R. L. Arora

Vs

State of U.P.

Civil Appeal No. 446 of 1959

(P. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta, N. Rajgopala Ayyangar JJ)

15.12.1961

JUDGMENT

WANCHOO, J. –

This is an appeal on a certificate granted by the Allahabad High Court. The appellant is the owner of certain lands in village Nauraiya Khera. Out of those lands, 15.5 acres were requisitioned by the Defence Department of the Government of India and are still in their possession and we are not concerned with that. Besides that, the appellant has 9 acres of land which he had purchased many years ago with the idea of erecting a factory thereon. The appellant got information in May 1956 that steps were being taken to acquire his nine acres of land for an industrialist in Kanpur. He therefore wrote to the Collector of Kanpur in that connection. On June 25, 1956, however, a notification was issued under s. 4 of the Land Acquisition Act No. 1 of 1894 (hereinafter called the Act), stating that certain land which was specified as 11.664 acres in village Nauraiya Khera was required for a company for the construction of textile machinery parts factory by Lakshmi Ratan Engineering Works Limited, Kanpur (hereinafter called the Works). This was followed on July 5, 1956 by a notification under s. 6 of the Act, which was in terms similar to the notification under s. 4. The notification also provided for the Collector to take possession of any waste or arable land forming part of the land mentioned in the Schedule to the notification immediately under the powers conferred by s. 17(1) of the Act. It is not in dispute that this notification was issued without taking any action under Part VII of the Act. On July 31, 1956, the Collector took possession of the land and handed it over to the Works along with the buildings standing on it.

In the mean time the appellant had filed a writ petition in the High Court on July 31, 1956, praying that the notification of July 5, 1956, be quashed and had also applied for interim stay. As however possession had already been taken on July 31, 1956, the application for interim stay was infructuous. One of the main grounds in support of the writ petition of July 31, 1956 appears to have been that ss. 38 to 42 of the Act had not been complied with. It seems that thereafter steps were taken by the State Government to comply with the provisions of ss. 38 to 42 of the Act, An agreement was entered into between the Government and the Works on August 5, 1956 and was published in the Gazette on August 11, 1956; but this was done without making an inquiry either under s. 5A or s. 40 of the Act. Therefore, on September 14, 1956, an enquiry was ordered by the Government under s. 40. The enquiry was accordingly made and the inquiry submitted his report on October 3, 1956. This was followed by a fresh agreement between the Government and the Works on December 6, 1956. On December 7, 1956, a fresh notification was issued under s. 6 of the Act after the formalities provided under ss. 38 to 42 had been completed. Thereupon the appellant filed another writ petition on January 29, 1957, challenging the notification of December 7, 1956 on various grounds.

It is not necessary to give in detail the grounds on which the notification of December 7, 1956 was attacked. It is enough to say that one of the grounds was that the notification was invalid as it was not in compliance with s. 40(1)(b) of the Act read with the fifth clause of the matter to be provided in the agreement under s. 41. The learned Single Judge however held that the agreement was in accordance with the provisions of ss. 40 and 41. He also held that there was no force in the other contentions raised on behalf of the appellant and dismissed the petition. The appellant then went in appeal which was dismissed. He then applied for a certificate to enable him to appeal to this Court, which was granted; and that is how the matter has come up before us.

The only question that has been urged on behalf of the appellant before us is that the consent of the Government is being sought to be given to an acquisition for a company which is not in accordance with s. 40(1)(b) read with the fifth clause of the matters to be provided in the agreement under s. 41 and therefore the notification of December 7, 1956 is invalid.

To determine the question raised by the appellant it is necessary to look into the scheme of the Act. The preamble to the Act shows that it is an amending Act enacted for the purpose of "acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be paid on account of such acquisition." Section 3(e) defines the expression "company." The expression "public purpose" is given an inclusive definition in s. 3(f). Then comes s. 4 which provides for the issue of a preliminary notification to the effect that land in any locality is needed or is likely to be needed for any public purpose. On the issue of such notification steps are taken to survey the land and take all other action necessary to decide whether the land is fit for the purpose for which it is needed and in that connection s. 5A provides for objections by any person interested in the land, and the Collector hears the objector and submits has report to Government for appropriate action. Then comes s. 6 which is in these terms:-

> "(1) Subject to the provisions of Part VII of this Act when the appropriate Government is satisfied, after considering the report, if any, made under s. 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders :
>
> Provided that no such declaration shall be made unless the Compensation to be awarded for such property is to be paid by the Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.
>
> #(2) x x x x##
>
> (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

Where however land is to be acquired for a company no notification under s. 6 can be issued till the provisions of Part VII of the Act are complied with, for action under s. 6 for acquiring land for a company is subject to the provisions of Part VII. This is made further clear by s. 39 which lays down that "the provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned." Before therefore the

machinery provided for acquisition of land under ss. 6 to 37 (both inclusive) of the Act is put into force for acquiring land for a company two conditions precedent must be fulfilled, namely, (i) the previous consent of the appropriate Government has been obtained and (ii) an agreement in the terms of s. 41 has been executed by the company : (see Baba Barkya Thakur v. The State of Bombay) [1961] 1 S.C.R. 128]. In that case the notification under s. 4 of the Act was challenged as it did not say that the land was required for a public purpose as provided therein but only said that the land was required for a company. This Court however pointed out that -

> "though it may appear on the words of the Act contained in Part II, which contains the operative portions of the proceedings leading up to acquisition by the Collector that acquisition for a Company may or may not be for a public purpose, the provisions of Part VII make it clear that the appropriate Government cannot permit the bringing into operation the effective machinery of the Act unless it is satisfied as aforesaid, namely, that the purpose of acquisition is to enable the Company to erect dwelling houses for workmen employed by it or for the provision of amenities directly connected with the Company or that the land is needed for construction of some work of public utility. These requirements indicate that the acquisition for a Company also is in substance for a public purpose inasmuch as it cannot be seriously contend that constructing dwelling houses, and providing amenities for the benefit to the workmen employed by it and construction of some work of public utility do not serve a public purpose."

Therefore, though the words "public purpose" in ss. 4 and 6 have the same meaning, they have to be read in the restricted sense in accordance with s. 40 when the acquisition is for a company under s. 6. In one case, the notification under s. 6 will say that the acquisition is for a public purpose, in the other case the notification will say that it is for a company. The proviso to s. 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where however the acquisition is either for a company, the compensation would be paid wholly by the company. Though therefore this distinction is there where the acquisition is either for a public purpose or for a company, there is not a complete dichotomy between acquisitions for the two purposes and it cannot be maintained that where the acquisition is primarily for a company it must always be preceded by action under Part VII and compensation must always be paid wholly by the company. A third class of cases is possible where the acquisition may be primarily for a company but it may also be at the same time for a public purpose and the whole or part of compensation may be paid out of public revenues or some fund controlled or managed by a local authority. In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of s. 6 which lays down that acquisition may be made for a public purpose if the whole or part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority. Such was the case in Pandit Jhandu Lal v. The State of Punjab [[1961] 2 S.C.R. 459]. In that case the acquisition was for the construction of a labour colony under the Government sponsored housing scheme for the industrial workers of the Thapar Industries Co-operative Housing Society Limited and part of the compensation was to be paid out of the public funds. In such a case this Court held that "an acquisition for a company may also be made for a public purpose within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds" and therefore it was not necessary to go through the procedure prescribed by Part VII. It is only where the acquisition is for a company and its cost is to be met entirely by the company itself that the provisions of Part VII apply. In the present case it is not the case of the respondents that any part of the compensation is to be paid out of what may be called public funds. It is not in dispute that the

entire compensation is to be paid by the Works and therefore the provision of Part VII would apply to the present case; and it is in this background that we have to consider the contention raised on behalf of the appellant.

We have already pointed out that s. 39 as well as the opinion words of s. 6 make it clear that the operative provisions of the Act for the purpose of acquiring land for a company will only apply when two conditions precedent have been satisfied, namely, (i) the previous consent of the appropriate government has been given to the acquisition, and (ii) the company has entered into an agreement as provided in the Act. This takes at to ss. 40, 41 and 42 of the Act. Section 40 lays down when the consent of the appropriate government can be given. Section 41 lays down the terms which must be incorporated in the agreement. Section 42 then provides that every such agreement shall be published in the official gazette and shall thereupon so far as regards the terms on which the public shall be entitled to use the work have the same effect as if it had formed part of the Act.

Now s. 40(1) lays down that such consent shall not be given unless the appropriate government is satisfied either on the report of the Collector under s. 5A(2) or by an inquiry 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 a work, and that such work is likely to prove useful to the public.

The Government therefore cannot give consent to the acquisition of land for a company unless it is satisfied about one or other of the two conditions mentioned in s. 40(1). We are in the present case not concerned with cl. (a) of s. 40(1) and need not refer to it further. The case of the respondents is that the Government was satisfied as to cl. (b) of s. 40(1) and that is why it gave the consent required under s. 39. The main dispute before us is as to the meaning to be given to cl. (b) of s. 40(1).

We are of opinion that it is not possible to interpret s. 40(1)(b) in isolation and by itself; it has to be interpreted in the context of what is provided in s. 41 about the agreement to be entered into between the Government and the company which agreement becomes a part of the Act under s. 42 so far as regards the terms on which the public shall be entitled to use the work. Now s. 41 provides that if the appropriate government is satisfied that 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, it shall require the company to enter into an agreement with it, providing to the satisfaction of the appropriate government for the following matters, namely -

(1) the payment to the appropriate Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the company;

(3) the terms on which the land shall be held by the company;

(4) where the acquisition is for the purpose of erecting dwelling houses or 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

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

It will be clear from the above that the fifth term is directly related to s. 40(1)(b) and there can be no doubt that in finding out what is meant by s. 40(1)(b) we must take into account the fifth term in s. 41 and it is only by reading the two together that it will be possible to find out the intention of the legislature when it provided for acquisition of land for a company through the machinery of the Act.

We may here set out the contentions of either side as to the interpretation of these provisions. It is contended for the appellant that though the words of s. 40(1)(b) are wide in amplitude and provide for acquisition of land for construction of some work which is likely to prove useful to the public, these words do not carry the meaning that if the product of the company which constructs the work is useful to the public, land can be acquired for it. It is urged that on this interpretation the Government will be turned into a sort of agent for acquiring lands for all companies which produce something which may be used by the public. It is therefore contended that when s. 40(1)(b) says that acquisition may be made for the construction of some work which is likely to prove useful to the public, it is not the product of the work which should be useful to be public but the work itself should be of direct use to the public; and it is further urged that this interpretation of s. 40(1)(b) is confirmed if one looks at the fifth term to be provided in the agreement according to s. 41. That requires that the agreement should provide for the terms on which the public shall be entitled to use the work. It is urged that this means that the public should be entitled to use the work as such and not merely the product of the work.

On the other hand it is contended for the respondents that the words in s. 40(1)(b) are of wide amplitude and land can be acquired under the Act for any company when the work set up by the company is likely to prove useful to the public. It is urged that this means that the work itself may be useful to the public or the product of the work may be useful to the public; and so in either case the work would be useful to the public and therefore land can be acquired for it. It is also urged that the fifth term in s. 41 should not be held to cut down the wide amplitude of the work's used in s. 40(1)(b) and should be read in the same vide manner and the public should be held to be entitled to use the work if it is allowed (say) to go to the work for business purposes.

The respondents rely of Ezra v. The Secretary of State [[1903] I.L.R. 30, Cal. 36] in support of their interpretation of the relevant words in ss. 40 and 41. In that case the Bank of Bengal, a Company which was incorporated under Act XI of 1876, was anxious to extend its premises for the purpose of providing accommodation for the Public Debt Office. The Bank was unable to acquire the premises required by it by private treaty and therefore approached the Government to acquire the land for it under the Land Acquisition Act. Action was consequently taken under Part VII of the Act for acquisition of the premises for the company and the agreement provided that the public, subject to the Act constituting and the bye-laws regulating the Bank, shall be entitled to use the said building or buildings in relation to the said Government business so far as the same might be utilised by the Bank for the purposes of such business. It was urged before the High Court that this was not sufficient compliance with the fifth term of the agreement provided by s. 41. The High Court repelled this contention on the ground, firstly that the Government was vested with absolute discretion in this matter and was the sole custodian of the public interest in this country, and secondly that the rights of the public generally were dependant upon the Government business and the Government had considered the conditions therein inserted as sufficiently safeguarding its interests. It was further held that that Court had no power to enter upon a consideration of the

question how far that provisions sufficiently safeguarded the interests of the Government or of the public, of which it was the custodian (see pp. 79-80). The problem that has been posed before us does not appear to have been posed before the High Court in that form. Further the High Court seems to have thought that as the sections provided for the satisfaction of the Government there was no power in a court to enter upon a consideration of the question how far that provision safeguarded the interests of the Government or of the public. This decision seems to suggest that the Government's decision as to the terms is completely final and as the Government was satisfied by the terms it had imposed in that case the matter was no longer open before the court. All that we need say about this case is, as already pointed out, that the question was not raised before the High Court in the manner in which it has been raised before us and that may account for the view taken by the High Court. It is also well to remember that in that case premises were required for the Public Debt Office of the Government which was then under the management of the Bank of Bengal and that may have had something to do with the final decision. But in any case, this case does not lay down that it is for the Government to determine what the relevant words in ss. 40 and 41 mean, though the High Court is right when it says that it is not for the court to enter upon a consideration of the question how far the provision made by the Government in the terms of the agreement sufficiently safeguards the interests of the public, that being a matter entirely for the satisfaction of the Government. But as the matter was not considered by the High Court from the point of view from which it has been argued before us, this case cannot be treated as a decision on the interpretation of the relevant words in ss. 40 and 41 merely by implication. In any case, if by implication the said decision supports the respondents' contention, it does not correctly represent the true legal position in that behalf. In our opinion the interpretation of the material terms in s. 40(1)(b) and the fifth term of the agreement provided in s. 41 read together is and must always be within the jurisdiction of the court.

Turning now to the opposing contentions as to the meaning of the relevant words in ss. 40 and 41, we have already said that the two provisions of ss. 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 ss. 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 ss. 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 there owners may make profits. It can hardly be denied that a company which will satisfy the definition of that word in s. 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 purposes 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 ss. 40 and 41. The very fact therefore that the power to use the machinery of the Act for the acquisition of land for a company is conditioned by the restrictions in ss. 40 and 41 indicates that the legislature intended that land should be acquired through the coercive machinery of the Act only for the restricted purpose mentioned in ss. 40 and 41, which would also be a public purpose for the purpose of s. 4. 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. If therefore the legislature intended by the provisions of ss. 40 and 41 that there should be restrictions on the power to acquire land for companies it can only be given effect to by putting the narrower meaning on the words used in ss. 40 and 41, as contended for by the appellant. Further, reading s. 40(1)(b) and the fifth term of the agreement as provided in s. 41 together (as they must in our opinion be read together in order to find out the real intention of the legislature) there can be no doubt that the only meaning to be given to these provisions read together is, as contended for on behalf of the appellant. In this connection we ought to add that as we shall presently point out the material words of the fifth term in the agreement provided in s. 41 are reasonably incapable of the construction suggested by the respondents.

Let us therefore turn to the words of s. 40(1)(b), which says that acquisition should be for some work which is likely to prove useful to the public. Now if the legislature intended these words to mean that even where the product of the work is useful to the public, land can be acquired for the company for that purpose, the legislature could have easily used the words "the product of" before the words "such work". The very fact that there is no reference to the product of the work in is no reference to the product of the work in s. 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. We have no doubt therefore that when s. 40(1)(b) says that the work should be useful to the public it means that it should be directly useful to the public which should be able to make use of it. This meaning in our opinion is made perfectly clear by what is provided in the fifth term in s. 41. Before the machinery of the Act can be put into operation to acquire land for a company, the Government has to take an agreement from the company, and that agreement must provide, where acquisition is needed for the construction of some work and that work is likely to prove useful to the public, the terms on which the public shall be entitled to use the work. These works can only mean that the public should have a right to use the work itself and not the product of it; and it is the duty of the Government when it takes an agreement under s. 41 to see that the public is so entitled to use the work. 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 herein and before 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 s. 41. Such use for business is implicit in every business, even if the Government does not acquire land for it, for no company can carry on for a moment its business with any profit if it does not allow those with whom it has business to come to its premises. Therefore, when the fifth term provides for the use of the work by the public as of right it cannot possibly envisage the use only by those who have business with a factory (for example) and their going there to transact business; such use would in any case have to be permitted by the owner of the company, as otherwise it will not be worth his while to run the company at all. Therefore, when the fifth term provides that "the public shall be entitled to use the work" it means that the public shall be entitled to use the work directly and as of right for its own benefit and does not mean that those who have business with the company can go upon the work for that business. Reading therefore s. 40(1)(b) and the fifth term of the agreement provided in s. 41, there is in our opinion no doubt that the intention of the legislature was that land should be acquired only when the work to be constructed is directly useful to the public and the public shall be entitled to use the work

as such for its own benefit in accordance with the terms of the agreement which under s. 42 are made to have the same effect as if they form part of the Act. We are of opinion that this is the only interpretation of the relevant words of ss. 40 and 41, and the legislature could not have intended otherwise.

Let us now turn to some of the arguments advanced on behalf of the respondents against the clear intention of the legislature which is deducible from the interpretation of the words used in ss. 40 and 41. It is urged in the first place that ss. 40 and 41 both provide for the satisfaction of the Government and it is the Government which has to be satisfied that the work is likely to prove useful to the public and further that it is the Government which has to be satisfied that the terms contain a provision as to how the public shall be entitled to use the work. It is further urged that as the Government in this case was satisfied that the Works was useful to the public and was also satisfied as to the terms in the agreement on which the public shall be entitled to use the Works, the court has no further say in the matter. We are of opinion that this argument is entirely fallacious. It is true that it is for the Government to be satisfied that the work to be constructed will be useful to the public; it is also true that it is for the Government to be satisfied that there is a term in the agreement providing that the public shall be entitled to use the work; but this does not mean that it is the Government which has the right to interpret the words used in s. 40(1)(b) or in the fifth term of the agreement in s. 41. It is the court which has to interpret what those words mean. After the court has interpreted these words, it is the Government which has to carry out the object of ss. 40 and 41 to its satisfaction. The Government cannot say that ss. 40 and 41 mean this and further say that they are satisfied that the meaning they have given to the relevant words in these sections has been carried out in the terms of the agreement provided by them. It is for the court to say what the words in ss. 40 and 41 mean though it is for the Government to decide whether the work is useful to the public and whether the terms contain provisions for the manner in which the public shall be entitled to use the work. It is only in this latter part that the Government's satisfaction comes in and if the Government is satisfied that satisfaction may not be open to challenge; but the satisfaction of the Government must be based on the meaning given to the relevant words in ss. 40 and 41 by the court. The Government cannot both give meaning to the words and also say that they are satisfied on the meaning given by them. The meaning has to be given by the court and it is only thereafter that the Government's satisfaction may not be open to challenge if they have carried out the meaning given to the relevant words by the court. The argument therefore that it is the Government's satisfaction which is required both by s. 40 and s. 41 is of no help to the respondents, for it is for the court to say what these words mean and then see whether the Government are satisfied according to the meaning given to these words by the court. We have already indicated what these words mean and if it plainly appears that the Government are satisfied as a result of giving some other meaning to the words, the satisfaction of the Government is of no use, for then they are not satisfied about what they should be satisfied. In the present case the Government seems to have taken a wrong view that so long as the product of the Works is useful to the public and so long as the public is entitled to go upon the Works in the way of business, that is all that is required by the relevant words in ss. 40 and 41. We have held that this is not the meaning of the relevant words in ss. 40 and 41 and therefore the Government's satisfaction on this meaning cannot be binding and would be worthless.

Learned counsel for the respondents also relied on certain American decisions and pointed out that the trend in the United States of America these days was to give a wide meaning to the power of eminent domain contained in the fifth amendment to the Constitution of the United States. The fifth amendment lays down as follows in this respect :-

"nor shall private property be taken for public use, without just compensation."

It seems that there has been controversy in America as to the meaning of the words "public use" used in the above amendment and there are two views prevalent. The older view was, and it is still held in some States, that "public use" means "use by the public - that is, public employment - and consequently that to make a use public, a duty must devolve on the person or corporation holding property appropriated by the right of eminent domain to furnish the public with the use intended, and that there must be a right on the part of the public, or some portion of it, or some public or quasi-public agency on behalf of the public, to use the property after it is condemned". The later view is that "public use" means "public advantage, convenience, or benefit, and that anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the State, or which leads to the growth of towns and the creation of new resources for the employment of capital and labour contributes to the general welfare and the prosperity of the whole community and giving the Constitution a broad and comprehensive interpretation, constitutes a public use" (see American Jurisprudence. Vol. 18. pp. 661-62). In one State, where the older view is still held, the court pointed out that "if public use were construed to mean that the public would be benefited in the sense that the enterprise or improvement for the use of which the property was taken might contribute to the comfort or convenience of the public, or a portion thereof, or be esteemed necessary for their enjoyment, there would be absolutely no limit to the right to take private property, that it would not be difficult to show that a factory, hotel, etc., the erection of which was contemplated, would result in benefit to the public, and that, under this power, the property of the citizen would never be safe from an invasion." (see ibid. p. 664) It is the later view prevalent in some States in America for which the respondents are contending, and the result of that would be the same as pointed out above. But we do not think it necessary to examine the American cases cited before us because the words in our statute are not pari materia with the words used in the fifth amendment to the American Constitution. The fifth amendment contemplates that private property shall not be acquired except for public use. The public use there is thus connected with the purpose of acquisition and may perhaps in certain conceivable circumstances depending upon the conditions in a particular State, be open to a wider interpretation. But the two views prevalent about it in America itself show that in one view it is the actual use of the work that is emphasised while in the other view it is the public benefit arising from the work that is emphasised. Now so far as the words in the Act are concerned, it is to our mind perfectly obvious that it is the actual use of the work which the Act envisages and not the public benefit that might directly of indirectly arise from the use of the land acquired. This is clear from the words used both in s. 40(1)(b) and the fifth term of the agreement provided in s. 41. Section 40(1)(b) requires that the acquisition is for the construction of same work, and that that work is likely to prove useful to the public. It does not say that the acquisition of land would be useful to the public. Further the fifth term in the agreement provided in s. 41 makes this clear beyond all doubt for it provides that the agreement shall contain the terms on which the public shall be entitled to use the work. These words therefore in the Act are clearly referable to the narrower view prevalent in America, which emphasises the use by the public of the actual work constructed. We are therefore of opinion that the respondents can derive no advantage from the American cases cited on their behalf to show the wider interpretation of the words used in the fifth amendment to the American Constitution.

Another argument on behalf of the respondents is based on S. 50 of the Damodar Valley Corporation Act (No. XIV of 1948) which provides that "any land required by the Corporation for carrying out its functions under this Act shall be deemed to be needed for a public purpose and such land shall be acquired for the Corporation as if the provisions of Part VII of the Land Acquisition

Act, 1894 (1 of 1894), were applicable to it and the Corporation were a company within the meaning of cl. (e) of s. 3 of the said Act." That section is not before us for interpretation and it is therefore not necessary for us to say anything about the scope and meaning of that section. All that we need point out is that that section was not enacted to explain what the legislature meant by the use of the relevant words in ss. 40 and 41. Whatever therefore may be the interpretation of that section and whatever may be the reason why the legislature enacted that section in that Act that will not control the meaning of the relevant words in ss. 40 and 41, and it is therefore not necessary for us to interpret that section in the present proceedings. As against this, learned Counsel for the appellant pointed out that there are many other later Acts creating statutory corporations like the Damodar Valley Corporation, in which there is no provision corresponding to s. 50. That again is a matter into which we need not go, and it is unnecessary to consider why the legislature provided s. 50 in the Damodar Valley Corporation Act and did not provide some similar section in other Acts creating statutory corporations which were enacted after the Damodar Valley Corporation Act was put on the statute book. These considerations in our opinion have no relevance to their interpretation of the relevant words of ss. 40 and 41 of the Act and we do not therefore propose to say anything about s. 50 of the Damodar Valley Corporation Act. We may add that the works are not like the Damodar Valley Corporation and what we say in the present case may not necessarily be taken to apply to a statutory corporation like the Damodar Valley Corporation, which is wholly owned by the State.

Then it was urged on behalf of the respondents that s. 6(3) makes the purpose noted in the notification under s. 6(1) not justiciable. We have not been able to understand how that provision helps the respondents. All that s. 6(3) says is that the declaration shall be conclusive evidence that the land is needed for a public purpose or for a company. In this case the declaration was that the land was needed for a company and that according to s. 6(3) is conclusive evidence that the land is so needed. Now it is not the case of the appellant that the land was not needed for the Works in the present case, nor does the appellant say that though the land was needed for some other purpose, the notification falsely declares that it was needed for the Works. In the circumstances the conclusiveness envisaged by s. 6(3) is of no assistance to the solving of the problem with which we are concerned in the present case.

It is then urged for the respondents that though the appellant had alleged mala fides, that part of the case was given up by him and therefore it is not open to him to urge the contentions that have been urged before us. There is no force in this argument either, for there is no question of any mala fides or fraud on the Act in the present case. What the appellant contends is that the relevant words in ss. 40 and 41 have a certain meaning and that on that meaning the action of the State Government in giving consent for the use of the machinery provided in the Act for the acquisition of land for the Works is not within the contemplation of the Act. This contention has nothing to do with mala fides or with fraud on the statute. It has always been the case of the appellant that the consent given by the Government was not within the meaning of the relevant words in ss. 40 and 41 and therefore the entire proceedings for acquisition of the appellant's land must be quashed, for the conditions precedent for the issue of the notification under s. 6 had not been complied with. On that case the appellant must succeed, if we accept the meaning for which he contends, and that has nothing to do with mala fides of fraud on the statute on the part of the Government.

Lastly we may notice an argument on behalf of the appellant that if we look to the history behind the legislation which culminated into the Act, we shall find that acquisition for a company was always for construction of some work which the public could use. Reference in this connection was made to Act XXII of 1863 which provided for acquisition for private individuals and companies.

That Act applied to works of public utility, which were defined under s. II to mean any bridge, road, railroad, tramroad, canal for irrigation or navigation, work for the improvement of a river or harbour, dock, quay, jetty, drainage work or electric telegraph and also all works subsidiary to any such work. At the same time there was another Act in force, namely, Act VI of 1857, which provided for acquisition of land for public purposes. Then came the Act (X of 1870), which repeated both Acts No. VI of 1857 and No. XXII of 1863 and made a consolidated provision for acquisition of land for public purposes and for companies and brought in Chap. VII for the first time. This Act was replaced in 1894 by the present Act. However, Act X of 1870 was a consolidating and amending Act. The Act of 1894 is also an amending Act. Therefore, it is not possible to derive much assistance from the previous law existing before the Act of 1870 was passed, for it not only consolidated the previous law but also amended it. We have therefore to interpret the Act on the words as they now stand and cannot derive much assistance from the provisions of Act XXII of 1863. That is why we have interpreted above the relevant words of ss. 40 and 41 without any reference to the past history of the law relating to acquisition of land for public purposes and for companies.

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 under s. 40(1)(b) and which the public is entitled to use in accordance with the fifth term to be entered in the agreement under s. 41. We have already set out the term in 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 herein and before 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 ss. 40 and 41 require. What these provisions require is that the work should be directly useful to 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 ss. 40(1)(b) and 41 it is works like a hospital, a public reading room or a library or an educational institution open to that 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. This is also the implication of the following observations of this Court in Babu Barkya Thakur's case [[1961] I.S.C.R. 128] at pp. 137-38 with reference to ss. 40 and 41 :

> "In an industrial concern employing a large number of workmen away from their homes it is a social necessity that there should be proper housing accommodation available for such workmen. Where a large section of the community is concerned, its welfare is a matter of public concern. Similarly, if a Company is generous enough to erect a hospital or a public reading room and library or an educational institution open to the public, it cannot be doubted that the work is one of public utility and comes within the provisions of the Act."

The fact that the product of the company would be useful to the public is not sufficient to bring the acquisition for a company within the meaning of the relevant words in ss. 40 and 41. In the present case all that the Government was satisfied about appears to be that the product of the company will be useful to the public and the provision in the agreement is merely that the public shall be able to go upon the works for purpose of business. This in our opinion is not the meaning of the relevant words under ss. 40 and 41 and therefore the Government's satisfaction in that behalf is not enough to entitle it to use the machinery of the Act for the purpose of acquisition in this case. We therefore allow the appeal with costs and setting aside the order of the High Court quash the notification under s. 6 of the Act and the proceedings resulting therefrom.

SARKAR, J. –

The appellant was the owner of certain lands. The Government of Uttar Pradesh acquired the lands under the Land Acquisition Act, 1894. The appellant, thereupon, moved the High Court at Allahabad under Art. 226 of the Constitution for an appropriate with to quash the order of acquisition made by the Government. The petition was dismissed by the High Court and the appellant has filed this appeal against the judgment of the High Court. The land, it may be stated, was acquired by the Government for a company called the Lakshmi Ratan Engineering Works Ltd., which required it for setting up a textile machinery parts factory.

Sections 6 to 37 of the Act lay down the procedure for all acquisitions under it. Part VII of the Act, which consists of ss. 38 to 44 provides for acquisition of lands for companies for certain specified purposes. It is not in controversy that the acquisition in the present case was made under this part. It is necessary to set out ss. 39, 40 and 41 of Part VII to appreciate the contention of the appellant :

> S. 39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Government, not unless the Company shall have executed the agreement hereinafter mentioned.
>
> S. 40. (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under section 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 workman employed by the Company or for the provision of amenities directly connected therewith, or
>
> (b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.
>
> (2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.
>
> (3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and as far as possible, in the same manern as is provided by the Code of Civil Procedure in the case of a Civil Court.

S. 41. If the appropriate Government is satisfied after considering the report, if any, of the Collector under section 5A, subsection (2), or on the report of the officer making the inquiry under section 40 that the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workman employed by the Company of 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, it shall require the company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely :-

> (1) the payment to the appropriate Government of the cost of the acquisition;
>
> (2) the transfer, on such payment of the land to the company;

(3) the terms on which the land shall be held by the Company;

(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenties 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

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

There is no dispute that the Government declared that it was satisfied that the acquisition needed for the construction of a work, namely, a textile machinery parts factory and that this work was likely to prove useful to the public but the appellant contends that such a factory is not a work contemplated by s. 40(1)(b) and the Government had no right, therefore, to give its consent to the acquisition. The precise significance of this contention will have to be stated more fully later.

The first point taken by the respondents against this contention of the appellant is that the satisfaction of the Government under s. 40(1)(b) is subjective and that a declaration in the official gazette that the acquisition is for a public purpose is under s. 6(3) conclusive and cannot therefore be questioned in a court. I think that the appellant is right when he says that this conclusiveness is of no avail unless the work can be said to be within s. 40(1)(b). The Government cannot by simply making a declaration that it is satisfied that the acquisition is needed for the construction of some work likely to prove useful to the public stop further enquiries even though the satisfaction contemplated is the Government's subjective satisfaction. If the work is not within the Act, the Government's satisfaction avails nothing. And that is the contention of the appellant. No doubt if the Government says it is satisfied, it cannot be contended that it is not satisfied, But the Government has to be satisfied about a specified thing and a question can be raised as to whether the thing about which the Government is satisfied is the thing contemplated by the section. I therefore, proceed to consider whether the work about which the Government was satisfied in the present case, is within s. 40(1)(b).

The real question raised by the appellant is as to the meaning of the words "such work is likely to prove useful to the public" in cl. (b) of s. 40(1). What is a work likely to prove useful to the public ? The appellant says it is a work which the public can use for the purpose for which it was constructed. Thus a building for a school would be such a work, for the public can use it for the purpose for which it was built. So would a building for a hospital or library be. It is said that this is the natural and ordinary meaning of the words. The it is said, even if it were not so, they have to be so read in view of ss. 39 and 41. The matter is put in this way : In view of s. 39 land cannot be acquired under Part VII unless two conditions are fulfilled. The first is the consent of the Government to the acquisition which, in view of s. 41, cannot be given - leaving out the cases of acquisition for workmen's dwelling houses with which we are not concerned now - unless the acquisition is needed for the construction of a work which is likely to prove useful to the public. The second is the execution of an agreement by the Company providing for the matters stated in s. 41, one of which is the terms on which the public shall be entitled to use the work to be constructed on the land to be acquired, about which work the Government has been satisfied that it is likely to prove useful to the public. Since both these conditions have to be fulfilled, the work must be such as the public can use directly; if it were not such a work then the condition as to the agreement cannot be fulfilled. Therefore, the work in s. 40(1)(b) must necessarily be restricted to a work which itself

can be used by the public.

The appellant contends that the work in the present case being a factory, it is not one which the public can use and, therefore, it is not a work for setting up of which the Government could under s. 40(1)(b) give its consent to the acquisition. It appears that in the present case the Company had executed an agreement purporting to be in terms of s. 41 and that agreement provided that the public would have a "right of access to and use of the land-works............... as may be necessary for the transaction of their business with the firm," that is the, Company. It is contended by the appellant that this is not a compliance with the second condition. It is said that this is not really providing for the use of the work for that means use by the public of the work, for the purpose for which it was built. Hence, it is argued, that the acquisition is illegal.

I am unable to accept the appellant's reading of s. 40(1)(b) as correct. The words "such work is likely to prove useful to the public" read by themselves seem to me plainly to imply a work the construction which results in some benefit which the public would enjoy. They do not contemplate only a work which itself can be put by the public to its use. For example, a work producing electricity for supply to the public is a work which is useful to the public. So also a work producing any commodity like say, medicines or cloth would be a work which would be useful to the public. Again, I feel no doubt that a radio broadcasting station would be a work which would be useful to the public. Take another case, namely a post-graduate college turning out a small number of highly qualified medical doctors. There can be no doubt that the building for the college can be said to be a work useful to the public. It would be so not because the public would have a chance of getting training there and a small number of the members of the public would after the training be able to make a good livelihood, but because an institution of this kind is useful to the public as it turns out men who give very useful service to the public. In all the illustrations given the works would be useful to the public though the public might have no access to the work or any right to use them directly. I think it would be unduly restricting the meaning of the word 'useful' to say that a work is useful to the public only when it can directly be used by the public. The words "are not work which the public can use", in which case it might with some justification have been said that the work must be such as the public could use. In the Shorter Oxford Dictionary, among the meanings of 'useful' appear, "having the qualities to bring about good or advantage", "helpful in effecting a purpose". I find no reason not to apply these meanings to the word 'useful' in the section that I am considering.

If the meaning for which the appellant contends were to be given to the words, then the work contemplated can only be a work like a hospital, school or philanthropic institutions of similar kind which itself the public can put to its use. It seems to me that it would be strange if the section only contemplated that, Part VII clearly deals with companies as business institutions. A company in the Act means a company incorporated under one or other of certain Companies Acts and includes a society registered under the Societies Registration Act, 1860 and a registered society within the meaning of the Co-operative Societies Act, 1912 : see s. 3(e). Now the first and the last are essentially business institutions. Under s. 38A again, a company for the purpose of part VII is to include "an industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company". This again is essentially a business organisation. It is true that land cannot be acquired for this last mentioned variety of "Company" under Part VII except for erection of dwelling houses for its workmen or for amenities connected therewith. I am however referring to s. 38A to show that Part VII is dealing with "companies" as business organisations and not as donors for philanthropic purposes. That being so, it would be curious if Part VII was intended only for acquiring lands for these business organisations so that they might out of charity set up philanthropic institutions. If encouragement of

philanthrophy was the idea behind Part VII, why were its provisions not made available to philanthropic minded private individuals or associations of individuals ?

Another reason which to my mind indicates that s. 40(1)(b) is not confined to philanthropic institutions is that the word 'work' would hardly then have been used; it is to my mind a very inappropriate use of the word 'work' to describe a philanthropic institution. 'Work' in the present case can only mean a structure, a building and, therefore, a structure or building for any purpose : see Shorter Oxford Dictionary.

Section 40, furthermore, contemplates and enquiry for determining whether the work is likely to prove useful to the public in course of which it may even be necessary to compel the attendance of witnesses and production of documents. This is not an enquiry to hear the objections of the owner of the land to be acquired, to the acquisition : Ezra v. Secretary of State [32 I.A. 93]. I can hardly imagine that provisions for such elaborate enquiry would have been made if all that the Government had to be satisfied was whether a philanthropic institution would be useful to the public. It would also appear inexplicable that Part VII was needed at all for the purpose of acquisition of land for the establishment of philanthropic institutions by companies for that could well have been done under s. 6 as that would clearly be an acquisition for a company for a public purpose. It do not suppose there can be any doubt that the establishment of a philanthropic institution would be a public purpose. I am unable to agree with the contention that land can be acquired for a company only under Part VII. Section 43 says that this Part would not apply to acquisition of land for a company for the purposes of which under an agreement with the company, the Government is bound to provide land. Acquisition in such cases for the company has therefore to be under ss. 6 to 37. It would follow that under s. 6 land can be acquired for a company in a case not coming under Part VII. In the view that land can be acquired for a company under the Act otherwise than under Part VII, I am supported by A. Natesa Asari v. The State of Madras [[1953] 2 M.L.J. 684].

Lastly, I think it right to point out that though the provisions in Part VII have been on the statute book since at least 1870, in not a single case it appears to have been held in all these years that the work contemplated is work of a philanthropic nature which the public can put to its use directly. I am not saying that this is an argument which is conclusive but it strikes me a somewhat extraordinary if the meaning was as the appellant contends, it should not have struck anyone so long. In Ezra v. Secretary of State [32 I.A. 93], an acquisition of land for the Bank of Bengal under Part VII for the purpose of constructing a building in which the Public Debt Office of the Government which was in charge of the Bank, was to be housed, was upheld. This was not a case of acquisition for a philanthropic purpose. In Radha Raman v. State of U.P. [A.I.R. 1954, All. 700], an acquisition under Part VII for the purpose of a co-operative housing society was upheld. In Ranibala Bhar v. State of West Bengal [62 C.W.N. 73] an acquisition for extension of the textile mills of a company was upheld.

Reading s. 40(1)(b) by itself, I am for these reasons unable to accept the view that the work there contemplated is only a building or other construction put up for a philanthropic purpose or is such as itself can be used by the public. In my opinion, the work contemplated is a work from the construction of which the public can in any way derive benefit, whether by the direct use of the work or by the enjoyment of the fruits of the activities carried on there, or, may be, otherwise.

The question then is, however wide may be the meaning of the works "work.............. likely to prove useful to the public" when read by themselves, has that meaning to be controlled in view of the fact that under s. 41 an agreement has to be made with the company concerning the work

providing for the terms on which the public can use it ? Is that meaning to be restricted and the words understood as contemplating only a work which is capable of meaning to be restricted and the words public directly ? I do not think so. That would not be a reasonable way of interpreting the statute. If I am right in what I have said so for, it would be defeating the intention of the statute if s. 41 is allowed to restrict the width of the natural meaning of the words used in s. 40(1)(b). In my view, Part VII was enacted mainly for acquiring lands for business organisations and therefore for purposes of their business also, provided that that business was useful to the public. Obviously, in a very large majority of cases of such acquisition it would not be possible to permit the use by the public of the works put up on the land. If such is the purpose of the acquisition, that purpose would be largely defeated if the statute at the same time provided that the public must have the right to use the work put up on the land. A construction leading to such a result would in my view be wholly unjustified. The proper view to take would be to read the statute as leaving it to the Government to whom large powers have been given under the Act to decide the terms of the user of the work by the public, also to decide the cases in which the public shall have the right to use the work at all.

I think that the interpretation suggested by me has the support of authority. It has to be observed that when it is said that the meaning of s. 40(1)(b) must be restricted to bring it in consonance with s. 41, it is conceded that the two sections cannot stand side by side, each having its full operation. Now, in such a case, I conceive it is the duty of the Court to remove the conflict by such interpretation as would carry out the intention of the legislature. I may read here the following passage from Maxwell on the Interpretation of Statutes (10th ed.) p. 78,

> "The beneficial spirit of construction is also well illustrated by cases where there is so far a conflict between the general enactment and some of its subsidiary provisions that the former would be limited in the scope of its operation if the latter were not restricted."

In such a case the rule is to allow scope to the general enactment. Maxwell cites Cortis v. Kent Water Works [(1827) 7 B. & C. 314] in support of this proposition. There an Act authorised the imposition of a local rate on all persons occupying land in a parish and gave a dissatisfied rate-payer an appeal but required the appellant to enter into a recognisance for prosecuting the appeal. Under this Act, a corporation was subjected to a rate and a suit was brought to recover that rate. It was said on behalf of the corporation that the Act did not authorise the imposition of the rate on a corporation because it contemplated the imposition of a rate on a person who could appeal against it and that a corporation was not such a person because it could not maintain the appeal provided in the statute as that appeal was one which a person who could enter into a recognisance could prosecute, and a corporation could not enter into a recognisance. Bayley, J. observed.

> "But assuming that they cannot enter into a recognisance, yet if they are persons capable of being aggrieved by and appealing against a rate, I should say that that part of the clause which gives by the appeal applies to all persons capable of appealing, and that the other part of the clause which requires a recognisance to be entered into applies only to those who are capable of entering into a recognisance, but is inapplicable to those who are not."

I think on the same principle I should in the present case hold that the provisions in the agreement about the terms on which the public would be entitled to use the work would be inapplicable to a case where the work is such that the public cannot use it. Thus for example, if land is acquired for setting up a highly specialised drug factory, it may be a work to which public admission as of right

cannot conveniently be granted and to such a work the last part of s. 41(5) would not be applicable.

I also find some support for the view that it is not obligatory that the public shall use the work from the fact that the user of the work by the public shall be such as the Government determines. The Government may be satisfied with very little user. The Government's satisfaction as to the quantum of this user is plainly conclusive. Therefore, it would seem that the provision as to the term of the user of the work by the public was not intended to confer a substantial benefit on the public a benefit which would warrant an interpretation defeating which otherwise would appear to be the main purpose of the statute.

Another reason leading me to the view that it is not obligatory under the statute that the public must have a right to use the work is this. Obviously, the public cannot in any case have the right to use the whole work. Even if a hospital was put up, the public cannot insist on using, say the dispensing room or the place where medicines are stocked or the residential quarters of the staff. That being so, it would be for the Government to decide what user of the work would be available to the public. If the Government decides that the public shall have the use of a very small part of the work, I do not think that any complaint can be legitimately made. This would show that the term as to user by the public was in no case intended to confer a great benefit on the public. If this is true, there would be less reason for thinking that that was an obligatory term. If it was not obligatory, it cannot of course control the meaning of s. 40(1)(b).

What I have said so far does not lead to the result that Part VII was enacted for the private benefit of companies as business organisations. Nor is its effect to convert the Government into land agents for them. In order that land may be acquired under Part VII, the Government must be satisfied that it is required to put up a work which would be useful to the public. So the controlling idea is benefit to the public. It is because of this that the Government acquires the land for the Company. No doubt the Company would itself derive some private benefit from the work. But that cannot justify the view that the acquisition is for the benefit of the Company only or that the Act converts the Government into a land agent for the Company. No one can force the Government to acquire the land and when the Government does so, it does for public benefit and not solely for the Company's benefit. Take a case where land is acquired to house the workmen of a company. Here the public cannot use the land. The acquisition is no doubt for the benefit of the workmen but at the same time the financial advantage goes solely to the Company. Is it to be said that the Act is converting the Government into land agents for the Company ? Obviously not. If so, neither can it be said in the case of acquisition for a company for putting up a work that the Government would be acting as a land agent for the company.

It is no argument that the Government might use its powers under Part VII to advance the interest of its friends and supporters. Assume the Government does that. The Government may equally use all other powers given to it by various statutes for a similar purpose. But that would not justify interpreting a statute plainly giving the Government a power, as not doing so. A country cannot go on unless power can be entrusted to its Government. The remedy against the misuse of such power is not always to the Court but to those who put the Government where it is,

In the present case, it will be remembered, the land was acquired for the setting up of a textile machinery parts factory. The Government was satisfied that it was a work which would prove useful to the pubic. It seems to me that Government were entitled so to be satisfied within the meaning of s. 40(1)(b). It is no part of the duty of this Court to sit in judgment over the merits of Government's satisfaction. I think it right however to point out that I find no fault with the Government for having

been satisfied that the work would be useful to the public. Textiles are an essential commodity for our daily life. Their manufacture therefore is useful to the public. Textile manufacture requires textile mills and the mills no doubt require parts. Therefore a factory for the purpose of manufacturing these parts can, in my view, be said to serve a public purpose. I find it impossible to take any objection to the present acquisition on the ground that the work proposed to be set up is not likely to prove useful to the public. Nor is it a legitimate objection to the acquisition that the public cannot directly use the work and the reasons for this view have been earlier stated.

I would therefore dismiss this appeal with costs.

BY COURT :

In accordance with the opinion of the majority, the appeal is allowed with costs.

Appeal allowed.

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