

(1957) 08 AHC CK 0018

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 1561 of 1956 and 352 of 1957

R.L. Aurora Ram Ditta Mal

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 30-08-1957

Acts Referred:

Constitution of India, 1950 — Article 14, 19(6), 226, 245, 246

Evidence Act, 1872 — Section 114

Land Acquisition Act, 1894 — Section 1, 17, 17(4), 4, 4(1)

Citation : AIR 1958 All 126

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : G.N. Kunzru and A.N. Kaul, for the Appellant; K.L. Misra and Satish Chandra and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mehrotra, J.—These two petitions raise common questions of law and facts and can be disposed of by a common judgment. On the 31st of May, 1943 the petitioner, Shri R L. Arora purchased 9 acres of agricultural land situate in village Naurayva Khera, District Kanpur lying along Kalpi Road from Mahadeo Prasad and others for Rs. 7000/-. The petitioner, thereafter, on the 31st July, 1952 obtained the surrender of the tenancy right from the tenants who were in occupation on the payment of Rs. 1,700/- and odd.

On the 31st of May, 1943 the petitioner obtained a permanent lease of another plot of land, measuring 15 acres which was contiguous to the plot purchased by him and was uncultivated, on payment of Rs. 3892/-. According to the petitioner these plots of land were acquired for erecting a factory. The plot which was held on lease and was 15 1/2 acres in area was requisitioned by the Military Department on the 26th July, 1953 for a period of 10 years and an area of 1.59 acres out of the plot of 9 acres which was purchased by the petitioner was acquired by the Military Department on the 6th May, 1944 for a similar period of

ten years.

The remaining area was utilised by the petitioner in cultivating and raising food crops. The petitioner invested a large sum of money in constructing a masonry well, fitted with tube well, laid out water channels and constructed quarters for the engineers & labourers. He also put barbed wire fencing around the plot of land under cultivation. The area of 1.59 acres out of 9 acres purchased by the petitioner was released by the Military Department on the 1st October, 1955.

The area of 15.5 acres leased out to the Military Department was still in the possession of the Department and the Department has expressed its inability to release the said area. The petitioner having come to know that the plot measuring 9 acres was being surveyed for some industrial purpose on the 18th May, 1956 and on the 1st of June, 1956 the petitioner informed the District Magistrate that he needed the plot for his own use.

On 31st June, 1956 a notification dated 25th June, 1956 was published in the U. P. Gazette u/s 4 of the Land Acquisition Act of 1894 giving out that an area of 11.664 acres out of the aforesaid plot of the petitioner was to be acquired for Laxmi Ratan Cotton Engineering Works Ltd. of Kanpur. In the notification it was further provided that the provisions of Section 5A of the Land Acquisition Act shall not apply, as in the opinion of the government provisions of Section 17(1) of the Land Acquisition Act applied to the land.

On 7th July, 1956 another notification dated 5th July, 56 was published in the U. P. Gazette u/s 6 of the Land Acquisition Act in respect of the aforesaid land and it was further stated therein that the case being one of urgency the Governor was pleased under Sub-section (1) of Section 17 of the Land Acquisition Act to direct that the Collector of Kanpur though no award u/s 11 had been made, may at the expiration of the notice mentioned in Sub-section (1) of Section 9 take possession of any waste or arable land forming part of the land mentioned in the Schedule of the company.

On the issue of this notice, the petitioner on 31st July, 1956 filed petition under Article 226 of the Constitution in this Court which is numbered as Writ Petition No. 1561 of 1956 challenging the validity of the notifications dated 25th June, 1956 and 5th July, 1956.

2. A stay order was passed by this Court which it is not necessary to refer to at this stage. The petitioner, however, asserts that on 31st July, 1956 possession was taken by the opposite parties 2 and 3 and delivered to the opposite party No. 4, Laxmi Ratan Cotton Engineering Works Ltd. On 11th August, 1956 an agreement required u/s 39 of the Land Acquisition Act between the opposite party No. 4 and the State of U. P. was published in the U. P. Gazette on 6th December, 1956.

However, during the pendency of the earlier petition the opposite parties Nos. 1 and 4 entered into a fresh agreement for the acquisition of the said plot of land

and thereafter a fresh notification dated 7th December, 1956 was published in accordance with the provisions of Section 6 of the Land Acquisition Act, 1894 in the Gazette dated 8th December, 1956. Thereafter a fresh notice u/s 9 of the Land Acquisition Act was pasted on the property in dispute intimating that possession over the said plot of land will again be taken after 2nd of January, 1957.

On 3rd of January, 1957 the possession over the disputed plots is alleged to have been delivered by the State Officials to the opposite party No. 4. On these facts another Writ Petition No. 352 of 1957 was filed challenging the subsequent notification.

3. In fact, therefore, the relief claimed by the petitioner is to issue a writ of certiorari cancelling the Notifications dated 25th June, 1956, 5th July, 1956 and 7th December, 1956 and for a writ of mandamus directing the opposite parties not to acquire the land and plots thereon belonging to the petitioner.

4. A number of grounds have been urged in support of the petitions. Firstly it is contended that provisions of Sections 6 and 17(4) are ultra vires and are hit by the provisions of Articles 14, 19(f) and 31(2) of the Constitution. Secondly it was contended that the land was not acquired for public purpose inasmuch as it was acquired for the benefit of a particular company opposite party No. 4. A public purpose necessarily implies the purpose and benefit of the public.

If a land is acquired for an individual and for the benefit of a particular industry it cannot be regarded as public purpose. It was next contended that there was no compliance of the provisions of Sections 38 to 40 of the Land Acquisition Act, and consequently the proceedings for acquisition are vitiated. Lastly it was also contended that the notifications were mala fide. It was further contended that Section 4 of the Land Acquisition Act provides for an acquisition for public purpose.

In the present case the notification provided that the acquisition was for a company. The notification was, thus, not in conformity with the provisions of Section 4 and subsequent proceedings taken on that notification are illegal.

5. I shall first deal with the last point mentioned by me. Section 4 of the Land Acquisition Act provides as follows :

"Whenever it appears to the State Government that land in any locality 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.

Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

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

3. to do all other acts necessary to ascertain whether the land is adapted for such purpose;
4. to set out the boundaries of the land proposed to be taken and the intended line of the work proposed to be made thereon;
5. to mark such levels boundaries and line by placing marks and cutting trenches; and
6. where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked to cut down and clear away any part of any standing crop, fence or jungle."

6. This section, no doubt authorizes the issue of a notification of acquisition and land needed for any public purpose, but it does not provide for a specific form in which the notification is to be issued. The notification in the present case issued u/s 4 lays down that the Governor is pleased to notify for general information that the land mentioned in the schedule is needed for a company. The purpose, however, for which the land was required is mentioned in the notification as the construction of textile machinery parts factory of Laxmi Ratan Engineering Works Ltd., Kanpur. The purpose has, therefore, been specified in the notification. Whether that purpose constitutes a public purpose in the eye of law is a distinct matter but it cannot be said that the notification issued u/s 4 does not conform to the provisions of the section. The land is stated to be acquired for a company but the purpose is also expressly mentioned in the notification. The notification, in my opinion therefore, cannot be said to be defective or contrary to the provisions of Section 4 of the Act.

7. I shall now take up the question of the constitutionality of certain provisions of the Land Acquisition Act. Section 6(1) of the Act provides as follows :

"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 5A, 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 authorized to certify his orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

2. The declaration shall be published in the Official Gazette and shall state the District or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

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."

8. The argument of the petitioner is that Clause (1) of Section 6 authorises an acquisition of land for public purpose or for a Company. Any declaration made u/s 6(1) has been made conclusive under Clause (3). The effect of Clause (3) is that once a declaration is issued u/s 6 to the effect that the land is required for a company such a declaration cannot be challenged and the appropriate Government has thus been given ample power to acquire land which may not necessarily be for a public purpose and thus Section 6(1) contravenes the provisions of Article 31(2). In substance the argument is that the combined effect of Section 6(1) and (3) is the violation of the fundamental rights guaranteed under Article 31(2). This argument to my mind has no substance. The words "for a company" under Clause (1) of Section 6 do not by themselves create a category of purpose for which acquisition can be made. The purpose for which an acquisition can be made is necessarily one for a public purpose. What the addition of the words "for a company" in Section 6(1) means is that it is open to the appropriate Government to acquire the land for the benefit of a company but nonetheless the acquisition must be for a public purpose.

9. If the words u/s 6(1) are so interpreted it cannot be contended that the provisions have provided for acquisition for a purpose other than a public purpose. Section 6 has only authorised the appropriate Government to acquire a land for a company, but the acquisition is to be for public purpose. In this view of the matter it is not necessary to examine the argument addressed as to the applicability of Article 31(2) to the provisions of the Land Acquisition Act. As, however, the point was urged I would like to deal with that contention as well. Article 31 as it stood before the Fourth Constitutional Amendment was passed by the Parliament is as follows :

"1. No person shall be deprived of his property save by authority of law.

2. No property movable or immovable- including any interest in or in any company owing any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession for the payment of compensation for the property taken possession of or acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined."

10. Clause (5) of the Article 31 provides that:

"nothing in Clause (2) of this Article shall affect the provisions of any existing law, or the provisions of any law which the state may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life,"

11. There has been no amendment to Sub-clause (5) of Article 31(A) by the

fourth amendment. Only CL (2) has been amended and the other Clause has been added, but for the purposes of the present case it is not necessary to take into consideration the amendment. The necessary requirements of acquisition both under the amended Clause and the unamended one are firstly that the acquisition should be for public purpose and secondly that it must provide for compensation or fix the principle on which the compensation is to be determined. The Sub-clause (5) of Article 31 of the Constitution saves the existing law other than those mentioned in Sub-clause (6) of Article 31. Article 31 Sub-clause (6) deals with the laws which were passed within 18 months of the coming into force of the Constitution, and that laws had received the consent of the President. Laws which were passed before 18 months of the coming into force of the Constitution and are existing laws have been saved under Article 31(5) from the provisions of Article 31(2). The Land Acquisition Act of 1894 is a law which is not covered by the provisions of Sub-clause (6) of Article 31. If, therefore, it is an existing law it is saved by Article 31(5). Existing law has been defined under Article 366 Sub-clause 10 as a law, ordinance or bye-law rules or regulations made before the amendment by any legislative authority having power to make such a law, rule or regulation. It is not denied that the Land Acquisition Act was passed before the commencement of the Constitution by a competent legislature. It is therefore an existing law within the meaning of Article 366, Sub-clause (10). It is therefore saved by the provisions of Article 31(5) of the Constitution and even if it does provide for the acquisition for non-public purposes or does not provide for payment of compensation it is not hit by the provisions of Article 31(2). The contention of the petitioner is that what is saved by Article 31(5) is valid law. If the law is otherwise invalid it is not saved by the provisions of Article 31(5). It is contended that the Land Acquisition Act is not a law in force at the time of the Constitution. There was no provision in any of the legislative lists in the Constitution at the time when it was passed for making laws for a purpose other than a public purpose and consequently having regard to the legislative lists under the Constitution the Land Acquisition Act was invalid at the day of the Constitution apart from Article 31(2). This argument to my mind has no substance. It firstly assumes that the requirement of public purpose is not a provision of Article 31(2) but it is depending upon the legislative lists which is not warranted by the provision of Article 31(2). The requirement of a public purpose is contained in Article 31(2). The inhibition on the power of the legislature is contained in Article 31(2) and if the Article 31(2) does not affect the legislation covered by Article 31(5) it cannot be contended that it is; affected by the provisions of legislative list. Moreover the validity of the Act passed prior to the Constitution cannot be tested with regard to the legislative list under the Constitution.

12. The next argument in this connection was that Article 372 which defines a law in force will not apply to the present case. Article 372 of the Constitution provides as follows :

"Notwithstanding anything elsewhere contained in this Constitution Parliament

shall have power to make laws with respect to any of the matters which under this part are required to be provided for by legislation by Parliament and for prescribing punishment for those acts which are declared to be offences under this part."

13. Explanation to this Article provides that a law in force in this Article shall include a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed. This explanation, to my mind, clearly provides that the competence of the legislature is to be determined at the time of the passing of the law and not at the time of the coming in force of the Constitution. Contention of the petitioner is that the words "subject to the other provisions of this Constitution" in Clause (1) of Article 372 makes this Section subject to the provisions of Articles 245 and 246. It means that only those laws in force at the time of the passing of the Constitution will continue to be in force if they satisfy the requirements of Articles 245 and 246. There is no force in this contention. Article 245 and Article 246 deal with the competence of the various legislatures to make laws in future. The laws which have already been made are not covered by the provisions of Articles 245 and 246. The words "subject to other provision" only means that if there are other provisions in the Constitution which make a law passed before the Constitution had been framed invalid. Such a law cannot be continued by the provisions of Article 372. Article 13 of the Constitution has provided that any law made in contravention of the fundamental rights guaranteed under Chapter III will be void to the extent of inconsistency. That Article expressly renders laws though passed by a competent authority prior to the coming into force of the Constitution void so far as it is inconsistent with the fundamental right and such a law cannot be deemed to be continued in force under the provisions of Article 372. The words "subject to the other provisions of this Constitution" in Article 372 did not render the laws passed by a competent authority as nonexistent because under the provision of Articles 245 and 246 the legislature is not competent in future to make laws on that subject.

14. In the case of Kanpur Oil Mills Harriesganj Vs. Judge (Appeals) Sales Tax, Kanpur Range, Kanpur and Others, , it was held by this Court that the effect of Article 372 is that if any law happens to be contrary to the provisions of the Constitution to that extent that law would cease to continue in force. What it means is that if any existing law contains any provision which is in conflict with any provision in the Constitution it would be void.

It does not provide that a law which was made by a competent authority 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 by a competent legislature at the time when it was 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 bans imposed by the constitution against such a law.

15. Reference may be made to the case of *The State of Bombay Vs. Bhanji Munji and Another*, . In that case the provisions of the Bombay Land Acquisition Act came up for discussion & the validity of the act was challenged under the provisions of Articles 31 and 19(f). The Act was held to be valid and it was held by the Supreme Court that the Act did not violate the provisions of Article 31 or 19(f) of the Constitution.

16. The next ground urged by the petitioner was that if Article 31 does not apply in view of Article 31(5), then Article 19(f) will apply. It is a law which curtails the freedom to hold and acquire property and as such it is illegal unless saved by Article 19 Sub-clause (6), namely, if it places a reasonable restriction in the interest of the general public. Mr. Gopi Nath Kunzru, Counsel for the petitioner strongly contended that the question whether the restriction placed on the rights of the petitioner are reasonable and in the interest of the public in general is justiciable.

In the present case the restriction has been placed on the right of the petitioner whereby power has been given to acquire the land of the petitioner for purposes other than public purpose and by depriving the petitioner of the right to object to that in view of Section 6(3) of the Act. Further in the present case the whole proceedings being for the benefit of the individual company cannot be regarded to be for the interest of the general public.

There are obviously two answers to this contention, firstly, as I have already indicated, the Act does not provide for acquisition for purposes other than public purposes and secondly, it cannot be said that the restrictions are not reasonable. The fact that the acquisition is for a company does not necessarily imply that the purpose for which it is acquired is not one for the benefit of the entire public.

The other more formidable answer to the contention is that the validity of the present Act cannot be judged from the point of view of the Article 19(f). Articles 19(1)(f) and 31 deal with different subjects and cover different fields. Article 19(1)(f) postulates the existence of a property which can be enjoyed and over which rights can be exercised. If there is no property which can be acquired, held or disposed of no restrictions can be placed on the exercise of the right to acquire, hold or dispose of it.

If the law is valid and saved under Article 31(5) the acquisition of the property will be justified under the law and once the property is acquired there is no property in respect of which the petitioner can claim the fundamental right to acquire, hold or dispose of it nor can there be any occasion for placing any restriction on such a right.

17. In the case of *A.K. Gopalan Vs. The State of Madras*, , it was held that the freedom relating to a person or a citizen guaranteed by Article 19 assumes the strict existence of free citizen and can no longer be enjoyed if the person is deprived of his liberty by the law of preventive or punitive detention. The same principle has been made applicable to the cases where a person has been

deprived of a property under the provisions of Article 31 vide *The State of Bombay Vs. Bhanji Munji and Another*, .

In the case of *Raja Suryapalsingh and Others Vs. The U.P. Govt.*, , it was held by a Full Bench of this Court that the acquisition of a property is not the subject of Article 19(1)(f) but of Article 31. There the validity of the Zamindari Abolition and Land Reforms Act was challenged on the ground that it violated the fundamental right guaranteed under Article 19(f). of the Constitution.

18. Dealing with this aspect it was observed at p. 383 (of All LJ): (at p. 689 of AIR) :

"It is argued that even if the effect of Clause 4 of Article 31 is to relieve the State from the necessity of proving that the acquisition of the applicant's land is for a public purpose the State has nevertheless to establish that the acquisition is being made in the interests of the general public.

Article 19 deals with the right to freedom guaranteed to all citizens. This right to freedom consists of a number of personal rights which are particularised in the article. One of such rights is the right to acquire, hold and dispose of property and no legislation is possible which will take or abridge away any of these rights unless it comes within the ambit of Clause (5).

It will be observed that Clause (5) contains no provision for the payment of any compensation and that while Article 19 applies only to citizens, Article 31 protects all persons from being deprived of their property save by authority of law. To bring the difference clearly into contrast we cannot do better than to borrow language familiar in the United States and say that while Clauses (2) to (6) of Article 19 make provision for the exercise of police powers, the acquisition of property by the State is an exercise of right of eminent domain.

Under Article 31 the State may compulsorily acquire a person's property and that property is thereby transferred to the State but under Article 19, Clause (5), the State may only impose restrictions reasonable in the general interest on the right to acquire, hold or dispose of property. In our view the acquisition of the property is not the subject of Article 19(1)(f) but of Article 31.

This view is reinforced by the consideration that as the Constitution contains specific provisions in Article 31 relating to the acquisition of property it is unlikely that it was intended that that matter should also be within the ambit of Article 19(1)(f) and it is consistent with the view expressed by Das J. in *A.K. Gopalan Vs. The State of Madras*, , and reaffirmed by that learned Judge in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , that if a person loses his property by reason of it having been compulsorily acquired under Article 31 he loses his right to hold the property and cannot complain that his fundamental right under Article 19(1)(f) has been infringed."

19. In this view of the matter it is not necessary to examine the contention that reasonable restriction contemplated by Article 19(6) includes total prohibition

also nor is it necessary to examine the cases cited by the counsel for the petitioner dealing with the test of reasonableness as required under Article 19(6).

20. The petitioner also has challenged the validity of Sections 6 and 17(1) and (4) of the Land Acquisition Act on the ground that they infringe Article 14 of the Constitution. The contention of the petitioner is that Section 6 empowers the State Government to make a declaration in respect of the property needed both for public and non-public purposes. As such the power is not controlled by any principles laid down in Section 6. It is arbitrary and naked and Section 6 is capable of being exercised in a manner so as to bring about discrimination.

Under the provisions of Section 6 it is open to the Government to choose any person and acquire his property for non-public purpose while the property of the people similarly situated may not be acquired at all. In my judgment this argument has no substance. Section 6 itself does not give any arbitrary power to the State Government to issue a declaration. A declaration can only be issued if the land is needed for a public purpose. It cannot therefore, be said that the legislation itself gives unfettered power to the State.

The fact that the discretion may be abused in some cases and may be exercised in a manner so as to result in discrimination, by itself will not render the provisions of the Act invalid. The exercise of the power may itself be challenged on the ground of mala fide but the provisions of the Act cannot be hit on that ground. In the case of Pannalal Binjraj Vs. Union of India (UOI), it is held by the Supreme Court that:

"..... There is a broad distinction between discretion which has to be exercised with regard to the fundamental rights guaranteed by the Constitution and some other right which the statute has given. If the statute deals with a right which is not fundamental in character the statute can take it away but a fundamental right the statute cannot take away. Where, for example a discretion is given in the matter of issuing licenses for carrying on trade, profession or freedom of speech, etc. by the imposition of censorship, the discretion must be controlled by clear rules so as to come within the category of reasonable restrictions.

Discretion of that nature must be differentiated from discretion in respect of matters not involving fundamental rights such as transfer of cases. An inconvenience resulting from the change of place or venue occurs when any case is transferred from one place to another but it is not open to a party to say that a fundamental right has been infringed by such transfer.

In other words, the discretion vested has to be looked at from two points of view, viz., (1) does it admit of the possibility of any real and substantial right guaranteed by the Constitution? (2) does it infringe on a fundamental right guaranteed by the Constitution? Article 14 can be invoked only when these two conditions are satisfied."

21. Whenever legislation grants a discretion to any authority there are two tests

laid down by the Supreme Court, in order to judge whether such a discretion is hit by Article 14, firstly that the discretion must be in respect of a fundamental right guaranteed by the Constitution and secondly that it admits of the possibility of any real and substantial discrimination.

Both these conditions are to be fulfilled before the legislation can be struck down under Article 14 of the Constitution. Section 6 in the first place, to my mind, does not give an unfettered discretion to the executive authority at all. It gives certain powers which are to be exercised if the land is to be acquired for public purpose or for a company. In this connection it will be useful to refer to the following observations at page 408 of the case referred to above :

"income tax Officer whether within or without will not by itself be sufficient to characterize the exercise of the discretion as discriminatory. Even if there is a possibility of discriminatory treatment of persons falling within the same group of category such possibility cannot necessarily invalidate the piece of legislation.

It may also be remembered that this power is not vested in minor officials but in top-ranking authorities like the Commissioner of Income Tax and the Central Board of Revenue who act on the information supplied to them by the Income Tax Officer concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot easily be assumed where the discretion is vested in such high officials.

This presumption, however, cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile and discriminatory treatment. There may be cases where improper execution of power will result in injustice to the parties.

As has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation & where there is an abuse of such power the parties aggrieved are not without ample remedies under the law. What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself."

Coming to the provisions of Section 17 of the Act. It provides as follows:--

"17 (1) In cases of urgency, whenever the appropriate Government so directs, 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 purpose or for a company. Such land shall thereupon vest absolutely in the State, free from all encumbrances.

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 5A 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)."

The scheme of the Section is that in the cases of urgency on the direction of the State Government the Collector is authorised to take immediate possession of waste or arable land needed for public purposes or for a company and if in the opinion of the appropriate Government there exists an urgency or the land sought to be acquired is a waste or arable land the Government can declare that the provisions of Section 5A shall not apply.

22. The contention of the petitioner is that it has been left to the unguided discretion of the State Government to assume urgency in some cases and to take away the right of the owner of certain land on a declaration that such a land is waste or arable land, though in fact it may not be so, to object to the acquisition of such a land u/s 5A. As I have already pointed out in dealing with Section 6 it cannot be said that the power given u/s 17 is unguided.

If the urgency in fact exist the power can be exercised by the Government. It is also limited to waste and arable lands only. It is therefore clear that the power is not unfettered. The guidance is to be found in the Section itself for the exercise of such power. The Section does not itself give unfettered power and is not hit by Article 14.

23. It was contended by the Advocate-General that even assuming that it is a discretion to be exercised by the Government the two tests laid down in the Supreme Court decision referred to by me earlier, are not satisfied in this case. The discretion effects a right conferred by the statute itself, viz., the right to file an objection to the acquisition of a property in Section 5A. It cannot therefore be said that the discretion relates to fundamental rights.

It was also contended that the discretion does not contain in itself the possibility of real and substantial discrimination. I do not think that there is much force in this contention. The effect of Section 17 is that a person is deprived of his right to possession of the property. The discretion therefore does relate to a fundamental right and it is likely to bring about real and substantial discrimination. But as I have already pointed out it cannot be said that the power given u/s 17 is unguided and unfettered and therefore it is not hit by the provisions of Article 14 of the Constitution.

24. It was also contended that as Clause (3) of Section 6 and Clause (4) of Section 17 make the declaration made thereunder conclusive these provisions are ultra vires. Reliance was placed in this connection on the case of West Bengal Settlement Kanungoe Co-operative credit The West Bengal Settlement Kanungoe Cooperative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others, . In this case the question was not decided as will appear from the following observation at page 118 of the report:

"I do not think it is necessary in this case to decide whether these two provisions

in Section 8 of the Act relating to the purpose of the acquisition and the nature of the land acquired offend against the provision of Article 19(1)(f) and Article 19(5) of the Constitution."

The case referred to above was again considered by the Calcutta High Court on the question of the validity of Section 8 and explanation attached to Section 8A of the West Bengal Planning and Development Act which is reported in West Bengal Settlement Kanungoe Co-operative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others, . It was held in that case that:

"The provisions in Section 8 making the declaration of the Government conclusive as to the nature of the purpose of the acquisition" is ultra vires Article 31(2) of the Constitution are therefore void. But the explanation to the proviso (a) of Section 8 does not offend against Article 19(1)(f) or 19(5) and is, therefore, intra vires and valid."

25. The explanation to proviso (a) of Section 8 was similar in terms as Section 17(4) of the Land Acquisition Act. As regards the provisions of the West Bengal Planning and Development Act, similar to the provisions of the Land Acquisition Act, Section 6(3), it was undoubtedly held in that case that it was ultra vires of Article 31(2), but as I have already said the Land Acquisition Act is saved by Article 31(5). This case is therefore of no help to the petitioner so far as the provisions of Section 6(3) are concerned. This case went up to the Supreme Court and the decision was upheld on the ground that the provision relating to compensation was ultra vires but the question of the validity of Section 8 and the Explanation to the proviso (a) was not decided.

26. The next argument of the petitioner is that the notifications issued under Sections 4 and 6 are ultra vires and mala fide. The grounds urged are that the notifications have been issued for the benefit of opposite party No. 4 alone. Secondly, it is pointed out that on the 25th of June, the notification was issued u/s 4. Thereafter the notification was issued on the 27th of July u/s 6. Possession was taken by the Collector.

This notification was subsequently withdrawn and another notification was issued in December 1956 u/s 6 and thereafter a show was made of taking possession on the 3rd of January 1957 although the possession was already with the Collector. All this points out that the notification was mala fide. The notifications have been issued under Sections 4 and 6 of the Land Acquisition Act. They have been challenged on the ground that the exercise of the power by the State Government is mala fide.

If the exercise of a power is challenged on the ground of mala fide the facts are to be given in details in the affidavit which are lacking in this case. In my opinion the circumstances pointed out by the petitioner also do not make out a case of mala fides. The acquisition was for public purposes and it was justified by law. It is not urged by the petitioner that he ever expressed his desire to set up a factory for making textile machines.

The Government in this case has taken steps to acquire the land for purposes of constructing a factory for production of textile machines. The petitioner has asked for the enforcement of his right as an owner as against the right of the Government to acquire land for public purposes and not as a person who is a rival claimant for the acquisition in his favour to set up a factory for making textile machines.

27. The next point urged was that even assuming that the Act was valid the acquisition in this case cannot be regarded as for public purpose within the meaning of the Act. Two questions arise in this connection; whether if the appropriate Government has considered a particular purpose as a public purpose this Court can examine the facts and come to its own conclusion with regard to the existence of the public purpose or not, and secondly, whether 011 the facts of the present case a public purpose has been made out or not.

28. In the case of *Lilavati Bai Vs. The State of Bombay*, , it was observed on page 528 that:

"The Act has made a specific provision to the effect that the determination of the questions referred to in Sections 5 and 6 of the Act by the State Government shall not be conclusive evidence of the declaration so made. But that does not mean that the jurisdiction of the High Courts under Article 226 or of this Court under Article 32 or on appeal has been impaired.

In a proper case the High Court or this Court in the exercise of its special jurisdiction under the Constitution has the power to determine how far the provisions of the statute have or have not been complied with. But the special power aforesaid of this Court or of the High Court cannot extend to reopening a finding by the State Government u/s 5 of the Act that the tenant has not actually resided in the premises for a continuous period of six months immediately preceding the date of the order or u/s 6 that the premises had become vacant at about the time indicated in the order impugned.

Those are not collateral matters which could on proper evidence be reopened by the Courts of law. The Legislature in its wisdom has made those declarations conclusive and it is not for this Court to question that wisdom."

These observations are apt for the present case. If the Act is constitutional the legislature has in its wisdom left it to the discretion of the Government to decide the fact whether the land is needed for public purpose and whether it is a waste and arable land. This Court will not examine the facts on which the Government has come to that conclusion.

Even if this Court can examine the question, in my opinion, it cannot be said that the purpose, for which the land has been acquired does not constitute a public purpose. The word "public purpose" has not been defined and no exhaustive definition can be given of the word "public purpose". The contention of the petitioner is that public purpose necessarily implies a purpose which will benefit

the public in general and not any individual.

No objection can be taken to this contention, but when applied to the facts of the present case it cannot be said that the purpose is not such as is likely to benefit the public in general. The purpose for which the land is being acquired is for the construction of a factory for production of textile machines. In the present circumstances when clothing is a fundamental necessity of a citizen any scheme for the production of textile machines is to benefit the public in general.

It is not necessary to enter into the controversy raised between the parties as regards the existence of similar factories in other parts of India. It is sufficient to point out that construction of any such factory is likely to benefit the public in general. The petitioner, however, contended that the acquisition for a private Company cannot be beneficial to the public in general.

The fact that the acquisition has been made for a company or for an individual or for the Government itself, to my mind, does not make any difference. The fact that it is required for a Company which is a Private Company is also not material. What is to be seen is the purpose for which the land is said to be acquired. The purpose being for the benefit of the public it comes within the scope of the Act.

29. Lastly it was contended that the provisions of Section 38 to Section 40 were not complied with in this case. Chapter VII of the Land Acquisition Act deals substantially with the acquisition of land for a company. Section 38 of the Act provides :

"The appropriate Government may authorise any officer of any company desiring to acquire land for its purpose to exercise the powers conferred by Section 4.

2. In every such case Section 4 shall be construed as if for the words "for such purpose" the words "for the purpose of the company" were substituted; and Section 5 shall be construed as if after the words "the officer" the words "of the company" were inserted."

Section 39 provides that:

"The provisions of Sections 6 to 37 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 provides that:

"1. Such consent shall not be given unless the appropriate Government be satisfied either on the report of the Collector u/s 5A, 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 a dwelling house for work-men 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.

2. Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

3. Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the CPC in the case of a Civil Court."

Section 41 then provides for the execution of an agreement after the consent has been given and Sub-section (5) of Section 41 provides that:

"(5) Where the acquisition is for the construction of any other work the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work."

In June 1956 an enquiry was held by an officer appointed by the Collector. This enquiry purports to be one u/s 40 of the Act. Later on another enquiry was conducted by another officer on the 3rd October, 1956. In view of these true enquiry reports it cannot be said that there was no enquiry made as contemplated u/s 40. It was further urged by the petitioner that there is no indication in the notification that consent of the appropriate Government was given in this case.

The validity of these notifications in the first instance was not challenged on the ground of want of consent as contemplated u/s 40. Secondly the mere absence of any such reference in the notification does not by itself negative the existence of the consent. The official act will be deemed to have been done in accordance with law in the ordinary course of business and in the absence of any clear averment to that effect, it cannot be presumed that no consent was obtained before an agreement was entered into between the parties, i. e., the Government and the opposite party No. 4.

30. It was then contended that Section 40 only authorises an enquiry to be made to the effect whether the acquisition is needed for the construction of some work and that such work is likely to prove useful to the public. What this provision contemplates is the construction of some work in addition to the work which is already in existence and by such a construction to make the existing construction more useful to the public. It does not contemplate an acquisition for erection of a new factory.

The land in this case is sought to be acquired for a work which is likely to prove useful to the public. In this connection it was lastly contended that the agreement is to provide for the terms on which the public shall be entitled to use the work and no such provision has been made in the agreement. There is fallacy in this argument also.

The agreement does provide the terms on which the public shall be entitled to

use the work in as much as it provides that the public can use this factory for doing business in connection with the production of textile machines. Whether these terms are good or bad is not the requirement of Section 41. The agreement thus provides the terms on which the public is entitled to use the work and as such the agreement itself cannot be regarded as contrary to the provisions of Section 41.

31. It was also contended that it was misrepresented to the State that the land acquired is valued at Rs. 25,000 and odd though in fact its value is several lacs. Even assuming that it was given out to the Government that the value of the land is Rs. 25,000, if the land is valued more than Rs. 25,000 the petitioner is entitled to claim larger compensation when the proceedings for determination of the amount of compensation are taken but that by itself is no ground for holding the notifications to be invalid.

32. In the result, I reject the petition No. 352 of 1957 with costs. The connected Writ Petition No. 1561 of 1956 is also rejected but there will no order as to costs in that case.