

(1958) 04 OHC CK 0002
In the Orissa High Court
Case No : O.J.C. No. 252 of 1956

Satrughna Sahu

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 11-04-1958

Acts Referred:

Constitution of India, 1950 — Article 31(2), 31(6)
Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and
Resettlement of Displaced Persons (Land Acquisitions) Act, 1948 — Section 2

Citation : AIR 1958 Ori 187 : (1958) 24 CLT 191

Hon'ble Judges : R.L. Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : M.S. Monahty, R. Mohanty, S.C. Ghosh and P.C. Chatterji, for the
Appellant; Ch. B.P. Das, General and S.M. Bose, for Opposite Party No. 3, for the
Respondent

Final Decision : Allowed

Judgement

R.L. Narasimham, C.J.—This is an application under Article 226 of the Constitution, challenging the validity of Notification No. 3710-V-Ind-38/52I dated the 27th June 1953, of the Government of Orissa in the Industrial Department, and all subsequent notifications and actions taken by the State Government and the Land Acquisition Officer, Cuttack, for the acquisition of the petitioner's lands described in the schedule attached to the petition, under the provisions of the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act 1948 (Orissa Act XVIII of 1948 -- hereinafter referred to as the Act).

The impugned notification may be quoted in full:

" Industries Department, Notification The 27th June 1953.

No. 3710-v-Ind. 38/52. T. In pursuance of Sub-section (c) of Section 2 of the Orissa Development of Industries, Irrigation, Capital Construction and

Resettlement of Displaced Persons (Land Acquisition) Act 1948 (Orissa Act XVIII of 1948), the Governor of Orissa is pleased to specify, that the project of "establishment of paper mill at Choudwar in the district of Cuttack by Messrs. F. W. Heilgers and Co., Ltd." shall be included within the meaning of the expression "Development of Industries" as defined in the said Section of the said Act.

By Order of the Governor, Sd. H. B. Mohanty. Secretary to Government."

(Messrs. F. W. Heilgers & Co., are the Managing Agents of Titagurh Paper Mills Co.). Subsequently, the Land Acquisition Officer, Cuttack, took steps to acquire the lands of the petitioner and other persons under the provisions of the Act, and on 21-10-1955, another notification was published in the Orissa Gazette to the effect that the petitioner's lands were required for the purpose of establishing a paper mill at Choudwar. From the counter affidavit filed by the officer in charge of the said paper mill and the map attached to the counter-affidavit, it appears that the petitioner's lands were required mainly for the construction of a railway siding to connect the proposed mill with the nearest railway station.

2. The present application was filed on 14-5-1956, and several objections were raised therein against the proposed acquisition of the petitioner's lands. Some of them have now become untenable in view of the Validating Ordinance (Orissa Ordinance No. 3 of 1957) and the Validating Act (Orissa Act XVII of 1957) passed by the State Legislature, validating all actions taken by the authorities concerned in the district of Cuttack, during the years 1954 and 1956 under the provisions of the Act.

Hence, during the hearing of this application counsel for both sides confined their arguments to the validity or otherwise of the notification, dated 27-6-1953, quoted above which was not in any way affected either by the Validating Ordinance or the Validating Act.

3. As is well-known, the Land Acquisition Act 1894 (Act I of 1894) is a self-contained statute dealing with acquisition of land for public purposes. That Act contains provisions for acquiring lands for a company also. But part VII imposes certain restrictions on the acquisition of land for a company under the provisions of that Act. Section 40(1)(b) expressly enjoins on the Government not to give consent to acquisition of land for a company unless it is satisfied that "such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public".

Some idea of what the Legislature meant by the expression "Work likely to prove useful to the public" occurring in this clause may be gathered from the provisions of Section 41 of the Land Acquisition Act which says that an agreement should be entered into between the Government and the company, providing amongst other matters for the following:

"(i) where the acquisition is for the purpose of erecting a dwelling house or for 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

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

Thus, under the provisions of the Land Acquisition Act, land cannot be acquired for a company unless either of the aforesaid two conditions is fulfilled. In 1948 after the expiry of the Defence of India Rules, the only law relating to acquisition of land in force in Orissa was the Land Acquisition Act. The Legislature thought that there should be a special law dealing with acquisition for certain specified purpose, and hence passed the Act which came into force on 11-1-1949.

The Statement of Objects and Reasons gives a clear idea as to why this special law was considered necessary and I am reproducing the same below in full:

"Statement of Objects and Reasons. It is felt that unusual delay is caused in the disposal of land acquisition cases under the existing procedure laid down in the Land Acquisition Act 1894, with the result that the execution of multipurpose hydroelectric projects is being hampered. It is therefore proposed to enact a special law for quick disposal of land acquisition cases, including taking possession of land and payment of compensation in projects of an urgent nature. Another object of enacting this special legislation is to limit the amount of compensation, which is to be paid, to a fair and reasonable amount which should exclude any element of speculation or profit due to unearned increment.

Sd. S. Tripathy. Member-in-charge."

4. An objection was taken by Sir S. M. Bose appearing for opposite party No. 3 to the Court's scrutiny of the statement of Objects and Reasons of the Bill for the purpose of construing any provision of the Act. But this objection is untenable in view of the three decisions of the Supreme Court reported in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, ; *M. K. Ranganatham v. Govt. of Madras*, (S) AIR 1955 SC 604 (B) and *The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi*, where it was held that though the Statement of Objects and Reasons may not be used for the purpose of construing the meaning of a particular word in an enactment, yet it can be referred to,

"for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which is sought to be remedied".

5. Apart from the Statement of Objects and Reasons, the long title, the preamble, Sub-section (2) of Section 3, and Sub-section (2) of Section 4 of the Act give a clear indication as to why the Act was passed.

The long title is as follows:

"An Act to provide for the speedy acquisition of land for the development of

industries, irrigation, agriculture, capital construction, resettlement of displaced persons and for matters incidental thereto for the Province of Orissa".

The preamble also is on similar lines:

"Whereas it is expedient to provide for the speedy acquisition of land for the purpose of the development of industries, irrigation, agriculture, capital construction, resettlement of displaced persons and for matters incidental thereto in the Province of Orissa".

Sub-section (2) of Section 3 of the Act says: "(2) Any notification issued under the provisions of Section 4 of the Land Acquisition Act 1894, for the acquisition of land for a public purpose in respect of the Hirakud Dam, reservoir and other necessary requirements of the Mahanadi Valley Scheme or Machhakund Hydro-Electric Project or the Capital Construction Scheme before the commencement of this Act, shall be deemed to be a publication of notification under Sub-section (1)".

Sub-section (2) of Section 4 of the Act is as follows:

"Any notice issued under the provisions of Section 4 of the Land Acquisition Act, 1894, for the acquisition of land for a public purpose in respect of the Hirakud Dam, reservoir, and other necessary requirements of the Mahanadi Valley Schemes or Machhakund Hydro-Electric Project or the Capital Construction Scheme, before the commencement of this Act shall be deemed to be a service of notice on the owner or occupier for the purpose of Sub-section (1)".

6. Government were faced with special problems in Orissa such as (i) development of industries, (ii) irrigation, (iii) agriculture, (iv) Capital Construction at Bhubaneswar and (v) resettlement of displaced persons. Government had actually taken steps under the Land Acquisition Act for acquisition of land for the Hirakud Dam project as part of the Mahanadi Valley Scheme, for the Machhakund Hydro-Electric Project, and for the Capital Construction Scheme.

They felt, however, that the dilatory and tedious process involved in acquiring land under the Land Acquisition Act for the aforesaid purpose necessitated special legislation to provide for speedy acquisition. Another objective was to prevent owners of land from getting the benefit of unearned increment arising out of the appropriation of land values due to the proposed execution of the aforesaid projects. For the purpose of this application it is unnecessary to consider this objective of the Legislature.

There is no doubt that the provisions of the Act, if properly applied, would enable Government to acquire lands more speedily than under the Land Acquisition Act and also to take possession of them as soon as possible. But it does not appear that there was any intention whatsoever to repeal the provisions of the Land Acquisition Act. On the other hand that Act was intended to be the normal mode of acquisition for public purposes. The application of the Act was restricted to the

purposes specified therein and to matters incidental thereto.

The five objectives for which the Act was passed have been specified in the long title and preamble of the Act. Of these "irrigation" and "agriculture" have well-defined meanings and those expressions were not specially defined in the Act. "Capital Construction" was defined in Clause (a) of Section 2 and similarly "displaced persons" was defined in Clause (d) of Section 2. The expression "Development of Industries", according to the dictionary meaning would include development of industries of all types in Orissa but it was defined in Clause (c) of Section 2 of the Act as follows:

" "Development of industries" shall mean and include construction of the Hirakud Dam and other dams and other reservoirs, hydro-electric projects and such other schemes or projects as the Provincial Government may, by notification, from time to time, specify in this behalf."

Some idea as to what the Legislature meant by the words "schemes or projects" may be gathered from Sub-section (2) of Section 3 and Sub-section (2) of Section 4 of the Act (already quoted) which expressly refer to (1) the Hirakud Dam reservoir as part of the Mahanadi Valley Scheme and also (2) the Machhakund Hydro-Electric Project. The Statement of Objects and Reasons also refers to Multipurposes Hydro-electric projects. It is a fact of which judicial notice can be taken that the Hirakud Dam project is a multi-purpose project for (i) irrigation (ii) navigation and (iii) development of Hydro-electric power.

The Machhakund Hydro-electric project, however, is a simple one consisting of the construction of reservoir by putting up a dam across the Machhakund river, and taking advantage of the Duduma falls below the Dam for the purpose of generating electricity. In Clause (c) of Section 2 of the Act after referring to these two schemes and projects and "other dams and reservoirs", the Legislature referred to "such other schemes or projects as the Provincial Government may, by notification from time to time, specify in this behalf."

7. The main contention put forward on behalf of the petitioner by Mr. M. S. Mohanty, in challenging the validity of the impugned notification are these:

(a) The said notification is in excess of the power conferred on the State Government by Clause (c) of Section 2 of the Act, inasmuch as the expression "other schemes or projects" occurring in that clause should be construed ejusdem generis and will not include the establishment of a paper mill at Chowdwar by a company.

(b) In any case, there is no "public purpose" behind the acquisition of the land for the purpose of the company and, consequently, the impugned notification would offend Article 31(2) of the Constitution.

8. In my opinion both these contentions must succeed.

9. It is a well-known rule of statutory construction that if some words are

specified and general words follow them, the general words, should be restricted to the same genus or category as the specific words. This rule of ejusdem generis will not apply (i) if the specific words do not come under a genus or category; or (ii) where the context of the whole scheme of the enactment and the object and mischief of the enactment do not require such a restricted meaning to be attached to words of general import. See *Lilavati Bai Vs. The State of Bombay*, .

10. The specific words which occur before the expression "other schemes or projects" are (i) "Hirakud Dam project" and (ii) "other darns and reservoirs" and (iii) "hydro-electric projects". All these clearly come under the genus or category of schemes or projects for the utilisation of the waters of the rivers and streams of Orissa. By using the specific words "hydroelectric projects" and not using the words "electric projects" the Legislature clearly intended that electricity generated by thermal power would not come within the scope of the aforesaid definition.

It is only when the waters of the rivers and streams of Orissa are harnessed either for generation of electricity or for irrigation, navigation or similar purposes, that Clause (c) of Section 2 would be attracted. Hence, it is reasonable to say that "other schemes and projects" referred to in that clause should also be limited to those schemes and projects which deal with the harnessing of the waters of the rivers and streams of Orissa. A court can take judicial notice of the fact that in 1948 the other rivers of Orissa such as Brahmani, Baitarani and innumerable hill-streams had not been harnessed.

The Legislature being aware of that future schemes for the utilisation of the waters of these rivers and streams may materialise, conferred power on the State Government to acquire land in connection with these schemes by the issue of a mere notification including those projects in the definition clause of the Act.

11. It is true that if the dictionary meaning is given to the expression "development of industries" the establishment of a paper mill will also come within the scope of that expression. But the definition of that expression in Clause (c) of Section 2 uses the words "mean and include". In modern statutory drafting the use of such an expression as "mean and include" is condemned -- See *Elements of Drafting* by Piesse (1950) at page 42. But the meaning of that expression is given in *Dilworth v. Commr. for Stamps* (1899) AC 99 (E) as follows:

"The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of statute; and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction which may become imperative if the context of that Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or

expressions, defined. It may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning which, for the purpose of the Act, must invariably be attached to these words or expressions."

Thus though the expression "mean and include" in the definition clause is not recommended by modern draftsmen, there is authority for the view that that expression is exhaustive but not expansive. The Legislature in drafting Clause (c) of Section 2 of the Act in that form intended to confine the definition of the expression "development of industries" only to those industries specified in the definition clause and others of a similar nature and not to apply it to all classes of industries generally.

12. It is true that in the long title and preamble it was further provided that the Act was intended to be used for "matters incidental to the development of industries". Hence, if a large amount of hydro-electric power is generated, the establishment of factory for the utilization of that power may be a "matter incidental" to the hydro-electric project and the Act may apply, for the purpose of acquisition of land for such a factory. Thus the establishment of several factories nearabout Hirakud for the utilisation of power developed at Hirakud or of factories for the utilization of power developed at Machkund may come within the scope of the Act.

In the instant case, there is no material before me to show that the establishment of a paper-mill by Messrs. Heilgers Company at Choudwar was part of the scheme for utilization of electric power generated either at Hirakud or Machkund or from any other hydro-electric project in Orissa. Hence, it cannot be held to be a matter Incidental to" the development of industries.

13. Neither the context nor the object and mischief of the Act requires a very wide meaning to be given to the expression "other schemes and projects". If the Legislature meant that the ejusdem generis rule should not apply they would surely have used such words as "any other scheme or project whatsoever" instead of "such other scheme or projects". Moreover, as the Statement of Objects and Reasons quoted above would show the Act was a special law dealing with land acquisition meant to be applied to projects of an urgent nature such as the-Mahanadi Valley Schemes, Machkund Hydroelectric scheme, Capital Construction scheme, and. Scheme for resettlement of displaced persons, and other similar schemes dealing with development of agriculture and irrigation.

The normal law dealing with land acquisition, namely the Land Acquisition Act, was intended to be applied in other (non-urgent) cases. The Legislature may be presumed to be aware that that Act is applicable to acquisition of land for the purpose of companies engaged in certain industrial undertakings, provided certain conditions are satisfied. Hence, when the entire scheme of the legislation dealing with the passing of the Act is examined, there is no special reason why the ejusdem generis rule should not be applied. I must, therefore, accept Mr. Mohanty's contention and hold that the establishment of a paper mill at

Choudwar will not come within the scope of the words "other schemes or projects" referred to in Clause (c) of Section 2 of the Act.

14. The second contention of Mr. Mohanty is also equally sound. In 1948 the power of Legislature to make a law for acquisition of land was restricted by Sub-section (2) of Section 299 of the Government of India Act, 1935 to acquisition "for public purposes" only. Again, after the commencement of the Constitution also, Article 31(2) restricted the right to acquisition to public purposes only and all pre-Constitution Acts were kept alive only in so far as they were not inconsistent with the Constitution.

The Act, though passed within 18 months before the commencement of the Constitution was not submitted to the President for his certification as required by Clause (6) of Article 31 of the Constitution and consequently the Courts are entitled to examine whether any action taken under the Act contravenes Clause (2) of that Article; that is to say, the Courts are entitled to examine whether there is "public purpose" behind the proposed acquisition.

15. The expression "public purpose" has not been defined either in the Government of India Act, or in the Constitution. In America the old view of the law of eminent domain which authorises the State to take private property for public use was a somewhat narrow one.

"It must be one in which the public actually has an interest and the terms and manner of enjoyment must be within the control of the State..... The public interest must dominate the private gain" -- Weaver's Constitutional Law and its Administration -- 1946 Edition p. 546. In modern times however,

"in certain western States, the definition of public use has been extended to include public benefit, advantage, or utility and is any use which tends to enlarge the resources, industrial energies, or productive power of a number of the inhabitants of the State or contributes to the welfare and prosperity of the community. Under this extended definition, are included taking by a private individual to enable him to cultivate the land or to carry on his business to better advantage, in a community so situated that public sentiment approves of such takings, either because they are sanctioned by custom or usage, or because the natural prosperity of the state will be seriously retarded if eminent domain could not be employed for that purpose" -- (ibid p. 547)."

In *Clark v. Nash* (1905) 198 US 361 : 49 Law Ed 1085 (F) Justice Peckham, while upholding a statute of Utah State authorising condemnation for a public use of the land of a person for the purpose of enlargement of an irrigation ditch therein for the use of an individual land-owner, in order to enable him to obtain water from a stream in which he had an interest to irrigate his land which otherwise would remain absolutely valueless, observed that the question whether such condemnation would be for public use would depend upon a number of considerations relating to the situation of the State, and its possibilities for land cultivation or the successful prosecution of its mining and other industries. But

though the Supreme Court was reluctant to reverse the decision of the State High Court as regards the constitutionality of such a statute they used the following guarded language:

"But we do not desire to be understood by this decision as approving of the broad proposition that private property may be taken in all cases where the taking may promote the public interest and tend to develop the natural resources of the state. We simply say that in this particular case, and upon the facts stated in the findings of the court, and having reference to the conditions already stated, we are of opinion that the use is a public one."

16. What constitutes a "public purpose" would vary according to the prevailing theories with regard to the functions of a Government. In a strictly police State, it might have a very narrow meaning. But in a welfare State, it may have to be given an extended meaning. But even in its extended meaning, it is not intended to apply where the land is required for an industrial concern working purely for its own gain, even though the goods produced by the concern may be of use to the general public. As has been pointed out in Rottshaeffer's Constitutional Law, 1939 Edition, at pages 700-701,

"The principle has considerably modified the scope of the well-established rule that the power of eminent domain may not be used, primarily to transfer private property from one owner to another for the private use of the latter. But it has not completely abolished that rule. Every condemnation of property by a private party for use by him, necessarily involves its exercise for his private benefit. It is only where his use of it either involves, as well as its use by the general public, that the property is deemed taken for a proper public use. It is invariably a question of degree whether the public benefits resulting from a private use of condemned property, are sufficiently important to outweigh the private benefits derived therefrom by the condemner."

17. I may now notice the Indian decisions bearing on the construction of the expression "public purpose." The leading decision is that of the Privy Council, reported in *Hamabai Framji v. Secy. of State of India* 42 Ind App 44 : (AIR 1914 PC 20) (G) where their Lordships quoted with approval the following definition of Batchelor J.

"General definitions are, I think, to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase "public purpose" in the lease. It is enough to say that in my opinion the phrase, whatever else it may mean, must include a purpose, i.e. 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".

18. In *Tambiran Padayachi v. State of Madras* 1952-7 DLR 275 : (AIR 1952 Mad 756) a Division Bench of the Madras High Court reviewed all the Indian and American decisions on the subject and observed as follows at p. 281 (of DLR) : (at p. 761 of AIR):

"The result of the authorities may be thus summed up: Acquisition of property for public purpose under Article 31(2) includes whatever results in advantage to the public. It is not necessary that it would be available to the public as such. It might be in favour of individuals provided they are benefited, not as individuals but in furtherance of scheme of public utility. Schemes for construction of houses for clearing slum areas, relieving congestion and housing poor people, are for a public purpose as they tend to promote social welfare and prosperity".

19. In the instant case there is absolutely no material to justify the conclusion that the acquisition of the petitioner's land is for any "public purpose", either in the narrow meaning of the expression or even in its extended meaning. At the commencement of the hearing of the case I specifically questioned Sir S. M. Bose, counsel for the paper mill, whether there was any agreement between the company and the State Government from which the element of public purpose could be reasonably inferred and, if so, whether his client was prepared to swear an affidavit to that effect.

He frankly stated that though there were some preliminary negotiations no agreement has yet been drawn up between the company and the State Government regarding the conditions under which the mill, when established, should work. It cannot, therefore, be said that the paper mill is being established in "furtherance of any scheme of public utility"; nor can it be said that the land is required for the purpose of providing residential quarters for the employees of the mills.

On the materials available before us, the only argument which Sir S. M. Bose could advance was that paper is very useful commodity and by manufacturing paper the company would be serving the interests of the public. But the company will work for its own pecuniary advantage and will sell paper at favourable prices wherever it chooses. The benefit to the public by the establishment of the paper mill is too indirect and remote to constitute "public purpose."

There is no "direct and vital concern" of the public with the paper mill so as to bring it within the rule laid down in 42 Ind App 44: (AIR 1914 PC 20) (G), cited above. The decision in 1952 7 DLR 275: (AIR 1952 Mad 756)¹ on which Sir S. M. Bose relied, does not help him very much. There it was held that acquisition of land to enable members of a co-operative society to construct houses for themselves under a building scheme was for a public purpose. A co-operative society stands in a fundamentally different position from a private industrial concern.

The spread of the co-operative movement is a matter of public concern. Moreover, construction of dwelling houses for employees always stands on a different footing. Even under the Land Acquisition Act construction of dwelling houses for employees would justify the acquisition of land for a company --See Section 41(4) of that Act. But acquisition of land for the purpose of constructing an embankment for providing a railway siding to the paper mill at Choudwar,

though very necessary for the proper working of the mill, will not be for a "public purpose" in the absence of further materials to show that the public are directly and vitally concerned.

20. Sir S. M. Bose then urged that the development of paper industry in Orissa is part of the industrial development scheme of the country as a whole as envisaged in the First and Second Five Year Plans prepared by the Government of India. In the Report of the First Five Year Plan prepared by the Government of India, the Planning Commission pointed out, at page 290, that bamboos were available in large quantities in Orissa and that long term leases by the State Government directly to the paper mills would facilitate the development of the unworked areas and the expansion of paper mill industry at the mouth of the Mahanadi. Again in the Report of the Second Five Year Plan while describing the programme of industrial development in the public and private sectors, papers mills were included (see pages 412, 414 and 424). The Report of the Planning Commission shows that the establishment of paper mills even by private agencies was included in the programme of industrial development. It is also correct to say that the Government of India included an industry engaged in the manufacture or production of paper as a "scheduled industry" in the Industries (Development and Regulation) Act 1951; vide item 21 of the First Schedule to that Act. But there is no statement either by the State Government or by the paper mill to show that the establishment of the paper mill at Choudwar was in favour of any scheme sponsored by the Government of India and accepted by the State Government. Admittedly there is no agreement between the company and the State Government by which the interests of the public were also intended to be safeguarded even though the mill may be established by a private agency.

The facts placed before us only show that a private concern whose sole aim is to make profits is being given facilities to acquire lands under the provisions of the Act which were meant to be applied only to projects or schemes of an urgent nature. I must therefore hold that there is no "public purpose" In the proposed acquisition and as such the impugned notification infringes the fundamental, right guaranteed under Article 31(2) of the Constitution.

21. For the aforesaid reasons, I would hold that the notification dated 27-6-1953 is not only ultra vires the Constitution, as offending Article 31(2), but is also outside the scope of Clause (c) of Section 2 of the Act. All proceedings taken in pursuance of the notification must be declared to be invalid and writ should issue directing the opposite parties not to take any steps to acquire the petitioner's lands under the Act.

22. The petition is allowed with costs; Hearing fee Rs. 200/- (Rupees two hundred only)

G.C. Das, J.

23. I agree.