1956 — Section 2(35)
Land Acquisition (Amendment) Act, 1962 — Section 7
Land Acquisition Act, 1894 — Section 3, 39, 4, 40(1), 41
Societies Registration Act, 1860 — Section 12

Citation : AIR 1963 Cal 534

Hon'ble Judges : H.K. Bose, C.J;G.K. Mitter, J

Bench : Division Bench

Advocate : Bimal C. Mitter and Rama Prasanna Bachi, in Nos. 111 and 453 of 1958 and C.C. Ganguli and Prafulla Kumar Chatterjee Jr., in No. 377 of 1958, for the Appellant; S.M. Bose, Advocate-General and Anil C. Mitter, Standing Counsel and S.K. Roy Choudhury, for Respondents (Nos. 1 to 4) in Nos. 111 and 453 of 1958, R.B. Pal, A.D. Mukherjee and Arun Kumar Dutt, in Nos. 111 and 453 of 1958, B.B. Mukherjee and Nanda Lal Pal for Respondents (Nos. 5(a) to 5(e), 5(i), 5(j), 5(l), 5(m) and 5(p) in Nos. 111 and 453 of 1958, Arun Kumar Dutt (II), B.B. Mukherjee and Nandlal Pal for Respondent (No. 1) in No. 377 of 1958 and S.M. Bose, Advocate-General, Anil C. Mitter, Standing Counsel and S.K. Roy Coudhury, For Respondents (Nos. 2 to 4 and 7) in No. 377 of 1958, for the Respondent

Final Decision : Dismissed

Judgement

Bose, C.J.—This appeal from an order of Sinha, J., relates to the question of the validity of the acquisition for Bharat Sevasram Sangha of about 17 cottahs of land forming part of premises" No. 1-A, Cornfield Road in South Calcutta.

2. The appellants along with certain other persons are the lessees in respect of a plot of land being premises No. 1-A, Cornfield Road and premises Nos. 203, 205-A and 207-A, Rash Behari Avenue, Calcutta with three houses on the said premises Nos, 203, 205-A and 207-A, Rash Behari Avenue, Calcutta. There was a

big tank covering a certain area of the said premises No. 1-A, Cornfield Road and for the purpose of constructing some more houses for the accommodation of the members of the family of the appellants and their deceased brother, the said tank was partly filled up at a huge cost. The plan for construction of the proposed houses at premises No. 1-A, Cornfield Road was sanctioned by the Corporation upon the application of the appellants on 13th May, 1955. Prior to that in 1954 some of the members of the Governing Body of Bharat Sevasram Sangha which is an organisation formed for the purpose of carrying on religious, philanthropic and charitable activities and which had its head office at premises No. 211, Rash Behari Avenue which is contiguous to premises No. 207-A, Rash Behari Avenue and also contiguous to the premises No. 1-A, Cornfield Road, approached the appellants for a gift of a portion of the premises No. 1-A, Cornfield Road for the purpose of setting up a gymnasium for the inmate of the Sangha. The case of the Sangha however, is that they did not ask for a gift of the land but they wanted to purchase it from the appellants by private negotiation. As the appellants did not agree to the proposal the Sangha made an application to the First Land Acquisition Collector, Calcutta on 20th October, 1954, for acquiring 12 cottahs of land forming part of the premises No. 1-A, Cornfield Road alleging Inter alia that the land was required by the Sangha for the efficient running and/or expansion of an existing Charitable dispensary attached to the Sangha at No. 211, Rash Behari Avenue. On 30th December, 1954, the appellants received a notice u/s 4 of the Land Acquisition Act, 1894, calling upon them to file objection against the proposed acquisition of 12 cottahs of land by the Government at the expense of the Sangha for the purpose of extension of a charitable dispensary in the interest of the suffering public. The notification u/s 4 was dated 9th December, 1954, and was published in the Calcutta Gazette dated 16th December, 1954. On 20th January, 1955, the appellants filed objections to the proposed acquisition inter alia on the ground that the charitable dispensary was nonexistent and the proposal for acquisition was a mala fide one and the land in question was required by the appellants for building residential houses. On 10th February, 1955, a local enquiry was held by the Second Land Acquisition Collector and on 16th April, 1955, the said Collector submitted his report recommending acquisition of the said land for the extension of the dispensary. But it appears that by a memorandum dated 3rd August, 1955, the State Government informed the Second Land Acquisition Collector of its decision not to proceed with the said acquisition. Thereupon the Second Land Acquisition Collector by a memorandum dated 4th August, 1955, informed the General Secretary of the Sangha about the said decision of the Government not to proceed with the acquisition. But it is alleged that no intimation was given to the appellants about this decision of the Government. In the meantime, after the sanction of the plan the appellants obtained the necessary permit for cement and purchased cement and other building materials for construction of the building according to the plan and stored the same at premises No. 1-A, Cornfield Road and in October, 1956, the contractors employed by the appellants commenced construction of the building according to the sanctioned plan. On 26th October,

1956, a member of the Sangha filed a petition of complaint against the appellant Ram Kumar Agarwalla and others u/s 144 of the Code of Criminal Procedure in the Court of the Police Magistrate, Alipore for the issue of prohibitory order restraining the appellants from proceeding with the construction work on the land alleging that the management of the Sangha had been in possession of the land for over 24 years and had been in actual possession by erecting on it a big corrugated tin structure. On 1st December, 1956, the Police Magistrate, Alipore, drew up proceeding against the appellant and others u/s 144 and directed them not to enter the said land. On 18th December, 1956, the Police Magistrate refused to rescind his order dated 1st December, 1956; as against that the appellant Ram Kumar Agarwalla moved an application being Criminal Motion No. no of 1956 before the Additional District Magistrate, Alipore, who by his order dated 31st January, 1957, allowed the application of Ram Kumar Agarwalla and set aside the prohibitory order. Thereupon the Sangha moved an application under Article 226 of the Constitution before this Court and obtained a Rule Nisi being Civil Rule No. 381 of T957 and an interim injunction restraining the appellants from going on with the construction work. In the meantime, on or about 21st November, 1956, the appellant received another notice from the Second Land Acquisition Collector that about 17 cottahs of land at premises No. 1-A, Cornfield Road were likely to be needed for a public purpose, namely, for the purpose of Sangha for the construction of Social Worker's quarters, Students' Home, Publication Department, Guest House and Panthasala. This notification was u/s 4 of the Land Acquisition Act dated 29th October, 1956, and was published in the Calcutta Gazette dated 30th October, 1956. It appears that on the same date and in the same issue of the Calcutta Gazette was published a notification cancelling the previous notification for acquisition u/s 4 dated 9th December, 1954. Upon receiving that notice the appellants made enquiries and came to learn that that fresh, notification u/s 4 had been published as a result of an appeal made to the Minister in charge of Land and Land Revenue, Government of West Bengal on the 31st August, 1956. On the 12th December, 1956, the appellants submitted a written objection against the proposed acquisition on the ground that the application was a mala fide one and the Sangha possessed two contiguous premises being No. 237 Rash Behari Avenue and No. 7/2Q, Zarnir Lane which was about 500 ft. away from the Head Office of the Sangha and about 21 cottahs of land were lying vacant and were available for the purposes for which the Sangha had set the machinery of the provisions of the Land Acquisition Act in motion. A local enquiry was thereupon held by the Second Land Acquisition Collector and he submitted his report on the 26th December, 1956. It is inter alia stated in the report that the entire area of the land held) by the appellants as lessees at premises No. 1-A, Cornfield Road comes to about 4 acres and the land under acquisition is situated at the northeastern corner of the said premises. The entire area was lying vacant for many years, but recently construction had been started on a portion 06 it measuring about one bigha but no actual construction was made on any portion of the land proposed for acquisition. But the appellants intended to construct

some out-houses, garages etc., on a portion of the land proposed to be acquired although there was plenty of vacant land lying in the other portion of the premises which could be easily utilised for the construction of the said outhouses etc., and there was also vacant space available at the back of premises Nos. 203, 205-A and 207-A, Rash Behari Avenue on which said outhouses etc., could be conveniently built. It is further stated in the report that from the nature of the new constructions which had been recently started it seemed that these were intended to be let out to tenants and were not meant to be kept by the appellants or the members of their family. The Second Land Acquisition Collector also finds in his report that The objects for which the Sangha requested the Government to acquire the land were bona fide objects and in fact the Sangha had been maintaining Students' Home, Publication Department, Guest Houses and Panthasalas at its various branches but had been unable to set up such organisation at its headquarters for lack of accommodation or space and that the public in general will be benefited by the extension of the activities of the Sangha for which the proposed acquisition is intended, is, according to the Collector, apparent to any fair-minded person. Dealing with the objection of the appellant as to the mala fide nature of the proposed acquisition, the Second Land Acquisition Collector states that the reasons why the Government ultimately decided not to proceed with the acquisition for the purpose of extension of a charitable dispensary are not known to him, but as the activities of the Sangha are manifold the mere fact that the Government decided not to proceed with the acquisition for extension of a charitable dispensary would not ipso facto render a proposal to acquire the land for other recognised purposes, a mala fide one. In the circumstances, he recommended that the proposed acquisition should proceed. Thereafter on or about 24th May, 1957, the Sangha entered into an agreement with the State of West Bengal for the acquisition of the said plot of land at its own cost. The agreement was published in the Calcutta Gazette dated 30th May, 1957. The agreement appears to have been entered into u/s 41 of the Land Acquisition Act and was published in the Gazette as required u/s 42 of the Act. Clause 4 of the said agreement is as follows : -

"4. The said land shall be held by a Society for the purposes of construction of Social Workers' quarters, Students' Home, Publication Department, Guest Houses and Panthasala as hereinafter 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 Social Workers' quarters, the Students' Home, Publication Department, Guest Houses and Panthasala shall be completed (and fully equipped in all respects ready for use) within 4 years from the date on which possession of the said land shall have been given to the Society.

6. Should the said Social Workers' quarters, the Students' Home, Publication Department, Guest Houses and Panthasala (not be completed and fully equipped in all 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 Government of West Bengal or should the said land at any time thereafter cease for a period of 12 consecutive months to be held and used or ceased to be required for the purpose or purposes provided for in the foregoing 4th clause and in any such case the said Government may summarily re-enter upon and take possession of the said land together with 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.

8. The public shall be entitled to get the benefit of the Students' Home, Publication Department, Guest Houses and Panthasala according to the rules and regulations of the Society.

9. Should any dispute or difference arise touching or concerning the subject-matter of this agreement or any covenant clause hereunder 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."

3 Thereafter on the 31st May, 1957, a declaration u/s 6 of the Land Acquisition Act was published in the Calcutta Gazette Extraordinary stating that the Governor was satisfied that the land was needed for a public purpose namely for the Bharat Sevasram Sangha for the purpose of construction of Social Workers' quarters, Students' Home etc. On 10th June, 1957, notices under Sections 9 and 10 of the Land Acquisition Act were served on the appellants. On the 28th June, 1957, the appellants moved this Court under Article 226 of the Constitution challenging the validity of the acquisition proceeding and the various notifications mentioned in the prayers of the petition and a Rule Nisi was issued by Sinha, J., on the 28th June, 1957. In the affidavit in opposition which was filed in answer to the petition under Article 226 of the Constitution it is inter alia stated in paragraph 15 as follows:-

"The Government duly considered the case of acquisition for which the Sangha moved the Minister as stated above and being satisfied that the land was needed for public purpose, issued the said notification u/s 4 of the Land Acquisition Act."

4 Then again paragraph 17 of the said affidavit in opposition was worded as follows:-

"With reference to paragraphs 24 and 25, I deny the allegation that the said notification dated 29th October, 1956, issued by the Government u/s 4 of the Land Acquisition Act is illegal, void and mala fide as stated. Before the issue of the said notification the Government was satisfied about the necessity, propriety and reasonableness of the acquisition for the purpose."

5. Sinha, J., before whom the Rule came up for hearing dismissed the application and discharged the Rule Nisi by his order dated 24th February, 1958, and

vacated the interim order. Rule No. 381 of 1957 which was obtained by the Sangha also came up for hearing before him and this Rule was made absolute in part and the appellants Ram Kumar Agarwalla and others were restrained by an order of injunction from making any further construction on the land which was the subject-matter of the acquisition. Another Rule being No. 1881 of 1957 which was also issued at the instance of the Agarwallas also came up for hearing before the learned Judge and he disposed of that rule also by the same judgment delivered in Rule No. 1720 of 1957 from which appeal No. 111 of 1958 has arisen. It is against the orders passed in these three Rules that three appeals which are now before us for hearing have been preferred.

6. At the hearing of the appeals besides the points which were argued before the learned trial Judge certain additional grounds have been urged. Notice of such additional grounds had been given by the appellants some time prior to the hearing of the appeal and the learned Advocates appearing for the respondents have not raised any objection to these additional grounds being urged as they are essentially Questions of law and no investigation into fresh facts is involved in such grounds.

7. The principal point which has been put in the forefront and has been urged with much force by the learned counsel for the appellants is that the acquisition is not for a public purpose or for a purpose useful to the public and inasmuch as the acquisition was for a company and the provisions of Part VII of the Land Acquisition Act, 1944, should have been complied with in this case, and as that has not been done, the entire acquisition proceeding is invalid. In order to examine the force of this contention it is necessary to refer to certain provisions of the Land Acquisition Act (Act I of 1894). The preamble of the Act shows that the object of the Act is to amend the law for the acquisition of land for public purpose and for companies. Section 3(e) defines the meaning of the expression of the "companies" as follows:-

"(e) The expression "company" means a company registered under the Indian Companies Act, 1882 and include a Society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912."

Section 3(b) defines public purpose as follows:-

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

The definition, of "public purpose" thus appears to be an inclusive definition and is not an exhaustive one. Section 4 which is in Part II of the Act and bears the heading "Acquisition and Preliminary Investigation" provides for the publication of a preliminary notification by the Government upon the result of a preliminary investigation that a particular land in any locality is needed or is likely to be needed for any public purpose. The next relevant section is Section 5-A under

which any person interested in any land which has been notified u/s 4 as being needed or likely to be needed for a public purpose or for a company, may file objections to the acquisition within 30 days after the issue of the notification u/s 4. Such objection has to be made to the Collector in writing and the Collector has to give an opportunity to the person objecting of a hearing in person or through a pleader, and after bearing such objection and after making any further enquiry that he may consider necessary he should submit the case for the decision of the Government together with the records of proceeding held by him and a report showing his recommendations on the objection, and the decision that the Government may arrive at upon considering the objections is made final. Section 6(i) provides that when the Government is satisfied after considering the report, if any, made u/s 5-A subsection (2) of the Act that any particular land is needed for a public purpose or for a company the Government may make a declaration to that effect and such declaration has to be published in the official gazette. Sub-section (3) of Section 6 provides that "the declaration shall be conclusive evidence that the land is needed for a public purpose or for a company as the case may be; and after making such declaration the Government may acquire the land in the manner hereinafter appearing."

8. It will thus be clear from these provisions that the object of this Act is to empower the Government to acquire land for a public purpose or for a company and where the proposed acquisition is for the company the acquisition is subject to the provisions of Part VII of the Act. Bharat

Sevasram Sangha for whom the acquisition is contemplated being a Society registered under the Societies Registration Act is a company within the meaning of Section 3 Clause (e) of the Act and accordingly the provisions of Part VII of the Act are attracted in this case. It will therefore be convenient to set out some of the provisions of that Part which have a bearing on the points for consideration before us. Section 39 of the Act is as follows: -

"The provisions of Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any company unless with the previous consent of the appropriate Government nor unless the company shall have executed the agreement hereinafter mentioned."

Section 40(i) provides that such consent shall not be given unless the Government be satisfied either on the report of the Collector u/s 5-A Sub-section (2) or by an enquiry held as hereinafter provided (a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith or (b) that the acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public. So the net effect of these two sections is that the conditions precedent which have to be fulfilled are that the (j) previous consent of the appropriate Government has to be obtained and such consent cannot be given unless the purpose of the acquisition is. erection of dwelling houses for workmen or for the provision of amenities as

contemplated in clause (a) of Sub-section (i) of Section 40 or the acquisition is needed for some work or construction which is likely to prove useful to the public, (Section 40(i)(b)). Then Section 41 provides that if after considering the report of the Collector under Sub-section (2) of Section 5-A or the report of the officer making an enquiry u/s 40 the Government is satisfied that the acquisition is for the purposes mentioned in Clause (a) or (b) of Sub-section (i) of Section 40, then the Government should require the company for which the acquisition is made to enter into an agreement with the Government making provisions for certain matters specified in Section 41. Clause 5 of Section 41 provides that where the acquisition is for the construction of any work other than the works mentioned in the preceding Clause (4) 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 have to be provided for in the agreement which is to be entered between the company and the Government. Section 42 of the Act provides that every such agreement shall as soon as it may be after its execution be published in the official gazette and shall thereupon (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.

9. Relying on these provisions the learned counsel for the appellant has argued that the purposes for which the acquisition is sought to be made and which are specified in the agreement which was entered into between the Government and the Bharat Sevasram Sangha are not purposes which are likely to prove useful to the public within the meaning of Clause (b) of Sub-section (i) of Section 40 read with Clause (5) of Section 41 of the Act and further the agreement is also invalid inasmuch as it does not contain the terms upon which the public shall be entitled to use the work as contemplated by Clause (5) of Section 41 of the Act read with Section 42 of the Act. Consequently the consent that was given by the Government to the acquisition was not a valid consent and the agreement was also an invalid one and so the entire acquisition is void. In support of this contention strong reliance is placed upon a decision of the Supreme Court reported in *R.L. Arora Vs. State of U.P.*, . In this case certain land was sought to be acquired for a company for the construction of textile machinery parts" factory and the agreement which was entered into between the Government and the company provided that the public will have such right of access to and use of the land/ works herein and before specified as may be necessary for the transaction of their business with the firm. The majority view of the Supreme Court was that what the relevant provisions of Section 40 and Section 41 require is that the work should be directly useful to the public and an agreement shall contain a term as to how the public shall have the right to use the work directly for themselves. In other words, works like a hospital, a public reading room or a library or an educational institution open to the public or such other work as the public may directly use that are contemplated and it is only for such works which are useful to the public in this way and can be directly used by it that land can be acquired for a company under the Act. It was further held by the majority Judges

of the Supreme Court that the term in the agreement that those who had business with the company would have only such right of access to and use of the land/ works as might be necessary for the transaction of their business was not proper compliance with the provisions of Sections 40 and 41 of the Act. It was further pointed out by the Supreme Court that the fact that the product of the company would be useful to the public is not sufficient to bring the acquisition for a company within the meaning of the relevant words in sections 40 and 41 of the Act. It is submitted by the learned counsel for the appellants that the work of construction of Social Workers' quarters, Students' Home, Publication Department, Guest Houses and Panthasala are not works which can be said to be directly useful to the public and Clause (8) of the agreement which simply provides that the public shall be entitled to get the benefit of the Students' Home, Publication Department, Guest Houses and Panthasala according to the rules and regulations of the society is an illusory provision and cannot be regarded as a term relating to user of the work by the public as contemplated in Section 40(1)(b) read with Section 41(5) of the Act. It is said that the rules and regulations of the society which have been brought to the notice of the Court have no bearing on any of the purposes which are set out in Clause 8 and the rules of Bidyarthi Bhavan which have been placed before the Court are not strictly speaking rules and regulations of the Society. So as there are no existing rules and regulations of the Society which are referable to the purposes specified in the agreement there is clear violation of the requirements of the provisions of Section 40(1)(b) read with Section 41(5) of the Act. It is further argued that even assuming that there had been certain rules and regulations of the Society which were referable to the purposes mentioned in Clause 8 or Clause 4 of the agreement even then there would not be sufficient compliance with these provisions of the Act because the term "according to the rules and regulations of the Society" provides scope for altering and adding to the rules and regulations which the society can do in any manner it likes and thereby frustrate the very object for which the proposed acquisition is made.

10. 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.

11. 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 the Section 41 of the Act.

12. It has been pointed out by the Supreme Court in *R.L. Arora Vs. State of U.P.*, which has been referred to in an earlier part of this judgment that it is not for the Court to enter upon a consideration of the question how far the provision made by the Government in the terms of the agreement sufficiently safeguards the interests of the public, that being a matter entirely for the satisfaction of the Government, though no doubt the interpretation of or the meaning to be given to the material terms in Section 40(1)(b) and Clause 5 of Section 41 read together, is always within the jurisdiction of the Court. At p. 771 of the report in *R.L. Arora Vs. State of U.P.*, the following observations occur :

"It is for the Court to say what the words in Sections 40 and 41 mean though it is for the Government to decide whether the work is useful to the public and whether the terms contain provisions for the manner in which the public shall be entitled to use work. It is only in this latter part that the Government's satisfaction comes in and if the Government is satisfied, that satisfaction may not be open to challenge The Government cannot both give meaning to the words and also say that they are satisfied on the meaning given by them".

13. There is nothing to show that before *R.L. Arora Vs. State of U.P.*, the true meaning of Section 40(1)(b) read with Clause 5 of Section 41 was not known to the Government or that the Government had given a different interpretation to the expression "useful to the public". Furthermore, the Government may have thought that the insertion of Clauses 4, 5, 6, 8 and 9 of the agreement sufficiently safeguarded the interest of the public and had amply fulfilled the requirements of Section 41(1)(b) read with Clause 5 of Section 41 of the Act. The contention of the learned advocate for the appellant that the acquisition is bad because of non-compliance with the provisions of Section 41(1)(b) read with Section 41(5) of the Act must, therefore, be held to be without any substance.

14. The next point which has been raised in this appeal is that even if it be assumed that there has been non-compliance with the provisions of Section 40(1)(b) of the Act read with Section 41(5) which renders the acquisition invalid, whether the provisions of Section 7 of the Land Acquisition (Amendment) Act 1962 (Act 31 of 1962) which was brought into force on 12th September 1962 saves the acquisition from challenge or validates the acquisition in question. Section 7 of the amending Act is as follows:

"Notwithstanding any judgment, decree or order of any Court, every acquisition of land for a company made or purporting to have been made in Part VII of the principal Act before 20-7-1962 shall, in so far as such acquisition is not for any of the purposes mentioned in Clause (a) or Clause (b) of Sub-section (1) of Section

40 of the principal Act, be deemed to have been made for the purpose mentioned in Clause (aa) of the said sub-section, and accordingly every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of Sections 40 and 41 of the principal Act, as amended by this Act, were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was intended or action was taken.

Expl.--In this section "company" has the same meaning as in Clause (e) of Section 3 of the principal Act as amended by this Act".

15. It has been argued on behalf of the respondents that in the present case, after Sinha J. had declared the proceeding for acquisition as valid, by his judgment dated 24-11-1958, further steps were taken to complete the acquisition, and award was made by the Collector on 7-3-1958. Immediately thereafter on 8-3-1958 possession was taken of the acquired land by the Government and it was delivered to the Sangha on that very date, that is, 8-3-1958. The present appeal was thereafter filed on 13-3-1958 against the order of Sinha J. and an application for injunction was made on the 20th March, 1958 and in paragraph 10 of the petition it is admitted by the appellant that the delivery of possession took place on 8th March 1958 at 9 A.M. and the order of injunction that was made on the application was inter alia to the effect that the condition of the land of which possession had been taken should not be changed pending disposal of the appeal. So as the acquisition was complete before the 20th day of July, 1962 the provisions of Section 7 are attracted to this case. In answer to this contention the learned Advocate for the appellant has argued that as the question of the amount of compensation is still in dispute, and proceeding in relation thereto is still pending, it cannot be said that the acquisition had been made or completed before the 20th day of July, 1962 so as to attract the provisions of Section 7. It is further submitted by the learned advocate for the appellant that inasmuch as the judgment of Sinha J. which is under appeal held that the acquisition came within the provisions of Clause (b) of Sub-section (1) of Section 40 of the principal Act the respondents are not entitled to take advantage of the provisions of Section 7. It appears to me that the argument of the learned advocate for the appellant is based on a misconception of the true meaning to be given to the words of the section. Merely because the question of compensation has not been finally settled and there is some proceeding pending in which the dispute as to the compensation has to be adjudicated upon does not take away the character of completeness of the acquisition as if possession has been given to the Sangha by the Government and there is nothing to suggest that the Sangha is not willing to pay the compensation in respect of the acquisition which will be ultimately determined in the pending proceeding as being payable by the Sangha to the owners of the property. Then again merely because the judgment of Sinha J. has held that the case before us comes under Clause (b) of Sub-section (1) of Section 40 of the principal Act does not prevent the provisions from applying to the facts of the present case. If by reason of any

judgment the Court is forced to the conclusion that the requirements "of provisions of Clause (b) of Sub-section (1) of Section 40 of the principal Act have not been complied with, as for example, if by reason of the judgment in Arora's case the Court has to come to the conclusion that in a particular case the acquisition is not for any work likely to prove useful to the public or the agreement does not contain the terms on which the public shall be entitled to use the work and so the acquisition is bad, even in such a case the provisions of Section 7 will be attracted and if the acquisition in question can be brought within the ambit of the provisions of Clause (aa) which was introduced into the principal Act by Section 3 of the amending Act the acquisition will be validated by virtue of the provisions of Section 7 of the Act. Now Clause (aa) is as follows:

"That such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for ranging itself in any industry or work that is for a public purpose".

16. As pointed out already the definition of "public purpose" which is contained in Section 3(f) of the Act is an inclusive definition but broadly speaking the expression would include a purpose in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned. In the case of Babu Barkya Thakur Vs. The State of Bombay and Others, the Supreme Court made the following observation:

"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."

It has been held by the Supreme Court that the expression "public purpose" has to be given the widest amplitude and any work of which the public can in any way derive benefit whether by the direct use of the work or by the enjoyment of the fruits of the activities carried on there will be a public purpose. In other words anything which is useful to the public in the sense of conferring some public benefit or conducing to some public advantage is a public purpose. Though the expression "uselul to the public" as occurring in Section 40(1)(b) has to be given a narrow meaning and has to be limited to works which are directly useful to the public, there can be no doubt that the establishments which are sought to be set up and the purposes which are specified in Clause 8 of the agreement for the acquisition of the property for the Sangha come within the expression "public purpose" even though it is assumed that such purposes cannot be said to be directly useful to the public.

17. The next point which has been raised in this appeal is that the procedure which has been followed by the Government in making the acquisition is contrary to the provisions of the Land Acquisition Act inasmuch as at the stage when the notification u/s 4 was issued by the Government it had already made up its mind without hearing the representations of the appellant against the acquisition, which is a step not warranted or contemplated by the provisions of the Land

Acquisition Act. In other words what is submitted is that at the time when the preliminary notification u/s 4 had been issued the Government had a closed mind and it had finally decided to make the acquisition no matter what objections were raised by the owners against the propriety of such acquisition. Reference is made in this connection to paragraphs 15 and 17 of the affidavit-in-opposition affirmed by Sailesh Chandra Chatterjee, the Special Officer and Deputy Secretary (Ex-Officio) to the Government of West Bengal in its Land and Land Revenue Department, who acted as the Second Land Acquisition Collector, Calcutta, at the material time. I have already referred to these paragraphs in an earlier part of the judgment and what is stated in these paragraphs inter alia is that before the notification u/s 4 was issued the Government was satisfied about the necessity, propriety and reasonableness of the acquisition for the purpose and after being satisfied that the land was needed for a public purpose issued the said notification u/s 4 of the Act. Relying on this statement in the affidavit-in-opposition it has been argued that there can be no doubt that even at the preliminary stage of issuing a notification u/s 4 the Government had come to a final decision to acquire the property and to ignore all objections that might be put forward by the "owners for resisting the proposed acquisition. I do not think that this argument of the learned Advocate for the appellant has any force. It is true that the paragraphs in the affidavit-in-opposition on which reliance is placed by the learned Advocate for the appellant have not been happily worded and the expression "satisfied" which has been used in those paragraphs is not an appropriate expression which can be used for indicating the tentative decision of the Government as to the necessity of the acquisition of the property in question for a public purpose or a company. The language of the statute in Section 4 of the Land Acquisition Act is "where it appears to the Government that land in any locality is needed or likely to be needed for any public purpose" and it is also clear from the hearing of the section in Part II of the Act that some preliminary investigation is made at this stage and after the notification u/s 4 is issued, Officers authorised by the Government enter upon and survey the land, dig or bore into the sub-soil and do all other acts necessary to ascertain whether the land is adapted to such purpose; then the boundaries are set out and marked and for such purpose the Officers can clear away any part or any standing crop, fence or jungle. After that, objections u/s 5-A of the Act are entertained and an enquiry is held and if after such enquiry the Government is satisfied upon the report of the enquiring officer containing the recommendations of the Officer on the objections put forward, that the objections cannot be given effect to, the decision of the Government on the objection is treated as final and the Government will then publish a declaration u/s 6 of the Act to the effect that the land is needed for a public purpose or for a company as the case may be. In the present case, objections u/s 5-A had been invited and had been entertained and an enquiry by the Second Land Acquisition Collector was duly held. He submitted a detailed report for the consideration of the Government and it was upon fully considering the report so placed that the Government ultimately made a declaration u/s 6. A reference to the notifications themselves which were issued

under sections 4 and 6 of the Act makes it clear that at the preliminary stage when the notification under portion 4 was issued it was stated in the notification that it appeared to the Government that the land was likely to be needed for a public purpose for Bharat Sevasram Sangha and the purposes are set out in such notice and when the declaration u/s 6 was made later on after holding the enquiry, the expression that was used was, "that the Governor is satisfied that the land is needed for a public ... for the Bharat Sevasram Sangha". There is thus no doubt that the procedure laid down in the Act has been duly complied with and there is no question of the Government having a closed mind before the issue of the notification u/s 4 of the Act.

18. The next point which has been argued is that the acquisition is a mala fide one. It is pointed out that before the notification u/s 4 was issued by the Government some members of the Bharat Sevasram Sangha had. approached the appellants and asked for the land in question for utilising it as a gymnasium. But as the appellants refused to accede to the request the Sangha made an application to the First Land-Acquisition Collector, Calcutta for acquiring about 12 cottahs of land at 1A, Cornfield Road for the Sangha for the alleged purpose of efficient running and/or extension of an alleged charitable dispensary attached to the Sangha at No. 211, Rash Behari Avenue. Upon such application a notification u/s 4 of the Act dated the 16th December, 1954 was published in the Calcutta Gazette dated December 19, 1954. Thereupon the appellants filed their objections to the proposed acquisition on the ground that the charitable dispensary was non-existent and that the proposal for acquisition had been made mala fide. Thereupon a local enquiry was held by the Second Land Acquisition Collector who by his report dated the 16th April, 1955 recommended the acquisition for the extension of the alleged dispensary. But the Government by its memorandum dated 3rd August 1955 intimated to the Second Land Acquisition Collector its decision not to proceed with the acquisition. It is submitted that the Government came to such decision because the Government was satisfied that the alleged purpose of extension of a charitable dispensary was not a bona fide purpose as no such dispensary in fact existed, and it was being frustrated in this attempt, that the Sangha approached the Minister in Charge of Land Revenue Department and wrote a letter to him on the 31st August 1956 stating that the land was required for certain purposes as therein set out. In this letter a proposal was made for acquiring a larger area of land namely 17 cottahs of land for the purpose of accommodating social workers' quarters, Student's Home, Publication Department, Guest House and Panthasala. It is on the strength of this letter that the Government again started proceeding for acquisition and issued a notification u/s 4 and made the declaration u/s 6 of the Act. It is pointed out that this change of purpose of the acquisition from time to time shows clearly that the Sangha was determined to deprive the appellants of their lands by hook or by crook and as the Government made itself a party to this illegal and mala fide acquisition, the whole proceeding for acquisition is invalid. It is no doubt true that this change of purpose from time to time on the

part of the Sangha indicates that they were bent upon acquiring a portion of this premises at 1A, Cornfield Road. But we find it difficult to hold that the Government had made itself a party to any mala fide acquisition. After the first notification u/s 5-A was issued for the purpose of acquiring land for extension of a charitable dispensary and after the enquiry was held as to the necessity of the acquisition for the said purposes and a report was submitted by the Second Land Acquisition Collector recommending the acquisition for such purpose, the Government thought fit to turn down the proposal for acquisition. This shows that the Government had been acting in a bona fide manner. Notwithstanding the recommendation of the Second Land Acquisition Collector, the Government came to an independent conclusion upon the materials available to them that the proposed acquisition should not be proceeded with and accordingly the Government did not hesitate to intimate its decision that the proposed acquisition should be dropped. Thereafter when the Sangha approached the Minister in charge of the Land Revenue Department with the second proposal for acquisition, a further enquiry was held after entertaining objections u/s 5-A and as the Government this time felt satisfied that the purposes of the acquisition were bona fide they issued a declaration u/s 6 of the Act and gave their consent to the acquisition and the necessary agreements as required under the provisions of Part II of the Act were entered into and other necessary steps were taken to complete the acquisition. As pointed out already there are provisions in the agreement to the effect that if the Sangha ceases at any time to use or hold the land for the specific purposes mentioned in the agreement, the Government will be entitled to deprive the Sangha of their possession and interest in the land covered by the acquisition. In the circumstances, we do not feel pressed to hold that the acquisition is a mala fide one and the entire proceeding for such acquisition is, therefore, null and void.

19. Another point was raised on behalf of the appellants to the effect that Section 44-B as introduced by Section 5 of the Amending Act 31 of 1962 is a bar to the acquisition with which we are concerned in this case. Section 44-B is as follows: -

"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."

20. It is argued on the basis of this provision that as Bharat Sevasram Pangha is a private company this provision operates as a bar to the present acquisition. But this argument overlooks the explanation which is appended to Section 44B which is as follows: -

"Expl. -- Private Company and Government Company shall have the meanings respectively assigned to them in the Companies Act, 1956." Section 2(18) of the Companies Act 1956 defines a "government company" as meaning a Government company within the meaning of Section 617 which provides that for the purpose of Sections 618, 619 and 620 Government Company means any company in which not less than 51% of the share capital is held by the Central Government or

by any State Government or Governments or partly by the Central Government and partly by one or more State Governments. Section 2(35) of the Companies Act, 1956 defines a "private company" as meaning a private company as denned in Section 3 of the Act in Section 3 Clause (iii) it is provided that private company means a company which by its Article (a) restricts the right to transfer its share if any (b) limits the number of its members to 50 not including persons (c) prohibits any invitationto the public to subscribe for any share in or debentures of the company.

21. Now, it is clear from the memorandum of association and from the rules and regulations of the Sangha that although the Sangha satisfies the definition of a company as given in Section 3(e) of the Land Acquisition Act, it does not answer the description of a private company as given in Section 2(35) read with Section 3(iii) of the Companies Act, 1956. It appears to us therefore that this point of the learned Advocate for the appellant is devoid of any substance.

22. This disposes of all the points raised in the appeal. In the result, the appeal fails and it is dismissed with costs. The hearing fee is assessed at five gold mohurs.

23. Appeal No. 453 of 1958. The judgment delivered in Appeal No. 111 of 1958 will govern this appeal. The appeal is accordingly dismissed with costs. The hearing fee is assessed at five gold mohurs.

24. Appeal No. 377 of 1958. The judgment delivered in Appeal No. 111 of 1958 also governs this appeal. This appeal is accordingly dismissed with costs. The hearing fee is assessed at five gold mohurs.

25. The operation of this order will remain stayed for a period of six weeks from this date.

Mitter, J.

26-31. (His Lordship after stating the facts proceeded.)

32. Before proceeding to consider the points urged in support of the appeal, it is necessary to refer to the memorandum of association of the society a copy of which forms annexure "A" to the petition. The objects of the association shown therein are, inter alia:-

(a) To help the distressed, to nurse the sick, to feed the hungry and to clothe the naked.

(b) To give necessary relief to the afflicted people in times of flood, famine and other disastrous condition of the country.

(c) To establish Sevasram in different parts of the country and to maintain, carry on and assist free educational and medical institutions and other charitable societies to help the spread of education and to render help to the infirm, the invalid, the afflicted and the suffering humanity in general.

(d) To take steps to revive the ancient culture of the land, to re-organise life on that basis, so as to suit modern conditions.

(e) Generally to promote educational facilities in the land, and particularly among the uncultured people, the outcaste and the depressed classes.

(f) To print and publish and to sell or distribute gratuitously or otherwise journals, periodicals, books and leaflets that the association may deem necessary for the promotion of its object.

33. The rules and regulations of the society are set out in annexure D to the petition. It is significant to note that none of these show how a students' home, guest house etc., are to be maintained. Clause 16 thereof gives the governing body the power from time to time to frame rules for conducting the business of the society and to make bye-laws for the management of the association as also to vary or repeal any such rules or bye laws.

34. A set of rules of the Vidyarthi Bhavan or Scholars' abode run by the society at Garia, which is at some distance from its Head Office, forms annexure N to the petition. These rules regulate, the admission of a student into the Bhavan and their conduct while staying there. They also prescribe the fees which have to be paid by the scholars.

35. The following points were formulated in support of the appeal :-

(1) The entire land acquisition proceedings were mala fide.

(2) The acquisition was not for a public purpose, that is to say, the public would not be benefited directly by the construction mentioned in the notification under the Act.

(3) The proceedings were bad because the agreement between the Government and the society was invalid as the terms on which the public were to be entitled to use the work u/s 41(5) of the Act were not set out in the said document.

(4) Assuming that such terms were incorporated, the agreement was invalid inasmuch as the society could alter its rules and regulations at any time thereby depriving the public of the right to use the work.

and lastly (5) the acquisition was not validated even by the recent charges introduced in the Land Acquisition Act with retrospective effect.

36. It was argued on behalf of the appellants that the mala fide nature of the acquisition was apparent from the fact that the society put forward different grounds for enlarged accommodation from time to time. It had first requested the appellants for the gift of a plot for the purpose of being used as a wrestling ground. On the request being turned down it approached the Government for acquisition of 12 cottahs of land for the extension of a charitable dispensary when in fact it was not running any dispensary of the kind. When the society found that the Government was not prepared to proceed with the acquisition for

the dispensary it put forward new grounds in numbers namely, (r) social workers' quarters (2) a students' home (3) a publication department (4) a guest house and (5) a panthasala. It was contended that the motive behind putting up of so many new grounds was that even if some of the purposes might not be found to exist the Government might be induced to take a favourable view with regard to the existence of others. As to the attitude of the Government it was argued that it was out to help the society regardless of its genuine need for any extra land. Reference was made in this connection to the fact that although the Land Acquisition Collector knew that the proceedings with regard to acquisition for a charitable dispensary would be cancelled, no steps were taken to inform the appellants thereof even though the society had knowledge of it. Further the cancellation of the notification u/s 4 with regard to the charitable dispensary and the fresh notice under the same section with regard to the students' home etc., were published simultaneously in the same Gazette the object being to keep some sort of proceedings hanging over the heads of the appellants all the time. Lastly it was argued that the affidavit of the special officer went to show that even at the preliminary stage when notice u/s 4 was issued the Government had made up its mind about the acquisition and was satisfied about its alleged propriety and reasonableness even before persons interested in the land had any chance of putting forward their objections.

37. The report made by the special officer after the inquiry in December, 1956, goes to show that there was a genuine need for more accommodation in the head office of the society, that there was a overcrowding of students and dearth of space for publication department and because of lack of space the society could not have a guest house of the kind maintained by it in other places. Nothing has been brought to our notice which would enable us to say that these needs were not genuine. It cannot however be denied that the conduct of the society might reasonably be viewed with some suspicion. The change of front with regard to its needs and the launching of criminal proceedings lend support to the theory of an element of bad faith on its part. So far as the Government is concerned the failure to intimate the appellants about the intention to cancel the first notice u/s 4 can at best be ascribed to carelessness on the part of some officer. There is nothing to indicate that there was a deliberate omission to give the information. Again the premature satisfaction with regard to "the propriety and the reasonableness of the acquisition" on the second occasion may be due to the out-burst of zeal inspired by saffron robes. The cumulative effect of all these falls short of establishing that the proceedings were mala fide.

38. Points 2 and 3 may be taken up together. To validate proceedings for acquisition of land for a company the essential pre-requisites are the previous consent of the appropriate Government and the execution of an agreement by the company in terms of Section 39 of the Act. u/s 40(1) of the unamended Act such consent of the appropriate Government could not be given unless it was satisfied either on the report of the Collector u/s 5-A(2) or by an inquiry held as thereafter provided : -

(a) that the purpose of the acquisition was to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith, or

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

Under Sub-section (2) of Section 40 such enquiry is to be held by such officer and at such time and place as the Provincial Government might appoint Clause (a) above does not apply to the facts of this case and the acquisition can only be justified if it was for the construction of some work which was likely to prove useful to the public in terms of Clause (b). Sinha, J., who heard the petitions held that the acquisition was under Sub-clause (b). u/s 41 of the unamended Act the appropriate Government could, when satisfied on the report of the officer making the enquiry that the proposed acquisition was needed for the construction of a work which was likely to prove useful to the public, require the company to enter into an agreement, with the Government providing to the satisfaction of the Government for the following matters, namely: -

(1) the payment to the Provincial Government of the cost 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 was for the purpose of erecting, dwelling houses 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; and

(5) where the acquisition was 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. Further u/s 42 every such agreement was to be published in the Official Gazette and shall thereupon so far as regards the terms on which the public would be entitled to use the work have the same effect as if it had formed part of the Act.

39. The position, therefore, before the amendment of the sections was that in a case where land was proposed to be acquired for the construction of some work likely to prove useful to the public the agreement between the company and the Government had to provide for the matters enumerated in Sub-clauses (1), (2), (3) and (5) of Section 41 of the Act. The Supreme Court had to interpret these sections in the recent case of R.L. Arora Vs. State of U.P., . There a majority of the Judges discountenanced the argument that in order that the work should be useful to the public it was enough if the company turned out something for the benefit of the public and observed "it is the duty of the Government when it takes an agreement u/s 41 to see that the public is so entitled to use the work. To say that the public is entitled to use the work because the public ran go to the work in the way of business is in our opinion not giving any right to the public to

use the work directly as such." In the case before the Supreme Court the agreement of the company provided that "the public will have such right of access to and use of the land/works herein and before specified as may be necessary for the transaction of their business with the firm". In the opinion of the majority of Judges this was not what was meant by the words "the terms on which the public shall be entitled to use the work" in the fifth term of the agreement as provided in Section 41". The Court added.

"Reading therefore Section 40(1)(b) and the fifth term of the agreement provided in Section 41, there is in our opinion no doubt that the intention of the legislature was that land should be acquired only when the work to be constructed is directly useful to the public and the public shall be entitled to use the work as such for its own benefit in accordance with the terms of the agreement which u/s 42 are made to have the same effect as if they form part of the Act."

40. The Supreme Court further rejected the contention that it was the Government which had to be satisfied that the work was likely to prove useful to the public and that if the Government was satisfied about the same as also with the terms providing for use of the work by the public the Court had no further say in the matter. The Court further held that if the Government failed to interpret Sections 40 and 41 correctly and came to be satisfied on a wrong interpretation of the sections such satisfaction would be open to challenge.

41. It appears to me therefore that before Government can be satisfied u/s 40 of the Act it must enquire whether the work which is proposed to be constructed was likely to prove directly useful to the public. If the enquiry revealed circumstances which would satisfy a reasonable person that the work would benefit the public the Court would not sit in appeal over the judgment of the Government. Further the duty of the Government was to insist on the fulfilment of the conditions specified not only in Sub-clauses (1), (2) and (3) but these in Sub-clause (5) as well. Under Sub-clause (5) the agreement had to provide for the following matters:-

(a) the time within which and the condition on which the work was to be executed and maintained and

(b) the terms on which the public would be entitled to use the work.

No point was made before us about the non-observance of conditions (1), (2) and (3) or of condition (a) falling within Sub-clause (5) but it was argued that: (1) the memorandum of association of the society did not include objects like providing for social workers' quarters, running a students' home, publication department, a guest house or a panthasala (2) the agreement did not specify the terms on which the public could use any of these works. It was contended that the objects clause in the memorandum of association of the society must contain powers to justify the proposed construction the position of the Society being analogous to that of a company which cannot take up any work not sanctioned

by the objects clause. In my opinion, this contention must be accepted. A society registered under the Societies Registration Act must confine its activities to the sphere embraced by its objects. A society formed for the purpose of spreading education could hardly justify the erection of a building to be used as a hospital unless it wanted to provide for medical education as well. I find myself unable to accept the proposition put forward on behalf of the respondents that because a society registered under the Societies Registration Act can change its objects at any moment even without making an application to Court for the purpose its powers should not be scanned too strictly. Our attention was drawn to Section 12 of the Societies Registration Act of 1860 for the purpose of showing that the governing body of any such society could extend or abridge or alter its purposes by merely submitting the proposition to its members and by convening a special meeting for the consideration thereof according to the rules of the society and it would be enough if three fifths of the members sanctioned such alterations. However that may be so long as the purposes of the society are not altered it cannot lawfully do something not sanctioned by its objects at any rate in a case where the society proposed to do something not envisaged by its objects the Government ought not to be satisfied about the society's right to take up such work. So far as social workers' quarters are concerned it seems to me that the construction thereof would be within the objects specified in the memorandum of association of the society. If the society is to help the distressed, nurse the sick and feed the hungry, it must have workers for the doing thereof and of necessity such workers must be housed. Therefore it appears to me that the erection of social workers' quarters is not beyond the objects of the society. The construction of a students' home would also be justified under Clause (e) of the objects set forth above. A publication department would come within the pale of Clause (f). Similarly a guest house may be justified on the ground that a society of this type must invite persons who can aid and encourage its members in holding social and cultural functions including members of cultural delegations from other countries.

42. The first objection therefore based on the memorandum of association of the society cannot be upheld. The second objection however seems to be more formidable. The agreement of the society with the Government merely shows that the works were to be used by the public in accordance with the rules and regulations of the society. The rules and regulations which form annexure "B" to the petition contain nothing to show how the social workers' quarters, the publication department, the students' home, the guest house and the panthasala were to be run. Needless to add that they do not envisage any contingencies for the public using any of these works. It was argued on behalf of the respondents that it was not necessary that rules and regulations should be framed in advance of the construction. I find it difficult to hold that such could be the object of the Land Acquisition Act. u/s 41(5) it is obligatory on the part of the Government to see that the agreement contained the terms on which the public were entitled to use the work, and on the publication of the agreement in the Gazette it was to

have the same effect as if it had formed part of the Act. If the terms on which the public can use the work are not to be found in the rules and regulations the requirements of Section 41(5) are clearly not fulfilled. The objection which found favour with the Supreme Court in *R.L. Arora Vs. State of U.P.*, can validly be raised in this case. The Supreme Court there held that the provision in the agreement that "the public will have such right of access to and use of the land/works herein and before specified as may be necessary for the transaction of their business with the firm" was not in compliance with Section 41(5) of the Act. It was argued that under Clause 9 of the agreement with the Society Government could resolve any dispute as to the manner of user of the works by the public and the lacuna, if any, due to the absence of the necessary rules and regulations of the Society for such purpose, could be set right by reference to Government. This argument overlooks the essential condition of Section 41(5) of the Act. Moreover the public cannot have the benefit of Clause 9 which is a covenant between the Society and the Government,

43. In my opinion, the proposed acquisition cannot be upheld if the matter is to be tested by the provisions of the Land Acquisition Act as it stood before the amendment in 1962. In view of the above point No. 4 does not need consideration.

44. The amending Act 31 of 1962 has made considerable changes in the old statute. By the new Act after Clause (a) of Sub-section (1) of Section 40 a new Clause (aa) has been introduced reading:

"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; or".

The opening portion of Section 41 now reads as follows:

"If the appropriate Government is satisfied after the consideration of the report, if any, of the Collector u/s 5A(2) or on the report of the officer making an inquiry u/s 40 that "the proposed acquisition is for any of the purposes referred to in Clause (a) or Clause (aa) or Clause (b) of Sub-section (i) of Section 40, it shall require the company to enter into an agreement with the appropriate Government for the following matters, namely:".

Clause (4) of Section 41 of the Act as it stood has been amended by the deletion of the word "and" at the end thereof and by the insertion of a new Clause (4A) thereafter reading:

"where the acquisition is for the construction of any 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, the time within which, and the conditions on which, the building or work shall be constructed or executed; and ".

Section 7 of the Amending . Act provides as follows:

"Notwithstanding any judgment, decree or order of any court, every acquisition of land for a company made or purporting to have been made under Part VII of the principal Act before the 20th day of July, 1962, shall, in so far as such acquisition is not for any of the purposes mentioned in Clause (a) or Clause (b) of Subsection (1) of Section 40 of the principal Act, be deemed to have been made for the purpose mentioned in Clause (aa) of the said sub-section, and accordingly every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be and shall be deemed always to have been as valid as if the provisions of sections 40 and 41 of the principal Act, as amended by this Act, were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was entered into or action was taken.

Explanation: -- In this section "Company" has the same meaning as in Clause (e) of Section 3 of the principal Act, as amended by this Act."

45. In my view, the effect of Section 7 is that any acquisition of land which could not be justified under Clause (a) or Clause (b) of subsection (1) of Section 40 must be deemed to have been made for the purpose mentioned in Clause (aa) of the said sub-section and the acquisition shall be deemed always to have been as valid as if provisions of sections 40 and 41 of the principal Act as amended by Act 31 of 1962 were in force at all material times and such acquisition was made or proceeding was held or order was made or agreement was entered into or action was taken under the amended Act if the acquisition had been made before July 20, 1962. An argument was advanced on behalf of the appellants that the amending Act would only affect acquisitions which had been completed before July 20, 1962 but as in this case objection had been preferred in the proceeding for determination of compensation it could not be said that the acquisition had been completed. On behalf of the respondents it was argued that after the publication of notification u/s 6 in the Gazette the acquisition was complete even though proceeding for determination of the compensation remained pending. I can find nothing in the Act which would impel me to hold that Section 7 only protected acquisitions of land where all proceedings had terminated. If Sections 40, 41 and 42 had been duly complied with the acquisition to all intents and purposes had been made although proceeding for fixation of compensation might remain pending. Again I cannot hold with the appellant that Section 7 only affected cases where a judgment, decree or order of any Court concerning the acquisition of land had been made. In my view, the use of the expression ""notwithstanding any judgment, decree or order of any Court" only emphasises the amplitude of the retrospective! effect and shows that the acquisition of land should be deemed to have been made under Clause (aa) of Sub-section (1) of Section 40 irrespective of the passing of any judgment, decree or order of any Court. There is no reason to limit the application of the section to cases where a judgment, decree or order had been made.

46. It cannot be said that by proposing to obtain land for the purpose of

constructing social workers' quarters, publication department, guest house or panthasala the society was not taking steps to engage itself in any work which would not be for a public purpose. It has been said in many cases that it would be difficult to define precisely what public purpose meant. In *Hamabai Framjee Petit v. Secretary of State* 42 I A 44 : (AIR 1914 PC 20) the Judicial Committee of the Privy Council approved of the dictum of Batchelor, J., that " "public purpose" must include 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". In that case the resumption of possession by Government of lands leased out for the purpose of erecting dwelling houses which could be offered to Government Officials at adequate rents for their private residence in the City of Bombay was held to be for a public purpose. In *Babu Barkya Thakur Vs. The State of Bombay and Others*, it was observed that the expression "public purpose" had been used in the Land Acquisition Act "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 erection of social workers' quarters, publication department etc., would in the light of these authorities be for a public purpose inasmuch as a section of the community would be benefited by the works.

47. The effect of the introduction of Clause (aa) in Section 40 (1) coupled with the addition of Clause (4-A) in Section 4r is that if the society was taking steps to engage itself in any work which was for a public purpose the acquisition would be good notwithstanding that the public might not be entitled to use such work as they could have done according to the terms of Section 41 (5) of the parent Act. Consequent on the addition of Clause (aa) Section 41 was amended as already noted and the result is that in a case like this where the society is taking steps for engaging itself in any work which is for a public purpose condition 5 of the section need not be observed. The result is that in the case of a society or a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose conditions I, 2, 3 and 4-A are all the conditions to be observed. Some argument was advanced to us on the wording of new-Section 44-A and 44-B of the amended Act. This point has been dealt with by my lord the Chief Justice and I do not desire to add anything thereto. In conclusion although I would have been prepared to allow the appeal from the judgment of the trial Court if the Act had remained un-amended I hold that we must test the acquisition in the light of the amended Act which has been given retrospective effect and uphold the acquisition.