
(1958) 07 AHC CK 0001
In the Allahabad High Court
Case No : Special Appeal No. 202 of 1957

R.L. Aurora

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 30-07-1958

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 31, 31(2), 366
Land Acquisition Act, 1894 — Section 17(1), 4, 40, 41, 42

Citation : AIR 1958 All 872

Hon'ble Judges : O.H. Mootham, C.J;Raghubar Dayal, J

Bench : Division Bench

Advocate : Gopi Nath Kunzru, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

O.H. Mootham, C.J.—This is an appeal from an order of Mr. Justice Mehrotra dated 30-8-1957, dismissing two petitions under Article 226 of the Constitution. The relevant facts are these :

On 31-5-1943, the appellant purchased a plot of agricultural land measuring approximately 9 acres in village Nauraiya Khera in Kanpur district for a sum of Rs. 7,000/-, and shortly thereafter he obtained the surrender of the tenancy rights of the tenant who was in occupation of the plot on payment of Rs. 1,705/-. He thus obtained actual physical possession over the entire plot. On 31-5-1943, the appellant also obtained a permanent lease of an adjacent plot of land measuring 15.5 acres. His purpose in acquiring the two plots had been, he says, for the erection of a factory.

This object was however frustrated by the fact that on 26-7-1943, the military authorities requisitioned the second of the two plots measuring 15.5 acres and on 6-5-1944, an area of 1.59 acres out of the first of the two plots; the period of requisition in each case being for 10 years. The appellant was thus left with an area of about 7.41 acres which he says was utilised by him for the raising of food

crops for which purpose he expended a sum of over Rs. 60,000/- in the construction of a tubewell, water courses, quarters and in enclosing the whole area with a barbed wire fence. On 1-10-1955, the military authorities released the area of 1.59 acres, thereby restoring the possession of the appellant over the whole of the first of the two plots.

2. In 1956 the State Government proposed to acquire an area of land for the erection of a factory for the manufacture of textile machinery parts by the fourth respondent, the Lakshmiratan Engineering Works Ltd. On 30-6-1956, it published in the Gazette a notification dated 25-6-1956, u/s 4 of the Land Acquisition Act, 1894, which stated that it was proposed to acquire inter alia, an area of 11.664 acres in village Nauraiya Khera for the construction of the proposed factory, and as it was of opinion that the case was one of urgency the State Government further directed, u/s 17(4) of the Act that the provisions of Section 5-A would not apply to the acquisition. The area proposed to be acquired included the plot in the possession of the appellant and, it seems, a portion of the adjoining plot which had been requisitioned by the military authorities. On 7-7-1956, another notification dated 5-7-1956, was published in the Gazette where-under the Governor declared, u/s 6 of the Act, that he was satisfied that the land mentioned in the schedule thereto (which included the area of 11.664 acres in Nauraiya Khera) was needed for a Company.

By this notification the Governor further directed the Collector of Kanpur to take possession of any waste or arable land forming part of the scheduled area on the expiration of the notice mentioned in Sub-section (1) of Section 9 of the Act. The appellant thereupon filed a petition in this Court (No. 1561 of 1956) wherein the principal relief sought was the quashing by a writ of certiorari of the notifications dated respectively the 25th June and the 5th July, 1956. Somewhat later, on 11-8-1956, a copy of the agreement between the State Government and the Lakshmiratan Engineering Works Ltd., which had been entered into on 5-8-1956, pursuant to Section 41 of the Act, was published in the Gazette.

3. On 6-12-1956, during the pendency of the writ petition No. 1561 of 1956, a fresh agreement u/s 41 of the Act was entered into between the Government and the Lakshmiratan Engineering Works Ltd., and thereafter a fresh notification, dated 7-12-1956, was published in the Gazette on 8-12-1956 u/s 6 of the Act. That notification was in exactly the same form as the earlier notification dated the preceding 7th July, save that the area of land sought to be acquired in Nauraiya Khera was stated to be 6.93 acres.

It is common ground that this area is wholly within the first of the two plots acquired by the appellant. The appellant then filed in this Court, on 21-1-1957 petition No. 352 of 1957, in which he sought two reliefs : first, the issue of a writ in the nature of mandamus directing the respondents not to acquire the land and buildings belonging to the appellant in village Nauraiya Khera; and secondly, the issue of a writ of certiorari quashing the notifications dated the 25th June, the 5th July and 7-12-1956. This petition in substance superseded the earlier

petition No. 1561 of 1956. The two petitions were rejected by Mr. Justice Mehrotra by the order which is the subject of the present appeal.

4. The validity of the three notifications has been attacked by Mr. Gopi Nath Kumzru on a number of grounds. In substance his submissions are four : he argues firstly that Sub-sections (1) and (3) of Section 6 of the Land Acquisition Act are unconstitutional as they contravene Articles 31(2) and 19(1)(f) of the Constitution; secondly, that Sub-section (3) of Section 6 and Sub-sections (1) and (4) of Section 17 of the Act are invalid as they contravene Article 14; thirdly, that in any case land cannot, under the Act, be acquired for the purpose of erecting a factory thereon; and fourthly, that the notification u/s 4 of the Act is bad in law because

(i) it preceded the agreement for which provision is made in Section 41, and

(ii) there was a failure on the part of the district authorities to comply with Government Order No. 939.

It was not contended before us (as it had been before Mehrotra, J.) that the notifications under Sections 4 and 6 were issued in bad faith or that the notification dated 25-6-195P was not issued in conformity with the provisions of Section 4.

5. Before proceeding to consider the several arguments addressed to us on behalf of the petitioner it is convenient to consider briefly the purpose and scope of the Land Acquisition Act. Prior to the year 1857 the compulsory acquisition of property was regulated by a number of regulations and Acts of local application. In 1857 the Legislative Council passed Act VI of the year for the purpose, as stated in the preamble

"to make better provision for the acquisition of land needed for public purposes within the territories in the possession and under the Government of the East India Company, and for the determination of the amount of compensation to be made for the same". This Act was followed six years later by Act XXII of 1863 for the purpose of providing "for taking land for works of public utility to be constructed by private persons or Companies, & for regulating the construction and use of works on land so taken". In this Act the phrase "work of public utility" was given a somewhat restricted meaning. In 1870 the earlier Acts of 1857 and 1863 were repealed and replaced by the Land Acquisition Act, 1870, the preamble to which stated that

"it was expedient to consolidate and amend the law for the acquisition of land needed for public purposes and companies....."

This Act, like the present Act, was divided into Seven Parts of which Part VII dealt with the acquisition of land for Companies. Reference to "public utility" was omitted, but provision was made in Section 48 that the consent of the Local Government for the acquisition of land for a company should not be given unless that Government was satisfied that the acquisition was needed for the

construction of some work which was likely to prove useful to the public.

6. Then came the Act of 1894, passed, as the preamble states

"to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition."

The Act was later itself amended but it is convenient to consider first the Act in its original form. The Act is divided into seven parts, of which Part I deals with preliminary matters. Part II deals with the acquisition of land, and Section 4 makes provision for the publication of preliminary notification which is the starting point of all acquisitions under the Act. Sub-section (1) of this section reads thus :

"(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."

It will be observed that this sub-section makes no specific reference to the acquisition of land for a company. Sub-section (2) of Section 4 empowers an officer authorised by Government to enter upon any land in respect of which a notice under Sub-section (1) has been made in order to ascertain whether the land is suitable for the purpose for which it is required and generally to survey the land and mark boundaries. Section 5 makes provision for payment for such damage as may have been done in making such survey. Then comes Section 8, which so far as is relevant provides that-

"6. (1). Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5-A, Sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders :

(2) * **** (3) The said 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 appropriate Government may acquire the land in manner hereinafter appearing.

After this declaration has been made the State Government is required to direct the Collector "to take order for the acquisition of the land" (Section 8) and the Collector will then u/s 9 give public notice that the Government intends to take possession of the land and that claims to compensation may be made to him. Section 10 is supplemental to Section 9 and empowers the Collector to serve a notice on any person having an interest in the land requiring him to furnish the Collector with a statement containing the names of all other persons having an

interest in the land and the nature of that interest.

Sections 11 to 15 provide for an enquiry by him u/s 9 and into the claims which have been made for compensation and for the making of an award with regard to the area of the land, the compensation which in his opinion should be allowed and the apportionment of that compensation among the persons having an interest in the land. After the award has been made the Collector is then empowered u/s 16 to take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Then comes Section 17, Sub-section (1) of which provides that

"(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances."

7. Part II of the Act makes provision for a reference to the Court by any person who does not accept the Collector's award, and Parts IV, V and VI deal respectively with the apportionment of compensation, the payment of compensation and the temporary occupation of land, with none of which we are now concerned.

8. Part VII (Sections 38 to 44) makes provisions for the requisition of land for companies and is substantially in the same form as Part VII of the Act of 1870. Section 39 says that the provisions of Sections 6 to 27 shall not be put in force to acquire land for a company unless (i) the previous consent of the State Government has been obtained and (ii) the company has executed the agreement for which provision is made in Section 41. Section 40 (corresponding to Section 48 of the earlier Act) was amended by Act 16 of 1933 which, in substance, enlarged the meaning of the word "work" to include the erection of dwelling houses for the company's employees and the provision of amenities. This section accordingly provides that such consent shall not be given unless the State Government is satisfied either -

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

If the State Government is so satisfied then it must, u/s 41, require the company to enter into an agreement with it which must provide "to the satisfaction of the appropriate Government" for a number of matters including, in a case where the acquisition is for a work other than the erection of dwelling houses for workmen employed by the Company or the provision of amenities directed therewith, "the

terms on which the public shall be entitled to use the work".

9. Part VIII deals with miscellaneous matters which are not material for our present purpose.

10. It will be observed that the Act originally contained no provision empowering a person interested in land which had been notified u/s 4 to object to the acquisition; such person could object only, u/s 9, to the measurements made u/s 8, or u/s 18, to the award of the Collector. By the Land Acquisition (Amendment) Act, 1923, a new Section 5-A was inserted in Part II of the Act which made provision for the lodging of objections to the acquisition of land by any person interested therein and for the disposal of such objections. At the same time, and as a consequence of this amendment, a new Sub-section (4) was added in Section 17. This sub-section provides that

"17(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made, u/s 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section (1)".

By a later amending Act, No XVI of 1933, another new Section 28-A was inserted in Part VII of the Act enlarging the definition of the term "Company" for the purposes of that Part.

11. The first argument advanced is that the acquisition of the appellant's land is bad in law because Sub-sections (1) and (3) of Section 6 of the Act contravene the provisions of Article 31(2) inasmuch as they confer upon the State Government the power to acquire property for a purpose which is not necessarily a public purpose. The answer to this argument is two fold. In the first place we are of opinion that the Act read as a whole makes it clear by implication that all acquisitions thereunder must be for a public purpose. Section 4 of the Act is, as we have pointed out, the starting point of every acquisition, and a notification thereunder can issue only when it appears to the appropriate Government that the land which is the subject of the notification is needed or is likely to be needed for a public purpose. The second answer is to be found in Clauses (5) and (6) of Article 31 of the Constitution, which, so far as they are material, read thus :

"(5) Nothing in Clause (2) shall affect--(a) the provisions of any existing law other than a law to which the provisions of Clause (6) apply, or

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any Court on the ground that it contravenes the provisions of

Clause (2) of this Article or has contravened the provisions of Sub-section (2) of Section 299 of the Government of India Act, 1935. The Land Acquisition Act was enacted many years before the Constitution came into force and the provisions thereof would accordingly appear not to be subject to the constitutional limitations on the acquisition of property embodied in Article 31(2). Learned counsel contends however that only a law which was a valid Law after the Constitution came into force can be an "existing law", and that the Land Acquisition Act ceased to be valid law when the Constitution came into force. He has also argued that in any case Clause 5(a) of Article 31 applies only to those laws enacted less than eighteen months before the Constitution came into force which may or may not have been certified by the President under Clause (6).

This latter submission is we think wholly without force. Clause 5(a) exempts from the operation of Clause (2) of Article 31 the provisions of any existing law except a law not made more than eighteen months before the commencement of the Constitution. Clause (6) lays down a special procedure for such laws, and the acceptance of learned counsel's contention would appear to make Clause 5(a) unnecessary.

12. "Existing law" is defined in Article 366(10) as including any law passed or made before the commencement of the Constitution by any legislature having power to make such a law. It is not suggested that the Indian Legislature had not the power in 1894 to pass the Land Acquisition Act, or in 1923 to amend it; and it appears manifest therefore that the Act is an existing law within the meaning of Article 31(5). The argument however is that under Article 372 a law in force immediately before the commencement of the Constitution continues in force "subject to the other provisions of the Constitution" and that, as under the Constitution no legislature can enact a law for the acquisition of property for a purpose other than a public purpose, the Land Acquisition Act, or at least those provisions therein which provide for the acquisition of land for a Company, became invalid immediately on the Constitution coming into force.

This argument is not, in our opinion, well founded. In the first place it is clear that by virtue of Article 31(5) no law which is an "existing law" as defined in Article 366 can be questioned on the ground that it is in conflict with Article 31(2). All that is necessary is that such a law has been enacted by a legislature which, at the time it passed the law, was competent to make it. Secondly, we think it to be clear that the phrase "subject to the provisions of this Constitution" applied to a law made before the Constitution came into force has, and can have, no reference to the competence of Parliament or of a State Legislature to enact such a law after the Constitution came into force. The true position is we think well stated in *Kanpur Oil Mills Harriesganj Vs. Judge (Appeals) Sales Tax, Kanpur Range, Kanpur and Others*, . In that case V. Bhargava, J. said-

"What this really means is that, if any existing law contains any provision which is in conflict with any provision in the Constitution, that provision of the existing law would be void. Of course, it does not mean that a law, which was made by a

competent legislature before the Constitution and which the legislature may not be competent to make after the Constitution, will also be void. All that is required is that the law should have been made up a competent legislature at the time when it made and, after the passing of the Constitution, it should not be contrary to any provision of the Constitution, and should not violate any fundamental right or other ban imposed by the Constitution against such a law."

13. Arguments somewhat similar to those addressed to us were considered by the Supreme Court in *Lilavati Bai Vs. The State of Bombay*, . Referring in that case to the Bombay Land Acquisition Act -- which had been passed in 1948 -- their Lordships said :

"It has not been contended that the law when passed on 11-4-1946, was not good law. It is also clear that the Act is not covered by the provisions of Clause (6) of Article 31. The Act is thus covered by the saving Clause, Clause 5(a), being an existing law other than a law to which the provisions of Clause (6) apply. The Act, therefore, would be valid even if the provision.") of Clause (2) of Article 31 are not in terms fully satisfied, in so far as the Act did not before its amendment by Act XXXIX of 1950 contain the expression "for a public purpose.""

14. The argument based on Article 19(1)(f) is, in our opinion, also without force. It is that Sub-sections (1) and (3) of Section 6 place a restriction on the appellant's right to hold property which cannot be justified under Article 19(5). The matter is however concluded in our view by the decision of the Supreme Court in the *The State of Bombay Vs. Bhanji Munji and Another*, . In that case their Lordship-- said :

"We need not examine those differences here because it is enough to say that Article 19(1)(f) read with Clause (5) postulates the existence of property which can be enjoyed and over which rights can be exercised because otherwise the reasonable restriction contemplated by Clause (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be placed on the exercise of the right to acquire, hold and dispose of it, and as Clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that the Article postulates the existence of property over which these rights can be exercised.

In our opinion, this was decided in principle in *A.K. Gopalan Vs. The State of Madras*, , where it was held that the freedoms relating to the person of a citizen guaranteed by Article 19 assume the existence of a free citizen and can no longer be enjoyed if a citizen is deprived of his liberty by the law of preventive or punitive detention, in the same way, when there is a substantively total deprivation of property which is already held and enjoyed, one must turn to Article 31 to see how far that is justified." If, therefore, the appellant has been lawfully deprived of his land by virtue of proceedings under the Land Acquisition Act he can no longer in respect of that property exercise the right for which provision is made in Article 19(1)(f).

15. The second main submission is that Sections 8 17(1) and 17(4) are invalid as contravening Article 14. Section 6, it is argued, confers upon the State Government a wholly unfettered power to acquire any person's land for a non-public purpose, while Sub-sections (1) and (4) of Section 17 invest the State Government with an unrestricted power to deprive a person of the right given to him by Section 54 if objecting to the acquisition of his property. We do not think that these contentions can be sustained.

16. Section 6 empowers the State Government to make a declaration that any particular land is needed for a public purpose or for a Company. It is true that the phrase "for a public purpose or for a Company" used in this and other sections of the Act suggests that the acquisition of land for a Company need have no relation to any public purpose, but this impression is in our opinion dispelled on reading the Act as a whole. All proceedings under the Act for the acquisition of land for a public purpose or for a Company begin with the issue of a preliminary notification u/s 4. That section contains no reference to the acquisition of land for a Company, and accordingly it follows that no land can be acquired for a Company unless such acquisition is, in the opinion of the State Government, for a public purpose.

Upon reading the statute as a whole there can be no doubt that the public interest or a public purpose is the object sought to be achieved by the Land Acquisition Act. It is to be observed that where (as in the present case) land is sought to be acquired for the erection of a factory the State Government's consent has first to be obtained, and that u/s 40 such consent cannot be given unless the State Government is satisfied not only that such acquisition is needed for the construction of some work but that such work is likely to prove useful to the public. Moreover, u/s 41 an agreement has to be entered into by the Company with the Government which must specify, inter alia, "the terms on which the public shall be entitled to use the work" and that u/s 41 such terms shall, on publication, have the same effect as if they had formed part of the Act.

If this be so, it follows that the power vested in the State Government u/s 6 to acquire land for a Company is not an uncontrolled power but is one which can be exercised only when the State Government is satisfied that the construction to be erected on the land is one which is likely to be useful to the public. The power vested in the Government is a power which, in the words used by the Supreme Court in *Pannalal Binjraj Vs. Union of India (UOI)*, , "is guided and controlled by the purpose which is to be achieved by the Act itself.

A very wide discretion has necessarily to be given to the Government in deciding what land should be acquired having regard to the purpose of the Act, and that power being vested in the State Government an abuse of it is not readily to be assumed. We are of opinion that the power vested by Section 6 of the Act in the State Government is not an arbitrary or unfettered power and that that section is not hit by Article 14.

17. With regard to Sub-sections (1) and (4) of Section 17, the argument is that these sub-sections confer an arbitrary power on the State Government to determine when a state of urgency exists and thus to deprive a person of his right u/s 5-A to object to the acquisition of his property. No criteria, it is said, are laid down by which the State Government is to be guided in determining whether a state of urgency exists. Land can however be acquired even for a Company, only when such acquisition is for a public purpose, and in this background we think it to be sufficiently clear that the urgency which in the opinion of the State Government must exist before it can under Sub-section (4) -- the sub-section with which we are concerned in this appeal -- declare that the provisions of Section 5-A shall not apply, means an urgency in the public interest.

We think that the Act contains a clear indication that the powers conferred on the State Government by the two sub-sections in question are to be exercised only when it is in the public interest that the acquisition of waste or arable land should not be delayed. The powers are not unfettered and the sub-sections do not in our judgment contravene the provisions of Article 14. It is not seriously contended that in this case there has in fact been any discrimination against the appellant.

18. Learned counsel then argues that in any case land cannot be acquired under the Land Acquisition Act for a Company for the erection of factory. The first branch of argument, as we understand it is that a factory cannot be a "work likely to be useful to the public" within the meaning of Section 40, and it is not a work of which public can be entitled to any use in the manner contemplated by Sections 41 and 42 of the Act. We are of opinion that the answer to this argument is to be found in Sections 40 and 41 which make the decision of the State Government on both matters final and conclusive.

Under the former section the State Government had to be satisfied that (in the present case) the acquisition was needed for a work likely to prove useful to the public; and under the latter section the fourth respondent is required to enter into an agreement with the State Government providing to the satisfaction of the latter for certain matters including the terms on which the public shall be entitled to use the factory. Clause 3(c) of the agreement dated 6-12-1956, entered into between the Governor of the Uttar Pradesh and the fourth respondent provided :

"(c) 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 satisfaction of the State Government is a subjective satisfaction, and it is not open to the Court to examine the grounds upon which it is founded. The question came before the Calcutta High Court in *Ezra v. Secy. of State* ILR Cal 36 (F), in which that Court, having held that the question whether a particular work--in that case the erection of a bank--was likely to prove useful to the public was a matter left to the absolute discretion of the Local Government, said with reference to Section 41:

"Under the provisions of Section 42 the agreement entered into between the Secretary of State and the Bank was published in the local Gazette and the Gazette of India, and by virtue of the enactment it has become a part and parcel of the law. Section 41 makes the Government the sole judge of the manner in which the public are to have the use of the land taken up. The agreement provides that the public, subject to the Act constituting and the bye-laws regulating the Bank, shall be entitled to the said building or buildings in relation to the said Government business so far as the same may be utilised by the Bank for the purposes of such business

The acquisition was needed for the purpose of constructing new buildings to afford better accommodation for the transaction of the public business. The rights of the public generally are dependent upon the Government business, and the Government has considered the conditions therein inserted as sufficiently safeguarding its interests, This Court, in our opinion, has no power to enter upon a consideration of the question how far that provision sufficiently safeguards the interest of the Government or of the public, of which it is the custodian."

19. The second branch of the argument is that the erection of a factory for a Company cannot be a public purpose within the meaning of Section 4 of the Act. We think this contention also to be unfounded. All that Section 4 requires as a condition precedent to the issue of a notification thereunder is the satisfaction of the State Government that certain land is needed or is likely to be needed for a public purpose. "Public purpose is not defined in the Act, and whether at any particular time certain land is needed or is likely to be needed for such a purpose is a matter to be determined by the Government. The matter having been raised, we think it proper to state that on the facts disclosed in the affidavits filed in this case we are of opinion that the acquisition was for a public purpose in the sense in which we consider that those words are used in the Act, namely as "likely to prove useful to the public".

The appellant did not, in the affidavit which he filed in support of his petition, assert that the acquisition of his land was not for a public purpose; that assertion appears only in his rejoinder affidavit. It is not however now in dispute that the purpose for which the respondent Company proposes to construct the factory is the manufacture of textile machinery parts, and that there is no other factory in Northern India in which such parts are made. Learned counsel has pointed out that the manufacture of textile machinery parts is not included in the Second Five Year Plan.

It is however conceded that that Plan includes the manufacture of machine made textiles. Textile machinery is therefore necessary, and we find no difficulty in holding that a factory which makes textile machine parts is, in the circumstances, likely to be useful to the public. It is to be noted that on 21-6-1950, the Central Government granted the respondent Company a licence for the manufacture of such machinery and that the State Government thereafter advanced to it a loan of Rs. 50 lacs to enable it to proceed with the construction

of the work.

20. Finally, it is argued that the notification u/s 4 is invalid on two grounds. In the first place it is contended that the agreement between the respondent Company and the State Government for which provision is made in Section 41 of the Act should have been executed before the notification was issued. We can see no reason why this should be so and none has been advanced. Secondly, it is said that the notification is bad as there has been a failure to comply with a Government Order issued by the Provincial Government on 12-7-1948, which said .

"..... In all cases where it is proposed to acquire land under actual cultivation, the Collector should ask for a map showing areas of banjar or uncultivated land lying within a radius of half a mile of the site proposed to be acquired."

It is however conceded that this Order is no more than an instruction of a departmental nature and it cannot therefore affect the validity of the notification u/s 4.

21. In the result therefore this appeal is dismissed with costs, which we assess at Rs. 400/-.