SUPREME COURT OF INDIA

R. K. Agarwalla

Vs.

State of W.B.

C.A.No.1055 of 1963

(P. B. Gajendragadkar, C.J.I., K. N. Wanchoo, J. C. Shah, Raghubar Dayal and N. Rajagopala Ayyangar, JJ.)

18.09.1964

JUDGEMENT

SHAH J.:

1. The appellants are lessees of a plot of land No.1A, Cornfield Road in the town of Calcutta. Bharat Sevashram Sangha (hereinafter called: 'the Sangha') a society registered under the Societies Registration Act, of 1860 with its head office at 211, Rash Behari Avenue, Calcutta formed for the purpose of carrying on religious, philanthropic and charitable activities submitted an application on October 20, 1954 to the Government of West Bengal to acquire 12 cottas of land out of Plot No. 1-A, Cornfield Road, alleging that the land was required by the Sangha "for efficient running and expansion of a charitable dispensary" of the Sangha. A notification under S. 4 of the Land Acquisition Act, 1894 ,was issued by the Government of West Bengal on December 9, 1954 declaring that "for the purpose of extension of the charitable dispensary in the interest of the suffering public" a piece of land comprising a portion of premises No. 1-A, Cornfield Road, and measuring 0.1963 of an acre was likely to be acquired.

2. On October 20, 1956 the Government of West Bengal cancelled that notification and issued a fresh notification reciting that it appeared to the Governor that whereas land was likely to be needed for a public purpose namely for the Sangha for the purpose of construction of social workers' quarters, the students' home, publication department, the guest house and Panthasala in Ward No. 61 of the Calcutta Municipality in the city of Calcutta, it was notified that a piece of land comprising a portion of premises No. 1-A, Cornfield Road, and measuring more or less 0.2810 of an acre and described therein was to be acquired for the aforesaid public purpose at the expense of the Sangha. Local enquiry was made by the Second Land Acquisition Collector under S. 5-A of the Act. That officer reported that the Sangha was maintaining a student's home, publication departments, guest houses and panthsalas at various branches and that as for carrying on their activities the Sangha had no facilities, land proposed to be acquired was needed. On May 24, 1957 the Sangha being called upon by the Government of West Bengal, executed an agreement in favour of the Governor of the State of West Bebgal reciting, inter alia, in the preamble that for the purpose of construction of social workers quarters, the students' home, publication department, the guest house and panthasala the society had applied to the Government of West Bengal for acquisition under the provisions of the Land Acquisition Act 1894 of the piece of parcel of land containing 0.2810 of an acre and the Government being satisfied by an enquiry held under S. 40 of the said Act that the proposed acquisition was needed for the aforesaid purposes and that the said work was likely to

prove useful to the public, had consented to acquire on behalf of the Sangha the piece or parcel of land described in the agreement. The material terms of the agreement were:

"4. The said land shall be held by the society for the purpose of construction of social workers' quarters, the students' home, publication deptt. the guest house and panthasalas as is hereinbefore mentioned and without the sanction in writing of the said Government of West Bengal first had and obtained for no other purpose whatsoever.

5. The said social workers' quarters, the students' home, publication department, the guest house and panthasala shall be completed (and fully equipped in all respects ready for use) within four years from the date on which possession of the said land shall have been given to the society.

6. Should the said social workers' quaters, the students' home, publication department, the guest house and panthasala not be completed and fully equipped in all respects ready for use) within the period stated in the last preceding clause * * * or should the said land at any time thereafter cease for a period of twelve consecutive month to be held and used or ceased to be required for the purpose or purposes provided for in the foregoing fourth clause then and in any such case, the said Government may summarily re-enter upon and take possession of the said land together with all buildings thereon whether such buildings were erected before or after transfer of the land to the society and thereupon the interest of the Society in the said land and buildings shall absolutely cease and determine.

8. The public shall be entitled to get the benefit of the students' home, publication department, the guest house and panthasala according to the rules and regulations of the Society."

3. On May 31, 1957 a declaration under S. 6 of the Land Acquisition Act was made and published in the Calcutta Government Gazette declaring that the Governor of West Bengal was satisfied that the land notified was needed for a public purpose, namely, for the Sangha "for the purpose of construction of social workers' quarters, the students' home, publiction department, the guest house and panthasala." Notices were then issued under Ss. 9 and 10 of the Land Acquisition Act by the Land Acquisition Collector. An award was made by the Land Acquisition Collector assessing compensation payable in respect of the land by order dated March 7, 1958. Possession of the land was thereafter taken by the Government of West Bengal from the appellants on March, 8, 1958.

4. In the meanwhile on June 8, 1957 the appellants moved the High Court of Calcutta under Art. 226 of the Constitution for an order in the nature of a writ of mandamus restraining the Government of West Bengal, the Board of Revenue, the Special Officer and Deputy Secretary to the Government of West Bengal, the Second Land Acquisition Collector, Calcutta and the members of the governing body of the Sangha from giving effect to the declaration dated May 31, 1957 and subsequent proceedings thereunder and to issue an appropriate writ, direction or order rescinding or cancelling the said declaration and all proceedings or notices issued thereunder and for an interin order prohibiting the respondents from giving effect to the declaration, the notification and the notices referred to in the petition. The principal grounds set up in the petition were that the acquisition "for the purpose of the Sangha was mala fide," that there was no compliance with the requirements of Ss. 40 and 41 of the Land Acquisition Act in that in the agreement with the Government of West Bengal the clause relating to the benefit to the public by the said acquisition was vague and the benefit to the public provided thereby being illusory the proposed acquisition was a fraud on the stature, that no proper enquiry was made under S. 5-A of the Land Acquisition Act and that the acquisition was not for a public purpose. The petition was dismissed by D. N. Sinha, J. In appeal

under cl. 15 of the Letters Patent, the order was confirmed. With certificate granted by the High Court, this appeal is preferred.

5. The plea that the Government of West Bengal acted mala fide was faintly mentioned at the Bar, and it has, in our judgment, no substance. It is true that initially the Sangha had proposed acquisition of 12 cottas of land for extension of a chartitable dispensary and it was found on enquiry that the Sangha was not running any dispensary at that time. Thereafter the Sangha set up for the acquisition new purposes, viz., construction of social workers' quarters, the students home, publication department, the guest house and panthasala, and proposed that a larger piece of land than that originally suggested be acquired. The earlier notification under S. 4 in which it was notified that the land was likely to be needed for the purpose of extension of a charitable dispensary was cancelled on October 29, 1956 and on that very date a fresh notification was issued. But we are unable to hold that the acquisition by the Government was for a collateral purpose or was mala fide. A perusal of the objects set out in the memorandum of association of the Sangha clearly shows that the Sangha had been formed for purposes chartable, philanthropic and religious. There is also evidence on the record that the Sangha is a cultural and socio-philanthropic organization and its activities extend to different parts of India. The activites of the Sangha include humanitarian work for the benefit of persons in need and distress through institutions set up for "physical, mental, moral and spiritual growth of the people." It appears that the accommodation available to the Sangha at its head office was meagre and it had to shift some of its institutions into the suburbs of Calcutta, but even then some of the principal activities could not be shifted elsewhere and the Sangha was in need of acquiring additional land for its activities. The report of the Special Land Acquisition Collector who held an enquiry in December 1956 shows that the Sangha was genuinely in need of more accommodation for the head officer of the Sangha, there being "considerable overcrowding of students and complete absence of space for its publication department" and that on account of lack of space the Sangha could not maintain a guest house of the kind maintained by it in other places. No evidence was tendered by the appellants in support of their case that the purpose for which the land was to be acquired for the Sangha was not the real purpose, and that the Government issued the notification for acquisition to assist the Sangha for a collateral purpose. The learned Trial Judge observed that even if the Sangha had changed the objects for which it purposed that the (sic) invented for the purpose of making acquisition and that the land was not required for expansion of the genuine activities of the Sangha. With that view the Court of appeal agreed. The plea that the acquisition proceedings were commenced mala fide cannot therefore be sustained.

6. The other question which falls to be determined is whether the acquisition proceedings were invalid because the requirements of the Land Acquisition Act were not complied with. There is no doubt that the land of the appellants was to be acquired for the Sangha, and the compensation for acquisition was wholly to be paid out of the funds of the Sangha. Acquisition was therefore for a Company, and had to comply with the requirements of Ch. VII of the Land Acquisition Act. In considering this question, it is necessary in the first instance to read the relevant provisions of the Act, and the amendment which has been made therein by the Land Acquisition (Amendment) Act 31 of 1962 with retrospective operation. The Sangha is a company within the meaning of the Land Acquisition Act. Section 3(e) of the Land Acquisition Act defines "company" as meaning a company registered under the Indian Companies Act, 1882, and includes a society registered under the Societies Registration Act, 1960 and a registered society within the meaning of the Cooperative Societies Act, 1912. Under the Land Acquisition Act the appropriate Government is authorised by S. 4 to notify that land is likely to be needed for a public purpose. As observed in Babu Barkya Thakur v. State of Bombay, (1961) 1 SCR 128 : (AIR 1960 SC 1203), "The expression "public purpose" (in the Land Acquisition Act) has been used in a generic sense of including any purpose in

which even a fraction of the community may be interested or by which it may be benefited". Therefore when the proposed acquisition is intended to serve a public purpose in its generic sense, the fact that the acquisition is primarily for a company. will not affect the validity of its acquisition. A person interested in any land notified under S. 4 (1) may object to the acquisition of the land. The objector is given an opportunity under S. 5-A (2) to be heard and thereafter the Collector makes a recommendation whether the land should be acquired. After considering the report the appropriate Government may, subject to the provisions of Ch. VII make a declaration that the land is needed for a public purpose or for a company. The expression "public purpose" in Ss. 4 and 6 has the same generic meaning, in S. 6 it has to be read in a restricted sense when the acquisition is for a company: R. L. Arora v. State of U. P., 1962 Supp (2) SCR 149 at p. 155: (AIR 1962 SC 764 at p. 767). Under S. 6 the Government may, subject to Ch. VII, if it is satisfied after considering the report, if any, made under S. 5-A, that any particular land is needed for a public purpose or for a company, make a declaration to that effect and upon publication the declaration is conclusive evidence that the land is needed for the public purpose or for the company, as the case may be. Whereas under S. 4 of the Act notification may be issued for land being needed far a public purpose which would include certain purposes referred to in S. 40(1), the declaration of acquisition under S. 6 must specify whether it is for a public purpose or for a company, and it is this declaration which is declared to be conclusive by S. 6(3).

7. Chapter VII deals with acquisition of lands for companies. By S. 39 it is provided that the provisions of Ss. 6 to 37 shall not be put in force in order to acquire land for any company, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned. Section 40, before it was amended by Act 31 of 1962 stood as follows;

"(1) Such consent, shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under Section 5-A, sub-section (2) or by an enquiry held as hereinafter provided-

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

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

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

Section 41 which deals with the agreement with the appropriate Government stood as follows:

"If the appropriate Government is satisfied after considering the report, if any, of the Collector under Section 5-A, sub-section (2), or on the report of the officer making an inquiry under Section 40 that the, purpose of the propsoed 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 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".

The Government could not therefore consent to the acquisition of land for a company unless an agreement was executed by the Company reciting the matters in cls. (1), (2) and (3) of S. 41, and if the acquisition was for the Company for purposes mentioned in S. 40 (1) (a), the matter set out in S. 41 (4), and if the purpose was one mentioned in S. 40 (1) (b), the matter set out in S. 41(5). Clauses (1), (2) and (3) of S. 41 are common to all agreements relating to acquisitions for companies and matters mentioned therein must find place in the agreement, but the matter mentioned in S. 41(4) was appropriate to an agreement for the purpose mentioned in S. 40 (1) (a), and the matter mentioned in S. 41(5) was appropriate to the purpose mentioned in S. 40(1)(b). Clause (5) of S. 41 indicates the nature of the work for the construction of which the land may be acquired for Company. The work has to be such that it is likely to prove useful to the public, and its usefulness has to be made real by providing expressly 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. Every indirect benefit to the public is not contemplated to fall within the meaning of cl. (b) of S. 40 (1) so as to justify acquisition of the land. If the public is not entitled to use the work it would not fall within the terms of cl. (b) of S. 40 (1) of the Act.

8. In 1962 Supp (2) SCR 149: (AIR 1962 SC 764) which may be called the first Arora case, this Court held that acquisition of land for setting up a factory for manufacturing textile machinery, in which the entire compensation for acquisition of the land was to be paid by the Company was invalid, notwithstanding that the products of the Company would be useful to the public and the agreement between the Company and the Government provided that those persons who had dealings with the Company shall have access to the land and works of the Company. In that case the notification under, Ss. 4 to 6 of the Land Acquisition Act, 1894 recited that the land was likely to be needed, and was in fact needed for a company. This Court held that S. 40(1) (b) must be read not in isolation but with cl. (5) of S. 41. So, read, acquisition for constructing a factory for manufacturing textile machinery parts was not likely to prove useful to the public, and the covenant merely permitting access to persons resorting to the factory for the purpose of business did not comply with the requirment of S. 41(5). The Court held in that case that the intention of the Legislature in enacting Ss. 40(1) (b) and 41 (5) was that the land should be acquired only when the work to be constructed is directly useful to the public and the agreement contains a covenant that the public shall be entitled to use the work as such for its own benefit; in other words, when S. 40 (1) (b) states

that the work should be likely to prove useful to the public it means "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 products". To say that the public is entitled to use the work because the public can go to the work in the way of business does not give any right to the public to use the work directly as such. Nor was the satisfaction of the Government that the work was likely to prove useful to the public upon an erroneous construction of Ss. 40 and 41 binding upon the owner of the land sought to be acquired. Conclusiveness attached by S. 6. was only to the extent that the land was needed for the purpose of a Company, but that did not support an acquisition which did not comply with the strict requirements of Ch. VII of the Act.

9. Acquisition of the land belonging to the appellants for the purposes of the Sangha set out in the notifications under Ss. 4 and 6 could not on this view be regarded as valid. The acquisition was not for the purpose mentioned in S. 40 (1) (a), nor could it be said that the proposed construction of work on the land was likely to prove directly useful to the public within the meaning of S. 40 (1) (b). Again a covenant ensuring a right to the public to use the work as of right was not incorporated in the agreement. The acquisition could not be justified under the statute as it stood before it was amended by Act 31 of 1962. The view expressed to the contrary by Bose, C. J., in the judgment under appeal cannot to the extent to which it seeks to uphold the acquisition under the Land Acquisition Act before it was amended, be accepted as correct.

10. It appears that the interpretation of the relevant provisions in the first Arora Case, 1969 Supp (2) SCR 149: (All 1962 SC 764) would have rendered many acquisitions for companies invalid, for the Governments of States had often assumed that use of land for construction of building to be utilised by the Company for which land was acquired, which manufactured goods useful to the public, justified acquisition of land and it was not necessary to provide in the agreement under S. 41(5) a covenant that the public shall have directly a right to use the works.

11. The President therefore intervened and promulgated an Ordinance called the Land Acquisition (Amendment) Ordinance which was replaced by Act 31 of 1962. The material provisions of the Act are the following:

By S. 3 of the Land Acquisition Amendment Act, 1962, cl. (aa) was added immediately after S. 40(1) (a) to the following effect:

"that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; or".

Amendment was also made by S. 4 in S. 41 to the following effect:

"In Section 41 of the principal Act,

(a) for the words "the purpose of the proposed acquisition is to obtain land for the erection if dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public the words, brackets, letters and figures" the proposed acquisition is for any of the purpcses, referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of Section 40" shall be substituted;

(b) in clause (4), the word "and" occurring at the end shall be omitted, and after that clause, the following clause shall be inserted namely:-

"(4-A) Where the acquisition is for the construction of any 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, the time within which, and the conditions on which, the building or work shall be constructed or executed: and"." By S. 7 validation of previous acquisitions was effected. The section provides:

"Notwithstanding any judgment, decree or order of the 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 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."

The effect of this amending Act was considered by this Court in the second Arora case: R. L. Arora v. State of U. P., AIR 1964 SC 1230. This Court observed at p. 1237:

"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 and acquisition under this clause can only be made where the company is engaged or is taking steps to engage itself in any industry or work which is for a public purpose, and the building or work which the company is intending to construct is of the same nature namely, that it is a building or work which is meant to subserve the public purpose of the industry or work for which it is being constructed.* * * We are therefore of opinion that cl. (aa) does not permit acquisition of land for construction of some building or work for a company engaged or to be engaged in any industry or work, which is for a public purpose unless the building or work for which the land is acquired also subserves the public purpose of the industry or work in which the company is engaged."

In dealing with the effect of S. 7 the Court observed at p. 1238:

"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) Suppl (2) SCR 149: (AIR 1962 SC 764): 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 Amendment Act. Thirdly S. 7 of the Amendment Act provides that 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 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."

12. In the light of these principles the present case must be decided. It is true that the acquisition of

the land of the appellant in fact commenced under cl. (b) of S. 40(1), but on the interpretation placed in the first Arora case, 1962 Supp (2) SCR 149: (AIR 1962 SC 764) unless the work was likely to prove useful to the public directly and unless there was an agreement between the company for which the land was being acquired and the appropriate Government as to the conditions on which the work was to be executed and maintained and the terms on which the public was entitled directly to use the work, the acquisition could not be regarded as valid. The requirements of S. 40 (1) (b) and S. 41 (5) were not complied with and the acquisition could not be sustained under the Land Acquisition Act, before it was amended by Act 31 of 1962. But Act 31 of 1962 amends the Land Acquisition Act with retrospective operation, and the validity of the acquisition must be judged on the footing that cl. (aa) of S. 40 (1) was on the statute book when the notifications under Ss. 4 and 6 were issued. It may be recalled that the acquisition was complete on March 8, 1958 when possession of the land was taken over and the title of the owners of the land was extinguished by the operation of S. 17(1) of the Land Acquisition Act. The notification under S. 6 of the Act was for the purpose of construction of the social workers' quarters, students' home, publication department, guest house and Panthasala. It may be observed that the expression "Panthasala" means a house maintained for the use of members who visit the Sangha and are lodged by the Sangha. It is a sort of a guest house. The question which fails to be determined is whether acquisition for construction of social workers' quarters, students' home, publication department, guest house and panthasala of the sangha satisfy the test laid down by this Court in the second Arora case, AIR 1964 SC 1230. Do these constructions subserve the public purpose of the Sangha for which they are to be constructed? The application submitted by the Sangha and the report of the Land Acquisition Collector make it abundantly clear that the Sangha was in need of more accommodation and in the absence of such accommodation its beneficent activities which were charitable, religious and philanthropic had to be restricted. A provision for social workers' quarters, students' home and publication department would, prima facie, subserve the public purpose of the Sangha. That was not denied. It was, however, urged that a guest house and a panthasala serve, no public purpose of the Sangha and when a piece of land is sought to be acquired for a composite purpose without allocation of specific portions to the different parts, some only of which are valid the entire acquisition must be regarded as unauthorised. We are unable to agree with that contention. If for carrying on effectively the objects of the Sangha it was necessary to maintain in a town like Calcutta in which there is great scarcity of accommodation a guest house and a panthasala for accommodating visiting guests, members, followers, or workers who take interest in the activities of the Sangha and propagate the ideals and the objects of the Sangha, it would be difficult to say that a public purpose of the Sangha was, by the construction of the guest house and panthasala not subserved. The public purpose of the Sangha as its objects denote, amongst others are to help the distressed, to nurse the sick, to feed the hungry and to clothe the naked, to give necessary relief to the afflicted people in times of flood, famine and other disastrous conditions, to establish Sevashrams in different parts of the country and to maintain, carry on and assist free educational and medical institutions and other charitable societies to help the spread of education and to render help to the infirm, the invalid, the afflicted and the suffering humanity in general, to ameliorate and improve the social and material condition of the people by encouraging home-industry irrespective of their caste and creed, and to create an atmosphere favourable to moral and spiritual growth. These purposes are undoubtedly public purposes. The Sangha is engaged in the pursuit of these objects and desires extension of the space available to it by the construction of social workers' quarters, students' home, publication department, and also a guest house and panthasala. Each of those objects would substantially facilitate the achievement of the objects of the Sangha and thereby subserve its public purposes.

13. It is true that when the notification was issued under S. 4 for acquisition of the land the appellants and was further confirmed by notification under S. 6 and the agreement was obtained from the Sangha, satisfaction of the Government was directed to the requirements of S. 40(1) (b) and the consent of the Government to the acquisition must be deemed to have been given with reference to the requirements then on the statute book. But on that account it cannot be said that it is not open to the Court to examine whether the requirements of S. 40(1) (aa) which was brought on the statute bock by the Amending Act 31 of 1962 were satisfied. Section 7 of the Amending Act in terms provided that where acquisition of land has been made before July 20, 1962, for any of the purposes mentioned in cl. (a) or (b) of sub-s. (1) of S. 40 it shall be deemed to have been made for the purposes mentioned in cl. (aa) of sub-s. (1) of S. 40. Even if an acquisition made before July 20, 1962 did not comply with the requirements of cl. (a) or (b) the amending statute clearly provides that its validity must be adjudged in the light of cl. (aa). The circumstance that the authorities could not have consciously applied their mind to the requirements of cl. (aa) can have therefore no force. If the purpose of acquisition made before July 20, 1962 falls within the terms of cl. (aa) and an agreement has been obtained which complied with the requirements of S. 41(4A) the acquisition will be regarded as valid, notwithstanding the fact that the authorities or the Government erroneously assumed that the acquisition could be made under cl. (b) of S. 40(1) and that the agreement to effectuate that purpose was purported to have been obtained under S. 41 (5).

14. The validity of the acquisition must be adjudged in the light of the Amending Act. Absence of rules and regulations dealing with effectuation of the objects and the uses which the public may be entitled to make as of right is, in considering the applicability of S. 41 (4A) irrelevant. Acquisition of the appellant's land was undoubledly for construction of buildings or work for the Sangha, and the Sangha is engaging itself in work which is for a public purpose. Requirements of cl. (aa) are therefore satisfied: and by virtue of S. 7 of the amending Act the acquisition must be deemed to have been made for the purposes mentioned in cl. (aa) of S. 40 (1). The agreement executed by the Sangha also complied with the requirements of S. 41(4A).

15. Strong reliance was placed by the appellants upon a judgment of this Court in State of West Bengal v. P. N. Talukdar, C. As. Nos. 410-413 of 1964 D/- 13-3-1964: (AIR 1965 SC 646) in support of the contention that the present acquisition for the purpose of the Sangha is invalid. In that case, to carry out its objects the Ramakrishna Mission - a society registered under the Societies Registration. Act of 1880 - applied to the Land Acquisition Collector, to start proceedings for acquisition of a plot of land for the construction of staff-quarters, a hostel building and play ground of the Mission. The Government of West Bengal commenced proceedings for acquisition on July 24, 1961 by issuing a notification under S. 4 of the Land Acquisition Act. Enquiry was made under S. 5-A and a notification was issued under S. 6 on October 4, 1962, that is after the amendment of the Land Acquisition Act by Act 31 of 1962. An agreement was also executed by the Mission in favour of the Government of West Bengal. By petitions under Art. 226 of the Constitution instituted in the High Court of Calcutta, the owners of the land challenged the validity of the acquisition. In appeal this Court, observed that construction of a hostel building and a playground were public purposes which Came within the terms of cl. (b) of S. 40(1) but the staff-quarters could not fall under that clause, because they were meant for occupation by individual members of the staff and it was not possible to accept the argument that each individual member of the staff must also be held to be a section of the public, and therefore the staff-quarters would be useful to the public. In dealing with the applicability of the amended Act, the Court observed that the Mission did not lay any foundation for the argument that the case was covered by cl. (aa).It was further observed:

"We do not know for what particular work the staff-quarters were required and therefore it is in our opinion impossible to accept the contention on behalf of the Mission that the case is covered by cl. (aa). Further it does not appear that any such material was supplied to Government either, as the application of October 5, 1960 merely mentions that the Mission was in urgent need of land for construction of staff-quarters, without further mentioning what was the work in connection with which land was required for such construction. Nor does the agreement show that this aspect of the matter was considered by the Government. We are therefore not prepared to hold in the absence of the necessary material that the land was required for construction of buildings by a company which was engaged in any industry or work which is for a public purpose:"

P. N. Talukdar's case, C. As. Nos. 410-413 of 1964 D/- 13-8-1964: (AIR 1965 SC 646) was decided not on any general principle, but on the facts and circumstances of the case. The Court declared the acquisition in that case invalid, because in its view the acquisition which was made after Act XXXI of 1962 was enacted did not fulfil the terms of S. 40 (1) (b), not of S. 40 (1) (aa). Further S. 7 of Act XXXI of 1962 did not apply in that case. It was not found in that case that the public were as of right entitled to use the staff quarters to be erected, nor did the Mission establish that the Government was satisfied that the land was needed for construction of some building or work for a Company engaged in any work which was for a public purpose, and assented to the acquisition and therefore the acquisition failed. It must depend upon the circumstances in each case, whether the evidence before the Court shows that the appropriate Government was satisfied about all or any of the three purposes mentioned in S. 40 (1), and assented to the acquisition. When acquisition of land for a Company is challenged on the ground that the requirements of Ch. VII were not complied, the burden lies upon the Company or the Government to establish its validity. But consent of the Government given upon satisfaction in respect of the matters mentioned in cls. (a), (aa) and (b) may be established from the recitals in the agreement under S. 41, the report made under S. 5A, the result of an enquiry under S. 40 (2), or by other evidence. In P. N. Talukdar's case, C. As. Nos. 410-413 of 1964 D/- 13-8-1964: (AIR 1965 SC 646) the Court was not convinced that the Government had consented to the acquisition after satisfaction that the land was to be acquired for the purposes mentioned in S. 40 (1) (aa).

16. We seek to impress that the question whether the Government is satisfied that the land was needed for the purpose which falls within cl. (aa) of S. 40(1), and assented to the acquisition, is a question of fact which must be determined in each case on evidence and no general rule can be laid down. In the present case evidence abundantly establishes that the Government was satisfied and give its consent to the acquisition for the construction of buildings which subserved the public purpose of the Sangha and an agreement to that effect was also obtained from the Sangha. Again by virtue of S. 7 the acquisition having been made before July 20, 1962, it had to be presumed that it was made under cl. (aa) of S. 40 (1). There can in this case be no doubt that the acquisition was in consonance with the requirements of S. 40(1) (aa) and an agreement setting out covenants dealing with the appropriate matters under S. 41 as amended was also obtained.

17. The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

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