STATE OF WEST BENGAL AND ANR. A

v.

SURENDRA NATH BHATTACHARYA AND ANR.

April 24, 1980

[S. MURTAZA FAZAL ALI AND P. S. KAILASAM, JJ.] B

Land Acquisition Act, 1894 *as amended by Act* 31 *of* 1962, *Section* 40(*aa*)—*Interpretation of Section* 40(*aa*) *and also Section* 7 *of the Amending Act of* 1962—*Acquisition of land for company engaged in industry or work which is for public purpose is valid and does not offend Article* 14 *of the Constitution—Section* 44*B of the Act is prospective and does not relate to acquisition.* C

Respondent 2 known as Calcutta Mineral Supply Company having its office at 31, Jackson Lane, Calcutta was carrying on the business of manufacturing sodium silicate, plaster of paris etc., which were formerly imported on a very large scale from foreign countries. The manufactured goods of the Company are widely used all over India saving considerable foreign exchange which otherwise would have had to be spent in importing these materials. With a D view to extend its business and improve the standard of its manufacture but for want of space for big underground storage tanks, the Company was handicapped, the Company applied to the Collector for acquiring for public purpose, the lands in dispute which were contiguous to the lands on which the existing factory of the company stood was best suited. Consequent to the application an agreement was executed between the Government and the Company on the 29th of November 1954. On December 9, 1954, a notification E under section 6 of the Land Acquisition Act, 1894 was published and the first respondent filed his objection which was rejected and was followed by a notification under section 9 of the Act.

After the land acquisition proceedings were complete a writ petition was filed by the first respondent before the High Court on January 14, 1957 which was dismissed by a single Judge of the High Court and therefore the F first respondent filed an appeal to the Division Bench of the High Court on February 21, 1957. While the appeal was pending before the High Court the Collector made an Award dated 14-10-1957 and after taking possession from the owners of the land, delivered the same to the company-respondent No. 2 on October 22, 1957. The first respondent filed an application for permission to urge additional grounds before the High Court which was permitted and ultimately the Division Bench of the High Court by the order G under appeal allowed the appeal and quashed the Land acquisition proceedings taken under the Act. Hence, this appeal before this Court after getting a certificate from the High Court.

Allowing the appeal by certificate, the Court

HELD : 1. Analysing the ratio of the decision of this Court in (Second) H *R. Li Arora* v. *State of U.P.,* [1964] 6 S.C.R. and followed in *Himalayan Tiles & Marbles* v. *Francis Victor Continho (dead) by* 1.*rs.,* [1980] 3 S.C.R. 235,

A the following conditions must be satisfied before an acquisition made prior to July 20, 1962 could be said to be constitutionally valid—

(a) that the acquisition had taken place before July 20, 1962, the date when the Amending Act came into force;

(b) that the said acquisition should have been fully completed in that property said to have been acquired had vested absolutely in
B the Government;

(c) that the acquisition was made for purposes mentioned in clause (aa) of the amended clause added to s. 40;

(d) that if these conditions were satisfied, then any acquisition proceeding, order, agreement or action in connection with much
C acquisition would be deemed to have been valid as if the amended provisions were in force at the time when the acquisition was made. [788 E-G]

The facts of the present case squarely fall within the ambit of the conditions laid down by section 7 of the Amending Act and hence the challenge on the ground of the constitutional validity of the acquisition must necessarily fail. The proceedings for acquisition were started long before July 20, 1962 that is, as early as December 9, 1954 when notification under section 6 of the Act was issued. After inviting objections an Award was made by the Collector on October 14, 1957 and after the property in dispute fully rested in the Government, the Collector then delivered the same to the Company-respondent 2 on October 22, 1957. [789 A-B]

E *Himalayan Tiles and Marbles* v. *Francis Victor Countinho (dead) by l.rs.*, [1980] 3 SCR 235; applied.

2. To hold that section 40(aa) of the Act also requires proof of public purpose in the restricted sense in that it must be for the general good of the people at large, then the very object sought to be achieved by the amendment would be completely frustrated and the provisions of Section 7 would
F become *otiose*. [789 D-F]

3. The words "public purpose" are not to be interpreted in a restrictive sense but take colour from the nature of the industry itself, the articles it manufactures and the benefit to the people that it subserves. The land should be acquired for building or work which would serve the *public purpose of the Company* and not public purpose as it is generally understood.
G [791 C-D]

In the instant case the articles produced by the Company are used for the benefit of the people and as it saves a lot of foreign exchange, it is unmistakably for the general good of the country particularly from the economic point of view. The object of the Company in extending its operations by enlarging the area of its production was for the public purpose of the Company. Taking an overall picture of the nature of the products of
H the company, its various activities, the general public good that it seeks to achieve and the great benefit that the people derive, the acquisition was for a public purpose. [791 C-F]

4. Section 44B of the Land Acquisition Act is purely prospective in character and has absolutely no application to acquisition proceedings taken before July 20, 1962, the date when the amendment was enacted. [791 F-G] A

5. Section 40(aa) of the Act does not violate Article 14 of the Constitution, by permitting acquisition of land for a Company but not for an individual or a private Company through these persons may also be engaged in an industry which was for a public purpose. [792 A-B] B

P. Girdharan Prasad Missair and Anr. v. *State of Bihar and Anr.*, A.I.R. 1968 Pat 77; *Chhotubhai Babarbhai Patel* v. *State of Gujarat and Anr.*, I.L.R. Gujarat 1964 p. 472; approved.

R. L. Arora (II) v. *State of U.P.*, [1964] 6 S.C.R. 784; followed. C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 140 of 1969.

From the Judgment and Order dated 3-5-1966 of the Calcutta High Court in F.M.A. No. 71/57.

P. K. Chatterjee & Rathin Dass for the Appellant.

V. S. Desai, S. C. Majumdar and *Miss Kirobi Banerjee* for Respondent No. 1. D

P. K. Mukherji for Respondent No. 2.

The Judgment of the Court was delivered by .

FAZAL ALI, J.—This appeal is directed against a judgment dated May 3, 1966 of the Calcutta High Court quashing the acquisition proceedings taken as also the notifications made by the State of West Bengal under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') in respect of the lands in dispute which comprised ·73 acres in village Kanpura, P.S. Dum Dum. E

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Although the case had a rather chequered career and was preceded by a full-fledged litigation starting from the trial court and ending with the High Court regarding the question of title, we are not, however, concerned with the past history in view of the short point on the basis of which the appeal was decided by the Division Bench of the High Court. The case of the Government was that on December 16, 1949, respondent No. 2 known as Calcutta Mineral Supply Company having its office at 31, Jackson Lane, Calcutta, applied to the Collector for acquiring the land in question in order to extend its business. The company was carrying on the business of manufacturing sodium silicate, plaster of Paris, etc., which were formerly imported on a very large scale from foreign countries. The manufactured goods of the Company are widely used all over India saving considerable foreign exchange which otherwise would have had to be spent in importing G H

these materials. The company pleaded that it wanted to extend its business and improve the standards of its manufacture but for want of space for big underground storage tanks, the company was seriously handicapped. The company, therefore, prayed that the lands in dispute which were contiguous to the lands on which the existing factory of the company stood was best suited for this purpose and hence the Collector was requested to acquire the lands for public purpose. Consequent to the application, an agreement was executed between the Government and the company on the 29th of November 1954. On December 9, 1954, a notification under s. 6 of the Act was published and the first respondent filed his objection which was rejected and was followed by a notification under s. 9 of the Act. After the land acquisition proceedings were complete a writ petition was filed by the first respondent before the High Court on January 14, 1957 which was dismissed by a single Judge on the High Court and therefore the first respondent filed an appeal to the Division Bench of the High Court on February 21, 1957. While the appeal was pending before the High Court the Collector made an Award dated 14-10-1957 and after taking possession from the owners of the land, delivered the same to the company-respondent No. 2 on October 23, 1957. The first respondent filed an application for permission to urge additional grounds before the High Court which was permitted and ultimately the Division Bench of the High Court by the Order under appeal allowed the appeal and quashed the land acquisition proceedings taken under the Act. Hence, this appeal before this Court after getting a certificate from the High Court.

The only point that has been canvassed before us by counsel for the parties is as to whether or not the acquisition of the land in dispute was valid in law. The appellant contended that in view of the amendment of section 40 by Act. No. 31 of 1962, acquisition of land for the purpose of the company was validated and all acquisitions made before the amendment were validated retrospectively provided certain conditions laid down under s. 7 of the Amending Act were fulfilled.

We might mention here that prior to the amendment, this Court in *R. L. Arora* v. *State of U.P.* (1) had held that any acquisition under the Act for purposes of a Private Company would not be a public purpose and would, therefore, be void. It was on the basis of this decision, which is usually known as the *'first Arora case'*, that the first respondent filed a petition in the High Court for quashing the land acquisition proceedings. The legislature, however, intervened by the Amending Act, as mentioned aforesaid, and removed the basis of the judgment of

(1) [1962] Supp. 2 S.C.R. 149.

this Court by adding clause (aa) to s. 40 of the Act so as to validate all acquisitions of private lands for purposes of a private company provided the conditions laid down in s. 7 were fulfilled. This amendment was also challenged before this Court in what is known as the '*second Arora case*' (2) where this Court by majority of 4 : 1 held that the Amending Act was valid and that under s. 40(aa) an acquisition could be made even for a private company if it was engaged in an industry which was for a public purpose. We are not concerned with the other amendments made which do not apply to the facts of the present case.

The High Court undoubetdly referred to the "*first Arora case*" as also to the "*second Arora case*" but, with due respect, we might observe that the High Court relied mainly on the observations made in the "*first Arora case*" and has not correctly interpreted the later decision of this Court and the effect of the amendment which completely superseded the "*first Arora case*". The argument of the learned counsel before us centered round the interpretation of s. 40(aa) as amended by the amendment as also s. 7 of the Amending Act. In order to understand the scope of the argument it may be necessary to extract both s. 40(aa) and s. 7 of the Amending Act, which run thus :

> "7. *Validation of certain acquisitions.*—Notwithstanding any judgment, decree or order of any court, every acquisition of land for a company made or purporting to have been made under Part VII of the principal Act before the 20th day of July 1962, shall, in so far as such acquisition is not for any of the purposes mentioned in clause (a) or clause (b) of sub-section (1) of section 40 of the principal Act, be deemed to have been made for the purpose mentioned in clause (aa) of the said sub-section, and accordingly every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of sections 40 and 41 of the principal Act, as amended by this Act, were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was 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."
>
> "40(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;"

(2) [1964] 6 S.C.R. 784.

In this connection, this Court observed as follows:—

"Therefore before s. 7 can validate an acquisition made before July 20, 1962, it must first be shown that the acquisition is complete and the land acquired has vested in Government. This means that the land acquired has vested in Government either under s. 16 or s. 17(1) of the Act. Thus s. 7 of the Amendment Act validates such acquisitions in which property has vested absolutely in Government either under s. 16 or s. 17(1). Secondly's. 7 of the Amendment Act provides that where acquisition has been made for a company before July 20, 1962 or purported to have been made under cl. (a) or cl. (b) of s. 40(1) and those clauses do not apply in view of the interpretation put thereon in *R. L. Arora's* case (1962 Supp. 2 SCR 149), it shall be deemed that the acquisition was for the purpose mentioned in cl. (aa) as inserted in s. 40(1) of the Act by the Amenment Act. Thirdly, s. 7 of the Amendment Act provides that every such acquisition and any prodeeding, 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 ss. 40 and 41 of the Act as amended by the Amendment act were in force at all material times when any action was taken for such acquisition. Finally, this validity is given to such acquisitions and to all actions taken in connection therewith notwithstanding any judgment, decree or order of any court".

Thus, analysing the ratio or the "*second Arora case*", the following conditions must be satisfied before an acquisition made prior to July 20, 1962 could be said to be constitutionally valid—

(a) that the acquisition had taken place before July 20, 1962, the date when the Amending Act came into force;

(b) that the said acquisition should have been fully completed in that the property said to have been acquired had vested absolutely in the Government;

(c) that the acquisition was made for purposes mentioned in clause (aa) of the amended clause added to s. 40;

(d) that if these conditions were staisfied, then any acquisition proceeding, order, agreement or action in connection with such acquisition would be deemed to have been valid as if the amended provisions were in force at the time when the acquisition was made.

On this aspect of the matter, the view taken by this Court in the "*second Arora case*" was followed in a recent decision of this Court in

Himalayan Tiles and Marbles v. *Francis Victor Coutinho (dead) by Lrs* (1). In the instant case, it is not disputed that the proceedings for acquisition were started long before July 20, 1962, that is to say, as early as December 9, 1954 when notification under s. 6 of the Act was issued. Secondly, it is also not disputed that after inviting objections, etc., an Award was made by the Collector on October 14, 1957 and after the property in dispute fully vested in the Government, the Collector then delivered the same to the company-respondent No. 2 on October 23, 1957. For these reasons, the facts of the present case squarely fall within the ambit of the conditions laid down by s. 7 of the Amending Act and hence the challenge on the ground of the constitutional validity of the acquisition must necessarily fail.

Mr. V. S. Desai, appearing for respondent No. 1, however, submitted that s. 7 itself was violative of Art. 31(2) of the Constitution. It is not necessary to examine this argument in detail because a similar argument was urged in the "*second Arora case*" (supra) and rejected.

It was then contended that even if we assume that s. 7 validated the present land acquisition proceedings, the conditions prescribed in clause (aa) of s. 40 were not fulfilled in this case inasmuch as the acquisition could not be said to be for a public purpose. It was submitted by the counsel for respondent No. 1 that as the company was a private one and there is nothing to show that there was any direct connection or close nexus between the articles produced by the company and the general good of the public, it could not be said that the acquisition was made for a company which was engaged in an industry which was for a public purpose. This argument, in our opinion, is based on a misconception of the concept of the Amending Act and the introduction of clauses (aa) to s. 40. If we are persuaded to hold that s. 40 (aa) also requires proof of a public purpose in the restricted sense, in that it must be for the general good of the people at large, then the very object sought to be achieved by the amendment would be completely frustrated and the provisions of s. 7 would become *otiose*. A similar argument was advanced in the "*second Arora case*" (supra) and was fully considered by this Court which observed as follows :—

> "In approaching the question of construction of this clause, it cannot be forgotten that the amendment was made in consequence of the decision of this Court in *R. L. Arora's* case (1962 Supp. 2 SCR 149) and the intention of Parliament was to fill the lacuna, which, according to that decision, existed in the Act in the matter of acquisitions for a company....Further, a literal interpretation is not always the only interpretation of a provision

(1) [1980] 3 S.C.R.235.

A in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute.

B * * *

Therefore, we have to see whether the provision in cl. (aa) bears another construction also in the setting in which it appears and in the circumstances in which it was put on the statute book and also in view of the language used in the clause. The C circumstances in which the amendment came to be made have already been mentioned by us and the intention of Parliament clearly was to fill up the lacuna in the Act which became evident on the decision of this Court in *R. L. Arora's* case (1962 Supp. 2 SCR 149).....It was only for such a company that land was to be acquired compulsorily and the acquisition was for the D construction of some building or work for such a company, i.e., a company engaged or about to be engaged in some industry or work which is for a public purpose. In this setting it seems to us reasonable to hold that the intention of Parliament could only have been that *land should be acquired for such building or work for a company as would subserve the public purpose of the* E *company*; it could not have been intended, considering the setting in which cl. (aa) was introduced, that land could be acquired for a building or work which would not subserve the public purpose of the company....Further, acquisition is for the construction of some building or work for a company and the nature of that F company is that it is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose. When therefore the building or work is for such a company it seems to us that it is reasonable to hold that the nature of the building or work to be constructed takes colour from the nature of the company for which it is to be constructed. We are therefore G of opinion that the literal and mechanical construction for which the petitioner contends is neither the only nor the true construction of cl. (aa) and that when cl. (aa) 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* H *or work in which the company is engaged or is about to be engaged.* In short, the words "building or work" used in cl. (aa) take their colour from the adjectival clause which governs the company

for which the building or work is being constructed.... It is only in these cases where the company is engaged in an industry or work of that kind and where the building or work is also constructed for a purpose of that kind, which is a public purpose, that acquisition can be made under cl. (aa). As we read the clause we are of opinion that the public purpose of the company for which acquisition is to be made cannot be divorced from the purpose of the building or work and it is not open for such a company to acquire land under cl. (aa) for a building or work which will not subserve the public purpose of the company."

(Emphasis ours)

The effect of the observations made above leads to the irresistible conclusion that the words 'public purpose' are not to be interpreted in a restricted sense but take colour from the nature of the industry itself, the articles that it manufactures and the benefit to the people that it subserves. This Court clearly indicated that the land should be acquired for building or work which would serve the *public purpose of the company and* not public purpose as it is generally understood. In the instant case, we have also set out the nature of the products of the company and have stressed the fact that the articles produced by the company are used for the benefit of the people and as it saves lot of foreign exchange, it is unmistakably for the general good of the country particularly from the economic point of view. In these circumstances, it cannot be said that the object of the company in extending its operations by enlarging the area of its production was not for the public purpose of the company. Taking an overall picture of the nature of the products of the company, its various activities, the general public good that it seeks to achieve and the great benefit that the people derive, it cannot be said that the acquisition, in the present case, was not for a public purpose. According to the test laid down by this Court it is sufficient if it is shown that the building sought to be built or the work undertaken subserves the public purpose of the company which is completely fulfilled in this case. The High Court seems to have been impressed by the argument advanced before it that the land acquisition proceedings in the instant case are hit by s. 44B of the Act. The High Court, however, has failed to consider that s. 44B is purely prospective in character and has absolutely no application to acquisition proceedings taken before July 20, 1962, the date when the amendment was enacted.

The High Court also seems to have accepted the argument of the first respondent that s. 40(aa) violates Art. 14 of the Constitution inasmuch as it permits acquisition of land for a company but

not for an individual or a private company though these persons may also be engaged in an industry which was for a public purpose. This argument was repelled by this Court and it was held that s. 40(aa) was not violative of Art. 14. In this connection, this Court observed as follows :—

> "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 cl. (aa) as introduced into the Act. The contention under this head must therefore also fail."

Some of the High Courts also have taken a similar view which has found favour with us in view of the *second Arora* case, referred to above. In the case of *P. Girdharan Prasad Missir and Anr.* v. *State of Bihar & Anr.* (1) a Division Bench of the Patna High Court while dealing with this question observed as follows :—

> "Thirdly, it was urged that the acquisition was not for a public purpose but merely for the purpose of helping a person (here the company) to make profits. This argument, however, is no longer available. It is well known that sugar industry is one of the important industries of India engaged in the production of an essential commodity, and the fostering of the growth of that industry is undoubtedly for a public purpose. A company engaged in the manufacture of sugar would, therefore, come within the scope of clause (a) of sub-section (1) of section 40 of the Act."

A Division Bench of the Gujarat High Court in *Chhotubhai Babarbhai Patel* v. *State of Gujarat and Anr.* (2) while construing the *second Arora* case referred to above clearly held that s. 40(aa) contemplated that the building or work which the company intended to construct was to subserve the public purpose of the industry or work for which it was being constructed. In that case also, the company concerned was manufacturing caustic soda, dyes, chemicals, colours and drugs (caustic soda is one of the products of the company in the instant case also). Dwelling on the importance of the public purpose of the industry concerned in that case, Shelat, C. J., observed as follows:—

> "Taking all these factors into consideration, it is not possible to deny that the industry in which the second respondent company is already engaged and is about to be engaged in, and for the

(1) A.I. R. 1968 Patna 77.
(2) I. L. R. Gujarat 1964, 472.

buildings or works for which the lands in question are being acquired is such that it will promote public purpose and will be in the interest of the public."

We find ourselves in complete agreement with the aforesaid observations of the learned Chief Justice.

Finally, even in the *second Arora case*, it would appear that the company in question was engaged in the production of textile machinery and its parts which were for the use of the general public. This was held by this Court to be a definite public purpose behind the acquisition. In this connection, this Court observed as follows :—

"We are concerned here with acquisition for a public purpose, which is undisputed. This is not a case of a house of one person being requisitioned for another; this is a case of constructing some work which will be useful to the public and will subserve the public purpose of the production of textile machinery and its parts for the use of the general public. In the circumstances we are of opinion that there being a definite public purpose behind the acquisition in the present case, the acquisition would be justified under the Act irrespective of the intention of the previous owner of the land to use it for some other public purpose."

The industrial venture in which respondent No. 2 was engaged was undoubtedly of much greater use than a company producing textile machinery because apart from being useful to the people at large and producing chemicals it has also resulted in saving lot of foreign exchange and thus improving the economy of our country so as to be an efficient instrument of economic benefit. We are satisfied that all the conditions of s. 7 of the Amending Act as also that of s. 40(aa) have been fulfilled in the instant case and the High Court was wrong in law in quashing the said proceedings. The appeal is accordingly allowed, the judgment of the High Court is quashed and the Award of the Collector as also the proceedings before the Award are restored. In the circumstances of the case, the appellant will be entitled to costs in this Court against respondent No. 1.

S. R. *Appeal allowed.*