(1966) 05 CAL CK 0026

In the Calcutta High Court

Case No : Appeal from Original Order No. 71 of 1957

Surendra Nath Bhattacharyya APPELLANT

Vs

Land Acquisition Collector, 24 Paraganas RESPONDENT

Date of Decision : 03-05-1966

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226, 31(2), 32
Land Acquisition (Amendment) Act, 1962 — Section 5, 7
Land Acquisition Act, 1894 — Section 3, 37, 4, 40, 40(1)

Citation : (1968) 2 ILR (Cal) 244

Hon'ble Judges : D.N. Sinha, C.J;Arun K. Mukherjea, J

Bench : Division Bench

Advocate : P.N. Mitra and U. Mukherjee, for the Appellant;S.M. Bose, General, B.C. Datta, Somendra Chandra Bose and P.K. Banerjee for Respondent Nos. 1 and 2 and Satyasanti Mukherjee and P.K. Hazra, for the Respondent

Judgement

D.N. Sinha, C.J.—This is an appeal against an order of H.K. Bose, J. (as he then was) dated January 14, 1957. The facts are briefly as follows: The Appellant Surendra Nath Bhattacharyya became the owner of C.S. plot No. 217 recorded in khatiyan No. 189 of mouza Kankari in the district of 24-Parganas. He purchased the superior interest from one Rajendra Nath Dalai and others by a registered deed dated December 19, 1932, and also purchased the tenancy interest in the said plot of land from one Satish Chandra Bar by a registered kobala dated December 16, 1935. In the year 1350 B.S. he was dispossessed by one Hari Charan Dutta and brought a title suit No. 248 of 1948 in the Court of Munsif, Sealdah, for declaration of title, khas possession, etc. The said suit was decreed in favour of the Plaintiff and appeals which were preferred against the same were dismissed by the lower Appellate Court as well as the High Court, It is alleged that it was only when he made an application for execution that he came to know that land acquisition proceedings had been started for the acquisition of the said plot of land at the instance of the Calcutta Mineral Supply Co. Ltd., a private limited company incorporated under the Indian Companies Act (Respondent No.

3). The facts relating to the said acquisition are as follows: On November 25, 1950, notification was issued u/s 4 of the Land Acquisition Act (hereinafter referred to as the ''said Act'') to the effect that it appeared to the Governor that land was likely to be required to be taken by Government at the expense, of the Calcutta Mineral Supply Co. Ltd. for a public purpose, viz., for the extension of the existing factory of the Calcutta Mineral Supply Co. Ltd. in the village of Kankari, district 24-Parganas. This notification was published on November 30, 1950, in the Official Gazette and it is alleged that on or about February 27, 1951, substance of the notification was published as required u/s 4 of the said Act. On December 9, 1954, a declaration u/s 6 of the said Act was published in the Official Gazette. On November 29, 1954, an agreement was entered into as required by Section 41, appearing in Pt. VII of the said Act, between the Government of West Bengal in its department of Land and Land Revenue and Land Acquisition and the Respondent No. 3, the Calcutta Mineral Supply Co. Ltd. In the agreement it is recited that the said company had applied to the Government for the purpose of acquiring the land for the construction of an extension of its existing factory and that the Government, after holding an enquiry u/s 40 of the said Act, was satisfied that the work was likely to prove useful to the public and had consented to the acquisition being made wholly at the expense of the company. So far as the use by the public of the said land is concerned, it is confined to the provisions of Clause (8) of the said agreement, wherein it is stated that the company shall train up one apprentice per annum in the various processes carried on in the company''s factories, such apprentice being nominated by the Director of Industries, West Bengal, or such other officer as may be authorised by him for that purpose. The period of training for each apprentice shall be two years, and in appointing officers and employees preference, shall be given to apprentices trained under the scheme contained in the said agreement. There is no other use by the public of the said land and the works to be constructed thereon contemplated in the said land agreement. Subsequently an affidavit has been filed to say that the company manufactures silicate of soda and plaster of Paris, which used to be the subject-matter of large scale import from foreign countries and that its manufactured materials are widely used by purchasers in India. On September 6, 1955, the Appellant made an application to this Court under Article 226 of the Constitution and a Rule was issued calling upon the opposite parties to show cause why a writ in the nature of certiorari should not be issued quashing and/or setting aside the notification dated November 25, 1950, and the declaration dated December 1, 1954, and why a writ in the nature of mandamus should not be issued directing the opposite parties Nos. 1 and 2 to forbear from proceeding with the land acquisition proceedings and for other reliefs. This Rule came up for hearing before Bose, J. (as he then was). The following points were urged before the learned Judge: The first point that was urged was that no personal notice of the proposed acquisition was served on the Appellant and secondly that the proper facts were not placed before the State Government, including the fact that there were other lands much more suitable for the purpose of the proposed extension of the works of the company and, therefore, the acquisition was invalid. Both these points were negatived by the learned Judge. Regarding the first point, it was held that under the said Act no individual notice was contemplated, and that the requisite notices contemplated under the Act were properly issued and served. As regards the second point, the learned Judge did not agree with the allegation that other lands were in existence which were more suitable for the purpose of the company and in any event held that the Government had properly applied its mind and the Court could not interfere. By an order dated January 14, 1957, the Rule was accordingly discharged. This appeal is directed against the said order. It is to be regretted that this appeal has to be determined on grounds which were not agitated in the Court below. In the matter of compulsory acquisition of land, however, there have been significant changes in the law and this Court is bound to take notice of the same. This may be explained as follows: Firstly, the Supreme Court has construed Clause (b) of Sub-section (1) of Section 40 of the said Act and laid down as to what work could be said to be ''likely to prove useful to the public'' as mentioned in the said clause. This was done in what has come to be known as the ''first Arora case'' - R.L. Arora Vs. State of U.P., . According to this decision, which will be dealt with in greater detail, presently the fact that the products of the company would be useful to the public was not sufficient to bring the acquisition within the provisions of Sections 40 and 41 of the said Act, and it was held that under Clause (b) of Sub-section (1) of Section 40, the word ''useful'' means that the work would be useful to the public only when it could directly be used by the public. This interpretation affected a large number of acquisitions made under the said Act and, accordingly, the said Act was amended by the Land Acquisition (Amendment) Act, 1962 (31 of 1962), which came into force on September 12, 1962. The provisions of this amendment Act were challenged as ultra vires and on other grounds in another case which is known as the ''second Arora case'' which came to be decided by the Supreme Court in R.L. Arora Vs. State of Uttar Pradesh and Others, . It was held that the provisions of the amending Act were not ultra vires the Constitution. The reasonings given in the said judgment have been utilised on behalf of the Appellant and it has been argued that the Supreme Court has clearly laid down that it was not the object of the said Act to enable the Government to acquire lands for the purpose and benefit of private limited companies and that Pt. VII of the said Act does not apply to acquisition for such purposes. It has been argued that in consequence of this the acquisition in the present case should be struck down. It is admitted that Respondent No. 3 is a private limited company.

2. Under the said Act, Section 6 envisages the acquisition of land which is needed for a public purpose or for a company. The expression ''company'' has been defined in Clause (2) of Section 3 of the said Act and includes a public and private limited company as also a society registered under the Societies Registration Act, 1860. Acquisition of land for companies is governed by the provisions of Pt. VII of the said Act. A special procedure has to be adopted for

that purpose. Firstly, the provisions of Sections 6 and 37 of the said Act are not to be put in force for the purposes of acquisition of land for any company unless with the previous consent of the appropriate Government, nor unless the company shall have executed the agreement mentioned in Section 41 of the said Act. The consent is controlled by the provisions of Section 40. The relevant terms thereof prior to the amendment of 1962 were as follows:

40(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 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.

3. If the appropriate Government was satisfied after considering the report of the Collector etc. that the proposed acquisition was for any of the purposes above-mentioned, the company concerned is required to enter into an agreement with the appropriate Government in terms of the provisions of Section 41. This agreement has to be published in accordance with the provisions of Section 42. In the first Arora case Supra the Supreme Court was called upon to consider the legal position under the provisions of the said Act as it stood before the amendment of 1962. Particularly it was called upon to explain the provisions of Clause (b) in Sub-section (1) of Section 40, which lays down that the acquisition that was contemplated must be one needed for the construction of some work, and that such work was likely to prove useful to the public. The question was as to what work was likely to prove useful to the public. This is the question that was answered by the Supreme Court. The facts in that case were as follows: The Appellant R.L. Arora was the owner of certain lands in village Auraiya, in Khera, U.P. A part of this land was being acquired by Government under the provisions of the Land Acquisition Act, as it was required for a company, Lakshmi Ratan Engineering Works Ltd., Kanpur, for the construction of a factory for the manufacture of textile machinery parts. Notifications u/s 4 and declaration u/s 6 were issued, and in fact possession was handed over to the company. Thereupon Arora filed a writ petition in the Allahabad High Court challenging the acquisition and the issue of the notification and declaration. The question inter alia arose as to whether the provisions of Clause (b) of Sub-section (1) of Section 40 were satisfied, and since the products of the company were going to be useful to the public, could it be said that the construction of the factory was a ''work'' which was ''likely to be useful to the public''? It was contended on behalf of the Respondents that the word ''work'' in Section 40(1)(b) was of wide amplitude and land could be acquired for the said work for any company when the work itself might be useful to the public or the product of the work might be useful to the public. Reliance was placed on the Privy Council decision of Ezra v. Secretary

of State ILR (1903) Cal. 36. On behalf of the Appellant it was contended that though the words of Section 40(1)(b) were of wide amplitude and provided for acquisition of land for construction of some work which was likely to prove useful to the public, this did not mean that if merely the products of the company which constructed the work was useful to the public land could be acquired for it. It was urged that acquisition could only be made for the construction of some work which was capable of being directly used by the public, and that the agreement should provide the terms upon which the public were entitled to have this kind of user. Wanchoo, J. said as follows:

Turning now to the opposing contentions as to the meaning of the relevant words in Sections 40 and 41 we have already said that the two provisions of Sections 40 and 41 must be read together to find out the intention of the Legislature when it provided for acquisition of land for a company through the agency of Government. It seems to us that it could not be the intention of the Legislature that the Government should be made a general agent for companies to acquire lands for them in order that the owners of companies may be able to carry on their activities for private profit. If that was the intention of the Legislature, it was entirely unnecessary to provide for the restrictions contained in Sections 40 and 41 on the powers of the Government to acquire lands for companies. If we were to give the wide interpretation contended for on behalf of the Respondents on the relevant words in Sections 40 and 41, it would amount to holding that the Legislature intended the Government to be a sort of general agent for companies to acquire lands for them, so that their owners may make profits. It can hardly be denied that a company which will satisfy the definition of that word in Section 3(e) will be producing something or other which will be useful to the public and which the public may need to purchase. So on the wide interpretation contended for on behalf of the Respondents we must come to the conclusion that the intention of the Legislature was that the Government should be an agent for acquiring land for all companies for such purpose as they might have provided the product intended to be produced is in a general manner useful to the public and if that is so, there would be clearly no point in providing the restrictive provisions in Sections 40 and 41.... We find it impossible to accept the argument that the intention of the Legislature could have been that individuals should be compelled to part with their lands for private profit of others who might be owners of companies through the Government, simply because the company might produce goods which would be useful to the public.... The very fact that there is no reference to the product of the works in Section 40(1)(b) shows that when the Legislature said that the work should be likely to prove useful to the public it meant that the work should be directly useful to the public through the public being able to use it instead of being indirectly useful to the public through the public being able to use its product.

4. It was then argued that the agreement did provide that members of the public which did business with the firm would have access to the work. This failed to satisfy the learned Judge and he proceeded to say:

To say that the public is entitled to use the work because the public can go to the work in the way of business is in our opinion not giving any right to the public to use the work directly as such. All that the agreement has provided in the present case is that "the public will have such right of access to and use of the land/ works hereinbefore specified as may be necessary for the transaction of their business with the firm." This in our opinion is not what is meant by the words "the terms on which the public shall be entitled to use the work" in the fifth term of the agreement as provided in Section 41.... Coming now to the facts of the present case, we have to see whether the acquisition is for a work which is useful to the public u/s 40(1)(b) and which the public is entitled to use in accordance with the fifth term to be entered in the agreement u/s 41. We have already set out the terms of the agreement which shows that those who have business with the company shall have "such right of access to and use of the land/works hereinbefore specified as may be necessary for the transaction of their business with the firm." This in our opinion is not what the relevant provisions of Sections 40 and 41 require. What these provisions require is that the work should be directly useful to the public and the agreement shall contain a term how the public shall have the right to use the work directly themselves. It seems to us that under the relevant words in Section 40(1)(b) and 41, it has works like a hospital, a public reading room or a library or an educational institution open to the public or such other work as the public may directly use that are contemplated, and it is only for such works which are useful to the public in this way and can be directly used by it that land can be acquired for a company under the Act.

5. Wanchoo, J. also referred to an earlier decision of the Supreme Court--Babu Barkya Thakur v. State of Bombay AIR 1960 S.C. 1923 where it was held that simply because the product of the company was useful to the public it was not sufficient to bring the acquisition for a company within the meaning of the relevant words of Sections 40 and 41.

6. There was another aspect of the case which was considered, namely, as to the power of the Court to question the satisfaction of Government, a matter which I will discuss later. It was this interpretation of Section 40(1)(b) that was principally responsible for the introduction of the Amendment Act of 1962, namely, the Land Acquisition (Amendment) Act, 1962 (XXXI of 1962). The reasons for promulgating the Amendment Act has been succinctly stated by Shah, J. in R.K. Agarwalla and Others Vs. State of West Bengal and Others, , in the following words:

It appears that the interpretation of the relevant provisions in the first Arora case would have rendered many acquisition for companies invalid, for the Government of States had often assumed that use of land for construction of buildings to be utilised by the company for which land was required, which manufactured goods useful to the public justified acquisition of land and it was not necessary to provide in the agreement u/s 41(5) a covenant that the public shall have directly a right to use the works. The President, therefore, intervened and promulgated an Ordinance which was replaced by Act 31 of 1962.

7. In Section 40 of the principal Act, after Clause (a), the following shall be inserted, namely:

(aa) that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; or

In Section 41 of the principal Act--

(a) for the words "the purpose of the proposed 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 that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public", the words, brackets, letters and figures "the proposed acquisition is for any of the purposes referred to in Clause (a) or Clause (aa) or Clause (b) of Sub-section (1) of Section 40" shall be substituted....

In pt. VII of the principal Act after Section 44, the following sections shall be inserted namely:

44A....

44B. Notwithstanding anything contained in this Act, no lands shall be acquired under this part, except for the purpose mentioned in Clause (a) of Sub-section (1) of Section 40, for a private company which is not a Government company.

Explanation--''Private company'' and ''Government company'' shall have the meanings respectively assigned to them in the Companies Act, 1956.

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

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

The Amendment Act was preceded by the Land Acquisition (Amendment) Ordinance of 1962 which was promulgated on July 20, 1962. That is why Section

7 mentions that date. The principal amendment made by the Act is in Sections 40 and 41 of the said Act. In the second Arora case, R.L. Arora v. State of Uttar Pradesh and Ors., the amendment of Sections 40 and 41, as also the validity of Section 7 of the Amendment Act was challenged by an application under Article 32 of the Constitution, made before the Supreme Court. It was argued that the amendments made in Sections 40 and 41 were ultra vires as they contravened Articles 31(2) and 19(1)(f) of the Constitution. The argument proceeded as follows:

It was pointed out that the new Clause (aa) requires that the company, before applying for acquisition, should be engaged or was taking steps for engaging itself in any industry or work which was for a public purpose. It does not say that the acquisition in question should be for a work which is required for a public purpose. Therefore, the new Clause (aa) which permitted such acquisition contravened Article 31(2), which lays down that no property shall be compulsorily acquired save for a public purpose and also Article 19(1)(f), as such acquisition would amount to unreasonable restriction on the fundamental right to hold property.

The validity of Section 7 of the Amendment Act was attacked on the ground that it contravened Article 31(2) and Article 14 of the Constitution inasmuch as acquisition for a company before July 20, 1962, purporting to have been made under Pt. VII of the principal Act before July 20, 1962, shall be ''deemed'' to have been made for the purpose mentioned in Section 41(1)(aa) of the said Act. In other words, it must be taken to be for a public purpose by fiction of law although there was in fact no public purpose. This was stated to be violation of Article 31(2) which requires that there must be an actual public purpose before land could be compulsorily acquired. It was further argued that Section 7 contravened Article 14 inasmuch as it made a discrimination in the matter of acquisition for a company before July 20, 1962, and after July 20, 1962. Wanchoo, J. pointed out that in approaching the question of the construction of Clause (aa) of Sub-section (1) of Section 40 of the said Act it must not be forgotten that the amendment was made in consequence of the Supreme Court decision in the first Arora case and the intention of the Parliament was to fill the lacuna which according to that decision existed in that Act in the matter of acquisition for a company. It was held that the true construction of Clause (aa) is that when it provides for acquisition of land needed for construction of some building or work it implicitly intends that the building or work which is to be constructed must be such as to subserve the public purpose of the industry or work in which the company is about to be engaged. It, therefore, neither contravenes Article 31(2) nor Article 19(1)(f). About Section 7, the first attack was with regard to its ''deeming'' provision. Wanchoo, J. said as follows:

The first fiction in Section 7. is that it shall be presumed that acquisition before July 20, 1962, if they do not fall within Clause (a) or Clause (b) of Section 40(1) shall be deemed to fall within Clause (aa). That means that building or work for which acquisition was made was required for a public purpose of the kind indicated in Clause (aa). It does not however follow from this that if the purpose was not of the kind indicated in Clause (aa) it will still be presumed that the acquisition was for the purpose mentioned in Clause (aa). All that the first deeming provision lays down is that where the public purpose does not come within Clause (a) or Clause (b), it should be deemed to come within Clause (aa), provided it is of a kind which can come within this clause. The intention behind this deeming provision clearly is to make the purpose of an acquisition made before July 20, 1962, which does not fall within Clause (a) or (b) of Section 40(1) to be judged in accordance with the provisions contained in Clause (aa). On a reasonable interpretation, this deeming provision therefore only provides that where the purpose does not fall within Clause (a) and (b) it shall be deemed to fall under Clause (aa) and to be judged in accordance therewith. If in fact the purpose of any acquisition made before July 20, 1962, is such as does not fall within Clause (aa) the deeming provision would be of no avail.

8. In this view it was held that there was no difference with regard to acquisition before July 20, 1962, and after since in either case the conditions of Clause (aa) had to be satisfied.

9. There was, however, another point taken with regard to Clause (aa) which is of great importance in the instant case, because Mr. Mitra appearing on behalf of the Appellant has relied upon it strongly and the point appears to be decisive of this appeal. His argument is that on the authority of the second Arora case Supra, a private limited company cannot in any event get benefit of the provisions as to acquisition for a company under Pt. VII of the said Act, and this position has not been altered by the Amendment Act. As the Respondent No. 3 is a private limited company, this proposition if correct would be decisive. I have already set out about Section 44B as introduced by Section 5 of the Amendment Act. It prohibits acquisition for a private company which is not a Government company except for the purpose mentioned in Section 40(1)(a), that is to say, for the purpose of the erection of dwelling houses for the workmen employed by the company or for the provision of amenities directly connected therewith. In the instant case, we are not concerned with any such purpose. It will now be necessary to set out at length the decision of Wanchoo. J. upon this point:

It now remains only to consider the argument on behalf of the intervener that Clause (a) violates Article 14 inasmuch as it permits acquisition of land for a company but not for an individual or a private company though the individual or the private company may also be engaged in or taking steps to engage himself or itself in an industry or work which is for a public purpose. Reference was also made to Section 44B introduced by the Amendment Act, which lays down that "notwithstanding anything contained in this Act, no land shall be acquired under this part, except for the purpose mentioned in Clause (a) of Sub-section (1) of Section 40, for a private company which is not a Government company." It is said that there is discrimination between a public company and a Government company for which land can be acquired under Clause (aa) on the one hand and a private company or an individual on the other. It is true that acquisition for the purpose of Clause (aa) can only be made for a Government or a public company and cannot be made for a private company or an individual; but there is in our opinion a clear classification between a public company and a Government company on the one hand and a private company and an individual on the other, which has reasonable nexus with the objects to be achieved under the law. The intention of the Legislature clearly is that private individuals and private companies which really consist of a few private individuals banded together should not have the advantage of acquiring land even though they may be intending to engage in some industry or work which may be for a public purpose inasmuch as the enrichment consequent on such work goes to private individuals or to a group of them who have formed themselves into a private company. Public companies on the other hand are broad based and Government companies are really in a sense no different from Government, though for convenience of administration a Government company may be formed, which thus becomes a separate legal entity. Thus in one case the acquisition results in private enrichment while in the other it is the public which gains in every way. Therefore, a distinction in the matter of acquisition of land between public companies and Government companies on the one hand and private individuals and private companies on the other is in our opinion justified, considering the object behind Clause (a) as introduced into the Act. The contention under this head must, therefore, also fail.

10. It should be noted that the Supreme Court is of the opinion that it was never the intention of the said Act to acquire lands for private individuals and private companies even though they may intend to engage in some industry or work which may be for a public purpose, inasmuch as the enrichment consequent on such work goes to private individuals or a group of them. The reason is that such acquisitions are not intended to be made for private profit. This, however, has always been the object of the said Act, both before and after the amendment. In the first Arora case Supra it was pointed out that it was not the object of the Land Acquisition Act that private individuals should be compulsorily made to part with their lands so that companies should make profit. In the second Arora case Supra this principle appears to have been extended further. It is now firmly established that it never was the object of the Act to acquire lands for private companies although incorporated.

11. In the background of these cases, I shall proceed to consider the facts of the instant case and the argument advanced on behalf of the parties. The first argument advanced on behalf of the Respondent is that the facts of the case satisfy the interpretation put by the Supreme Court on Section 40(1)(b) of the said Act, and that the agreement does show that some work is being constructed which is likely to prove useful to the public. It is pointed out that in the agreement there is provision for the training of one apprentice per'' annum and it is said that this, therefore, makes the work useful to the members of the public.

In our opinion this argument cannot be accepted. As laid down in the first Arora case Supra, the work must be such that the public as a whole should have the right of actual user and it should be in the nature of a public hospital or public library etc. Providing for one apprentice a year does not satisfy that condition. Next it is argued that if the matter does not, come with- in the scope of Section 40(1)(b) it comes u/s 40(1)(aa) because the Respondent No. 3 is engaged in an industry or work which is for a public purpose. Firstly, it is argued that u/s 6(3) of the said Act the declaration made u/s 6(1) is conclusive evidence that the land was needed for a public purpose and also the satisfaction of Government under Sections 40 and 41 of the said Act is subjective satisfaction and, therefore, it is not justiciable. Both these points have been considered in the first Arora case Supra and negatived. As regards Section 6(3), it has been held that the satisfaction so far as a company is concerned, is merely on the question as to whether it was needed for a company and not whether it was needed by the company for any of the purposes laid down in Section 40 of the said Act. This has been held in the first Arora case Supra and in the case of Smt. Somavanti and Others Vs. The State of Punjab and Others, where Mudholkar, J. said as follows:

No doubt, in so far as an acquisition for a company is concerned Part VII requires that before a declaration u/s 6(1) is made the Government should be satisfied that the land is required for one of the two purposes set out in Section 40(1) of the Act. The Government can consent to the making of a declaration u/s 6(1) after it is satisfied u/s 41 about the fact that the land is required for a company for the purposes set out in Clause (a) and (b) of that section. But the declaration made thereafter is confined only to one matter and that is that the land is required for a company and nothing more. The question whether in fact the land is required by the company for the purpose set out in Clause (a) and (b) of Section 40(1) is not germane to the declaration. No doubt the power of the Government to make a declaration with respect to an acquisition for a company is circumscribed and, therefore, the Government is expected to exercise it with due regard to the limitation placed upon it. But it does not follow that Sub-section (3) of Section 6 makes the declaration conclusive evidence not only of the fact that the land is required for a company but also of the fact that the land is required by a company for a purpose specified in Section 40(1) of the Act.

12. In the first Arora case Supra Wanchoo, J. has held that the interpretation of the material terms of Section 40(1) and the fifth term of the agreement provided for in Section 41 is and must always be within the jurisdiction of the Court.

13. It is next argued that the matter comes within Section 40(1)(aa), because the Respondent No. 3 is engaged in the manufacture of certain articles like silicate of soda and plaster of Paris which used to be imported from abroad and the manufacture of the same in India is highly useful to the members of the public, as it saves foreign exchange and makes the supply of the said articles readily available to a large number of Indian concerns, a list of which is set out in the affidavit filed on behalf of the said Respondent.

14. It is to be observed that Clause (aa) has only been introduced by the Amendment Act. Previous to the Amendment Act, acquisition of land for a company under Pt. VII of the said Act had still to be made for a public purpose, but as explained in the first Arora case Supra, so far as acquisition for companies is concerned, the public purpose was conditioned by the provisions of Section 40(1)(a) and (b). It was, however, held that the provisions of Section 40(1)(b) were not satisfied simply because the company might produce goods which would be useful to the public. Wanchoo, J. said as follows:

We find it impossible to accept the argument that intention of the Legislature could have been that individuals should be compelled to part with their lands for profits for others who might be the owners of companies through the Government simply because the company might produce goods which would be useful to the public.

Prior to the Amendment Act, therefore, it could not be said that the provisions of Section 40(1)(b) were satisfied, simply because a company was producing goods which would be useful to the public. The question is as to how far the introduction of Clause (aa) has altered the situation. In this connection certain decisions were cited before us which might be considered now. The first case is a decision of Bose, J. (as he then was) Ranibala Bhar and Ors. v. State of West Bengal and Ors. (1958) 62 C.W.N. 73. In that case the company for which acquisition was being made manufactured bricks. It was also provided in the agreement that four apprentices would be trained in the mill which was proposed to be constructed on the land to be acquired. The learned Judge said as follows:

It may be noted, however, that in the present case, which is before me now, there is a provision in the agreement dated the 17th February, 1953, which was produced at the hearing and which was also published in the Gazette, for training of four apprentices in the mill. It is doubtful, however, whether such a provision can be considered as adequate compliance of the provisions of Clause (b) of Section 40(1) or Clause (5) of Section 41 or of the provisions of Section 42 of the Act.

It has been held in several English cases that the mere fact that the public was likely to be remotely benefited could not make the purpose a public purpose. Where primary object is personal gain whether that be of private individual or of a company, the public benefit resulting from the act of such a person or company is too remote and the purpose cannot be said to be a public purpose. Every merchant and every dealer can say that the benefits are for the public because he is catering or providing for the wants of the public. The merchant''s first object is to make a gain for himself. The benefit that he may confer upon his constituents or patrons is very remote. Such purposes are not public purposes.

15. The learned Judge, however, relied on the Privy Council case, Ezra v. Secretary of State Supra and held that since the Government was satisfied that there was a public purpose, this was conclusive, and the matter was not

justiciable. This aspect of the matter was dealt with by the Supreme Court in the first Arora case Supra. Wanchoo, J. pointed out that in Ezra''s case Supra the matter was not argued in the way it was done before the Supreme Court and the fact that in that case the permises was required by the Public Debt Office of the Government which was then under the management of the Bank of Bengal might have something to do with the final decision. The learned Judge rejected the contention that it was for the Government to determine what the relevant words in Sections 40 and 41 meant and held that the interpretation of the material terms in Section 40(1)(b) and the fifth term of the agreement provided in Section 41 read together is, and must always be, within the jurisdiction of the Court. In view of this the authority of Ranibala''s case Supra, in so far as it held that the matter was not justiciable, no longer holds the field. Next, we have been referred to a Bench decision of this Court presided over by Bose, C.J.--Chirkut Tewari v. State of West Bengal and Ors. (1966) 70 C.W.N. 1. In that case, land was being sought to be acquired for a society registered under the Societies Registration Act, 1860, and known as the ''Hooghly Kristi Parishad''. It was held that the land was required for the construction of a public hall and building for cultural and social works by a society the object of which was advancement of the cultural life of the public, holding of meetings, debates and lectures on literary, scientific and allied subjects for diffusion of knowledge among the members of the association and public, spread of education through free night school for adults and primary school in day time, staging of dramas, holding of exhibition for development of faculties in each one of which members of the public of the locality were interested, and that this was for a public purpose. It was observed that although the company was not a public limited company still the institution was not run for private profit. In my opinion it is extremely doubtful, whether it can be said that a company satisfies the test of public purpose in Clause (aa), simply because it provides goods which will be remotely useful to the public. But in any event, if it is a private company (as opposed to a public one), then it can never satisfy the test.

16. The strongest objection that has been put forward by the Appellant, a point which in our opinion is decisive of the matter, is that even if the company is producing goods which are of use to the public, there cannot be a ''public purpose'' u/s 40(1)(aa), because Respondent No. 3 is a private limited company. Upon this point Mr. Mitra has strongly relied on the statement of law propounded by Wanchoo, J. on the second Arora case Supra, p. 1241, para. 17 which has been set out above. It is pointed out that this proposition of law, namely, that acquisition of land for the purpose of a private company or for private profit is not a public purpose and is not contemplated by Pt. VII, is not something which has been introduced by the Amendment Act. It is a proposition/which was found valid even before the amendment. Mr. Mitra has referred to the first Arora case Supra, p. 770, para. 13 where it has been pointed out that it was never the intention of the Legislature that the Government should be made a general agent for companies to acquire land for them in order that the owners of the companies

would be able to carry on their activities for private profit. Mr. Dutta appearing for the Respondent has framed his argument thus: He says that, previous to the Amendment Act we had Section 40(1)(b) which spoke of a work ''likely to prove useful to the public''. Now there has been introduced Clause (aa) which speaks about ''for a public purpose''. By Section 7 of the Amendment Act, retrospective operation has been given to Clause (aa). It has been provided that where in an acquisition prior to July 20, 1962, land has not been acquired for purposes mentioned u/s 40(1)(a) or (b) it should be deemed to have been made for the purpose mentioned in Clause (aa). He does not dispute, and indeed after the second Arora case Supra it cannot be disputed that even before July 20, 1962, there must have existed a public purpose. He, however, argues that so far as Section 7 of the Amendment Act is concerned, the ''Explanation'' shows that the word ''company'' would include a private limited company, because it came within the definition of Section 3(e) of the said Act. The Amendment Act by Section 5 introduces a new section in the said Act, namely Section 44B, which expressly provides that no land shall be acquired under Pt. VII so far as a private limited company is concerned, which is not a Government company, except for the purpose mentioned in Clause (a) of Sub-section (1) of Section 40. Mr. Dutta argues that Section 44B is prospective in operation, whereas Section 7 of the Amendment Act gives retrospective operation to Clause (aa) in Sub-section (1) of Section 40 of the said Act. According to him, so far as acquisition before July 20, 1962, is concerned and the acquisition in the instant case comes within that category, a private limited company would come into the picture as a result of the Explanation to Section 7, whereas it would be excluded by Section 44B of the said Act so far as the prospective application is concerned. I shall now proceed to consider this argument.

17. In Section 7 of the Amendment Act the word ''company'' has been used and undoubtedly by the Explanation it would include a private limited company. But what Section 7 provides is that where an acquisition is not for any of the purposes mentioned in Clause (a) or (b) of Sub-section (1) of Section 40 of the said Act, it will be deemed to have been made for the purpose mentioned in Clause (aa) of the said section. An argument had been advanced that since it was a deeming Clause there need be no public purpose at all. This view has been firmly rejected. Therefore, whether it be before July 20, 1962, or after that date, an acquisition of land must be for a public purpose. What is a ''public purpose'' is however difficult to define. In Somawanti (sic). State of Punjab Supra, p. 561 Mudholkar, J. said as follows:

Boardly speaking the expression ''public purpose'' would, however, include a purpose in Which the general interest of the community, as opposed to the particular interest of the individual, is directly and vitally concerned.

18. The question, therefore, is as to whether in the case of a private limited company, which simply produces goods which are demanded by the public and are consumed by them even though it might have saved a lot of foreign

exchange and be thus useful for the economic development of the people, it could not be said that it was a purpose in which the general interest of the community, as opposed to the particular interest of the individual, is directly and vitally concerned. In our opinion this is precisely the point which has been dealt with by the Supreme Court in the cases cited above. In the second Arora case Supra it has been clearly laid down that the intention of the Legislature was that private individuals and private companies, which really consist of a few private individuals banded together, should not have the advantage of acquiring land even though they may be intended to engage in some industry or work which may benefit the public inasmuch as the enrichment consequent upon such work goes to private individuals or to a group of them who have formed themselves into a private company. In other words, it was held that it was never the intention of the Land Acquisition Act to compulsorily acquire land from others for the purpose of private profit. Since the public are not interested in it, it cannot be said to be a ''public purpose'' for the purposes of the said Act at any time. If any other meaning is given to the expression ''public purpose'' in Clause (aa), then it cannot escape the limitation laid down by Article 14, because it will then be said that, before the Amendment Act, both private and public companies could acquire land under the said Act whereas after the Amendment Act private companies have been excluded. Acceptance of this argument would set at naught the reasoning by which the provisions of Clause (aa) were saved so far as Article 14 was concerned.

19. For the reasons given above, it must be held that the land acquisition proceedings, in the instant case, for the purposes of acquiring land for the Respondent No. 3, which is a private limited company, is not in accordance with law and cannot be sustained. The result is that the appeal succeeds and the judgment and order of Bose, J. (as he then was) dated January 14, 1957, must be set aside. The Rule is made absolute and there will be order made in terms of prayers (a) and (b) of the petition. There will, however, be no order as to costs.

20. Let the operation of this order remain in abeyance for six weeks from this date as prayed for.

Arun K. Mukherjea, J.

21. I agree.

