Sheikh Gulfan and Others

Vs

Sanat Kumar Ganguli

Civil Appeals Nos. 48 to 53 of 1963

(CJI P. B. Gajendragadkar, V. Ramaswami – I, M. Hidayatullayh JJ)

15.03.1965

JUDGMENT

GAJENDRAGADKAR, C.J.-

The short question which these six appeals raise relates to the construction of section 30(c) of the Calcutta Thika Tenancy Act, 1949 (W.B. Act No. II of 1949) (hereinafter called 'the Act'). This question arises in this way. The respondent Sanat Kumar Ganguli is the owner of a plot of land being premises No. 12, Haldar Lane, in Central Calcutta. This plot had been let out in several lots to the predecessors-in-title of the six appellants. On July 24, 1954, the respondent filed six suits Nos. 2240 to 2245 of 1954 against the six appellants respectively on the original side of the Calcutta High Court, claiming decrees for ejectment against them and asking for arrears of ground rent and Municipal taxes.

The appellants contested the respondent's claim on the ground that the lands in suits had been taken by their predecessors-in-title from the owner as Thika tenants in or about the year 1900, and they alleged that they were in occupation of the said plots after having built substantial structures on them. The appellants further claimed that they had themselves let out portions of such structures to their own tenants. On these allegations, a preliminary objection to the competence of the suits was raised by the appellants on the ground that under s. 5 of the Act, claim for ejectment of Thika tenants can be entertained only by the Controller, and so, the learned Judge on the original side of the Calcutta High Court had no jurisdiction to entertain it.

The respondent admitted that the appellants were Thika tenants and did not dispute that normally, a claim for ejecting such Thika tenants could be tried only by the Controller; but he urged that the present suits fell within the scope of s. 30(c) of the Act and in consequence, the provisions of s. 5 and indeed, all other relevant provisions of the Act did not apply to them. That is how the respondent sought to meet the preliminary objection raised by the appellants.

In appreciating the nature of the controversy thus raised by the pleadings, it is necessary to mention some more facts. On February 9, 1940 a notice was issued by the Chairman of the Calcutta Improvement Trust under s. 43 of the Calcutta Improvement Act, 1911 (Bengal Act V of 1911) as amended up to 1931. This Act will hereafter be called 'the Improvement Act'. This notice shows that a scheme bearing No. 53 had been framed for the purpose of improvement of Calcutta by a street scheme in Ward No. 10 of the Calcutta Municipality for an area the boundaries whereof were described in the said notice. This notice gave the particulars of the scheme and was accompanied by a map of the area comprised in the scheme. It also contained the statement of the land which it was proposed to acquire as well as land on which betterment fee was proposed to be levied. These plans

were open for inspection at the office of the Trust at No. 5, Clive Street, Calcutta. Along with this notice, another notice was published which gave a list of properties proposed to be acquired under the scheme and contained a statement of the land in regard to which betterment fees were proposed to be levied. Premises No. 12, Haldar Lane, were included in the latter category of lands.

In July 1952, proceedings were started for settling the betterment fee to be levied in respect of premises No. 12, Haldar Lane, and a letter was addressed by the Chief Valuer of the Calcutta Improvement Trust to the respondent on November 19, 1952. This letter shows that the Chief Valuer had not received a reply from the respondent, though his advocate had accepted the assessment of betterment fee of Rs. 15,000 in the Land Committee meeting which had been held on August 7, 1952 and confirmed by the Board on August 30, 1952. On November 19, 1952, however, the respondent recorded in writing that he accepted the said assessment.

The respondent's case before the learned trial Judge was that since betterment fee had been levied by the Board in respect of the suit premises and had been accepted by him, s. 30(c) of the Act applied to the present suits. Section 30(c) provides that "nothing in the Act shall apply to any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911." That is how the respondent sought to repel the application of s. 5 of the Act and the exclusive jurisdiction of the Controller to deal with ejectment proceedings in respect of thika tenants' holdings. The learned trial Judge held that the plots constituting the land in the six respective suits did not attract the provisions of s. 30(c) of the Act, and so, he upheld the preliminary objection raised by the appellants and came to the conclusion that the suits filed by the respondent on the original side of the Calcutta High Court were incompetent and could not be entertained. In the result, the said suits were ordered to be dismissed with costs.

The respondent challenged these decrees by preferring six appeals before a Division Bench of the High Court. The learned Judges who heard these appeals have delivered separate, but concurring, judgments and have upheld the respondent's argument that the land in suits attracted the provisions of s. 30(c) of the Act, with the result that the preliminary objection raised by the appellants has been rejected. Once the preliminary objection was rejected, it was plain that no other point survived, because the appellants had no defence to make on the merits of the respondent's claim. That is why the appeals were allowed and decrees, for possession were passed in favour of the respondent. The claim made by the respondent in respect of arrears of ground rent and municipal taxes was also allowed. It is against these decrees that the appellants have come to this Court with certificates granted by the High Court; and so, the only question which arises for our decision is whether the Division Bench was right in holding that s. 30(c) of the Act applied to the present suits. The answer to this question depends on a fair construction of the provision prescribed by s. 30(c)

Before dealing with this question, it is necessary to refer to the material provisions of the Act. The Act was passed in 1949 with the object of making better provision relating to the law of landlord and tenant in respect of thika tenancies in Calcutta. Section 2(5) in Chapter I defines a "thika tenant" as meaning any person who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate, for that land to that another person and has rejected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person. Sub-cl. (a), (b) and (c) of this definition exclude from its purview certain other categories of persons, but we are not concerned with these categories of persons in the present appeals. It is common ground that the appellants are thika tenants in respect of the plots in their possession.

Chapter II of the Act deals with incidents of thika tenancies. Broadly stated, the object of the Act is to afford special protection to the thika tenants and several provisions have been enacted by the Act to carry out this object. Section 3 specifies the grounds on which alone a thika tenant may be evicted. Section 4 prescribes a notice before ejectment proceedings can be taken against a thika tenant; and s. 5 provides for proceedings for ejectment. The important feature of the provisions contained in s. 5(1) is that the application for ejectment of a thika tenant has to be made to the Controller in the prescribed manner. The "controller" is defined by s. 2(2) as meaning an officer appointed as such by the State Government for an area to which the Act extends and includes officers of another category therein described. The remaining provisions of Ch. II deal with the procedure which has to be followed by the Controller in dealing with applications for ejectment of thika tenants and make other incidental provisions in that behalf. The policy of the Act to afford protection to the thika tenants is writ large in all these provisions.

Chapter III contains provisions as to rent of thika tenancies. Chapter IV deals with appeals and certain special procedures. Section 27(1), for instance, provides for appeals to the Chief Judge of the Court of Small Causes of Calcutta and District Judge respectively under cl. (a) and (b). Section 27(6) provides that an order made under sub-s. (4) by the Chief Judge or the District Judge or a person appointed under sub-s. (2), as the case may be, or, subject to such order, if any, an order made by the Controller under this Act shall, subject to the provisions of sub-s. (5) be final and may be executed by the Controller in the manner provided in the Code of Civil Procedure for the execution of decrees. It is thus clear that the Act has made special provisions for the enforcement of the rights and liabilities of the thika tenants, has constituted hierarchy of special authorities to deal with claims made by landlords against their thika tenants, either in the first instance or at the appellate stage. The decisions of these special authorities which become final are assimilated to decrees passed under the Code of Civil Procedure and can be executed in the manner prescribed by 0.21 of the Code. Section 31 provides that restriction or exclusion of the Act by agreement between a landlord and a thika tenant will be invalid, and will not affect the rights conferred on the thika tenants by the provisions of the Act. It is in the light of these provisions that we have to construe s. 30 of the Act.

Section 30 reads thus :-

> "Nothing in this Act shall apply to -
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> (a) Government lands,
>
> (b) any land vested in or in the possession of -
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> (i) the State Government,
>
> (ii) a port authority of a major port, or
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> (iii) a railway administration, or
>
> (iv) a local authority, or
>
> (c) any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911."

The perusal of s. 30 clearly shows that the provisions of the Act are excluded in regard to lands

specified in cl. (a), (b) and (c), so that claims made for ejectment of thika tenants from these lands will not be governed by the provisions of the Act and can be made and entertained in ordinary civil courts of competent jurisdiction. The question which we have to consider in the present appeals is whether the land which is the subject-matter of the six suits is land which is required for carrying out any of the provisions of the Improvement Act.

That takes us to the relevant provisions of the Improvement Act itself. The Improvement Act was passed in 1911 and has been amended from time to time. Let us consider broadly the material provisions of this Act, as they stood prior to the amendment of 1955, which would assist us in construing s. 30(c) of the Act. This Act was passed, because it was thought expedient to make provision for the improvement and expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, acquiring land for the said purposes and for the re-housing of persons of the poorer and working classes displaced by the execution of improvement schemes, and otherwise as hereinafter appearing. It was further thought expedient to constitute a Board of Trustees and invest it with special powers for carrying out the objects of this Act. Section 2(1a) of this Act defines a "betterment fee" as the fee prescribed by s. 78A in respect of an increase in value of land resulting from the execution of an improvement scheme. Chapter III of this Act deals with improvement schemes and re-housing schemes. Section 36 provides when general improvement schemes may be framed. It is only where the conditions specified by cl. (a) & (b) of s. 36 are satisfied that general schemes can be framed. Under this section, the Board has to pass a resolution to the effect that the general improvement scheme should be framed on the ground that the area comprised in the scheme is an unhealthy area and that it was necessary to frame a general improvement scheme in respect of such area. Section 40 deals with matters which have to be considered while framing improvement schemes. It provides that when framing an improvement scheme in respect of any area, regard shall be had to -

(a) the nature and the conditions of neighbouring areas and of Calcutta as a whole;

(b) the several directions in which the expansion of Calcutta appears likely to take place; and

(c) the likelihood of improvement schemes being required for other parts of Calcutta.

Section 41 deals with matters which must be provided for in improvement schemes; it reads thus:-

"Every improvement scheme shall provide for -

(a) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion be required for the execution of the scheme;

(b) the laying out or re-laying out of the land in the said area;

(c) such demolition, alteration or reconstruction of buildings, situated on land which it is proposed to acquire in the said area, as the Board may think necessary;

(d) the construction of any buildings which the Board may consider it necessary to erect for any purpose other than sale or hire;

(e) the laying out or alteration of streets (including bridges, causeways and culverts),

if required; and

(f) the levelling, paving, metalling, flagging, channelling, sewering and draining of the said streets, and the provision therein of water, lighting and other sanitary conveniences ordinarily provided in a Municipality."

Section 42 deals with matters which may be provided for in dealing with improvement schemes. It is necessary to read this section as well :-

"Any improvement scheme may provide for -

(a) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be affected by the execution of the scheme;

(b) raising, lowering or levelling any land in the area comprised in the scheme;

(c) the formation or retention of open spaces; and

(d) any other matters, consistent with this Act, which the Board may think fit."

Under s. 47, the Board is required to consider objections, representations and statements of dissent received under the relevant provisions of sections 43, 44 and 45; and it provides that as a consequence of considering the said objections, representations and statements of dissent, the Board may either abandon the scheme or apply to the State Government for sanction to the scheme, with such modifications, if any, as the Board may consider necessary. Section 47(2)(e) lays down that every application submitted under sub-s. (1) shall be accompanied by a list of the names of all persons, if any, who have dissented, under s. 45, cl. (b), from the proposed acquisition of their land or from the proposed recovery of a betterment fee, and a statement of the reasons given for such dissent. The rest of the Chapter deals with the subsequent stages of the framing of the improvement schemes to which it is unnecessary to refer.

Chapter IV deals with acquisition and disposal of land. Three sections out of this Chapter are relevant for our purpose. Section 78 deals with the abandonment of acquisition in consideration of special payment. Section 78(1) is relevant; it reads thus :-

"In any case in which the State Government has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf."

The other sub-sections of s. 78 lay down a procedure for dealing with applications made under sub-s. (1). With the details of these provisions we are not concerned. The only point which is relevant for our purpose is that an application for abandonment can be made in respect of land which is not required for the execution of the scheme. In other words, if it appears that the piece of land which is comprised in the scheme already sanctioned by the Government is in fact not required for the execution of the scheme, and application may be made for abandonment of acquisition in respect of such a land. The basis for making such an application is that though the land was comprised in the scheme, it is found that it is not required for the execution of the scheme.

That takes us to s. 78A which has a bearing on the construction of s. 30(c) of the Act. Section 78A(1) is material for our purpose; it reads thus :-

> "When by the making of any improvement scheme, any land in the area comprised in the scheme which is not required for the execution thereof will, in the opinion of the Board, be increased in value, the Board, in framing the scheme, may in lieu of providing for the acquisition of such land, declare that a betterment fee shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of the scheme."

Section 78A(2) provides for the determination and calculation of the betterment fee.

The last section in this Chapter is s. 81. It confers power on the Board to dispose of land vested in or acquired by them under this Act. Section 81(1) lays down that the Board may retain, or may let on hire, lease, sell, exchange or otherwise dispose of any land vested in or acquired by them under this Act. How this power can be exercised is specified by sub-sections (2) and (3) of s. 81.

Before we part with the Improvement Act, it would be useful to mention that sections 120 to 126 which occur in Ch. VI of this Act deal with the accounts of the Board. Section 122 provides for credits to capital account and lays down, inter alia, that all sums, except interest, received by way of special payments for betterment fees in pursuance of sections 78, 78A or 79, shall be credited to the capital account. Section 123 deals with the question of the application of the capital account, and it proceeds on the basis that the moneys credited to the capital account shall be held by the Board in trust, and by cl. (a) to (h), it specifies the objects or purposes for which the said amount can be applied. Section 124 refers to items which have to be included in the revenue account; and s. 125 requires that like the moneys credited to the capital account, those credited to the revenue account must also be held by the Board in trust, and the same shall be applied for the purposes specified in cl. (a) to (g) of s. 125(1).

Let us now revert to the question about the construction of s. 30(c) of the Act. Before answering this question, we would like to recall the material facts which are not in dispute. The land in question has been included in the boundaries of the area comprised in the scheme. After the Board framed scheme No. 53, it has issued a notice under s. 43(1) of the Improvement Act, and as required by s. 43(7)(b), while mentioning the boundaries of the area comprised in the scheme, it has clearly been shown that the land in question is comprised in the said scheme. In respect of this land, proceedings have been taken under s. 78A of the Improvement Act and betterment fee has been levied and accepted.

Mr. Pathak for the respondent contends that as soon as it is shown that the land in question was comprised in the scheme and in respect of it betterment fee has been levied and accepted, s. 30(c) of the Act is attracted. His argument is that such a land is required for carrying out the provisions of the Improvement Act. On the other hand, Dr. Barlinge contends that the land in respect of which betterment fee has been levied cannot be said to be required for carrying out any provisions of the Improvement Act, though it may be that the betterment fee would assist the Board in discharging its functions under the Improvement Act. In deciding the merits of these competing claims, it is necessary to remember that the dispute in the present proceedings is not between the Board on the one hand and the landlord or the thika tenant on the other; the dispute is between the landlord and the thika tenants, and in the decision of this dispute, the Board is not interested. Whatever be the decision of the Court in the present dispute will not affect the Board in the discharge of its duties

and functions and will have no impact on the scheme as such.

The words used in s. 30(c) of the Act are, in a sense, simple enough; but it must be conceded that the problem of their construction is not very easy, and so, we might attempt to resolve this problem by considering what our approach should be in construing the relevant provision. Normally, the words used in a statute have to be construed in their ordinary meaning; but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends or a fair and a reasonable constructions. Exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material. As Halsbury has observed, the words "should be construed in the light of their context rather than what may be either strict etymological sense or their popular meaning apart from that context [Halabury's Laws of England Vol. 36, p. 394, para 593]". This position is not disputed before us by either party.

There has, however, been a sharp controversy before us on the question as to what is the context to which recourse should be had in interpreting section 30(c). Mr. Pathak contends that in construing s. 30(c) of the Act, the key words are "required for carrying out any of the provisions of the Improvement Act", and he has urged that the task of interpretation of this key clause should be attempted by having regard to the context, the object and the policy of the Improvement Act. In interpreting this clause, the court should ask itself : what is the purpose of the provisions of the Improvement Act which the land is required to serve, before s. 30(c) of the Act can be invoked ? And in finding an answer to this question, the court must bear in mind the historical evolution of the legal principles relating to the powers and functions of Improvement Boards. In this connection Mr. Pathak has relied on the decision of the House of Lords in R. H. Galloway v. The Mayor and Commonalty of London [[1866] 1 Eng & Ir A.C. 34]. In that case a contrast was drawn between the special powers conferred on persons by Parliament for effecting a particular purpose, and those conferred on the Mayor and Commonalty of the City of London to make certain public improvements in the City. It was held that where a company was authorised to take compulsorily the lands of any person for a definite object, it would be restrained by injunction from any attempt to take them for any other object. On the other hand, where the Mayor and Commonalty of the City of London had been entrusted with powers to make certain public improvements in the City, and for that purpose had been authorised compulsorily to take land, to raise money on the credit of it, and to sell superfluous land to pay off the debt, the Act which gave them those powers did not expressly confer on the authorities to acquire more land than was absolutely necessary to effect the desired improvements; nevertheless the material provisions of the said Act ought to be construed favourably to them, and ought to be interpreted to confer on them the power to take lands "for the purposes of the Act", even though they may not be absolutely necessary for the improvement scheme as such. In other words, this decision shows that where the Board is entrusted with the work of improving the City and is constituted for that purpose by a statute, its power to acquire lands for the purpose of the improvement scheme would include the power to acquire a land which is comprised in the scheme, though it may not be absolutely necessary for the scheme as such; and in such a case, it would be competent to the Board first to acquire the land and then to dispose of it, thereby putting itself in possession of the necessary funds to discharge its functions and obligations.

The same principle has been emphasised by the Privy Council in the Trustees for the Improvement

of Calcutta v. Chandra Kanta Ghosh [[1919] L.R. 47 I.A. 45]. We have already referred to ss. 41 and 42 of the Improvement Act. Section 41 enumerates matters which must be provided for in the improvement schemes, whereas s. 42 deals with matters which may be provided for in the improvement schemes. Section 42(a) lays down that any improvement scheme may provide for the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be affected by the execution of the scheme. The question which arose before the Privy Council in the case of the Trustees for the Improvement of Calcutta [[1919] L.R. 47 I.A. 45] was whether under s. 42(a), it was competent to the Board to acquire, for the purpose of recoupment, land which is not required for the execution of the scheme, but the trustees are of opinion that the said land would, by virtue of the scheme, be increased in value. The decision of this question depended, inter alia, on the meaning of the word "affected" used in s. 42(a). The argument which was urged before the Privy Council was that in order that land can be acquired by the Board under s. 42(a), it must appear that the land falls in the area comprised in the scheme and would be affected by the execution of the scheme. If the land does not become a part of the scheme itself but remains outside the scheme, it cannot be said to be affected by the scheme; and so, the Board may have no power to acquire it avowedly for the purpose of securing recoupment money. The Privy Council rejected this contention and held that the Board was empowered to acquire land which is comprised in the scheme and would be competent to sell it and thereby raise funds if it is satisfied that the value of the land will be enhanced by virtue of the scheme. "There Would appear to be nothing", said Lord Parmoor speaking for the Board, "either in the general scheme of the Act or in the special context which is inconsistent with giving the word "affected" its ordinary and normal sense; but it was suggested in the argument on behalf of the respondent that the Act did not authorise the Board to acquire land unless it was either physically affected by the execution of the scheme, or injuriously affected, whether by severance or in some other manner" (p. 54). In rejecting this argument, Lord Parmoor observed that "in the opinion of their Lordships, none of the suggested limitations to the usual and normal meaning of the word "affected" in s. 42 are admissible, and that there is no reason, either in the general purpose of the Act or the special context, that the word should not be construed in its ordinary sense, and that, as so construed, s. 42 authorises the acquisition of the land of the respondent, which was inserted in the scheme, because in the opinion of the Board, it would be enhanced in value by its execution". Section 78 and s. 78A which has been inserted in the Improvement Act in 1931, in a sense give statutory recognition to the principle evolved by the Privy Council while interpreting s. 42 of the Improvement Act.

Basing himself on this aspect of the matter, Mr. Pathak contends that where a land is comprised in the improvement scheme originally notified and betterment fee is levied later in respect of it under s. 78A, the Board can be deemed to have taken two steps; it may be said that the Board acquired the land and later, sold it to the owner on the terms and conditions authorised by s. 78A. In other words, the argument is that the levy of batterment fee is another way of bringing the land within the purview of the improvement scheme and it is, in fact, an alternative way of acquiring it. If that is so, s. 30(c) which obviously includes lands acquired for the purposes of the scheme, cannot be said to exclude land which is not directly acquired, but is indirectly placed in the same category of lands, because recovery of the recoupment fee is one way of acquiring the land. It is on these grounds that Mr. Pathak has strenuously contended that the key clause in s. 30(c) should receive a liberal construction and the land in question in the present proceedings should be held to be required for carrying out the relevant provisions of the Improvement Act.

On the other hand, Dr. Balinge has emphasised the fact that the section which we are construing occurs in the Thika Tenancy Act and it is the context of this Act as well as the object with it seeks to achieve that are relevant and material. There is not doubt that the provisions of the Act are intended

to serve the purpose of social justice. The Legislature realised that the relations between the landlord and the tenants in respect of holdings let out to thika tenants under the Act needed to be regulated by statute and it thought that thika tenants deserved some special protection. The Act is thus a measure which can be described as social welfare measure, and so, the argument is that s. 30 which provides for an exception to the material provisions of the Act, should be strictly construed, so that the beneficent purpose of the Act should not be unduly narrowed down or restricted. In construing s. 30(e), it would, therefore, be relevant to remember whether it could not have been the intention of the Legislature to permit a private land-holder whose land has not been acquired and does not form part of the improvement scheme, to claim immunity from the application of the relevant provisions of the Act which give protection to the thika tenants; and so, Dr. Barlinge's contention is that it would be unreasonable to introduce a liberal approach in construing the clause "required for carrying out any of the provisions of the Improvement Act" as suggested by Mr. Pathak.

In our opinion, while construing s. 30(c) it would be necessary to bear in mind the context of the Act in which the section occurs. We have already noticed the broad features of the Act, and the object of the Act to help the thika tenants is writ large in all the material provisions. In the case of such a statute, if an exception is provided, the provision prescribing the exception and creating a bar to the application of the Act to certain cases must, we think be strictly construed. Take the other clauses of s. 30; they clearly indicate that it is only lands vested in Government or other special bodies or authorities that are excepted from the application of the Act. Prima facie, it is not easy to assume that a private landholder like the respondent would be within the protection of s. 30 because there is no consideration in his case, as in the case of other authorities or bodies covered by cl. (a) and (b) of s. 30, which would justify the exclusion of the Act to his case. That is one aspect of the matter which we cannot ignore.

That takes us to the crux of the problem : can the land in question be said to be required for carrying out any of the provisions of the Improvement Act ? It is significant that it is the land which must be required, and not any fee or charges that may be levied against it. What s. 30(c) of the Act seems to require is direct connection between the land as such and the requirements of the provisions of the Improvement Act. The other ingredient of s. 30(c) is that the land must be required for carrying out the provisions of the Improvement Act. In the context, this second ingredient of the section seems to suggest that the land must be necessary for carrying out the provisions as such of the Improvement Act; in other words, we should be able to say about the land in question that it was necessary for carrying out a particular provision of the Improvement Act. The third and the last ingredient of s. 30(c) is that the necessity must be established for carrying out the provisions of the Improvement Act and not the policy of the said provisions or the object which they are intended to achieve. Having regard to these ingredients of s. 30(c), the question which calls for an answer is : is it shown that the land in question is necessary to carry out any specific provision of the Improvement Act ? It is difficult to answer this question in favour of the respondent.

It is true that the betterment fee which is levied goes to constitute an important item in the capital account under s. 122 of the Improvement Act. It is also true that the Board has the power to levy betterment fee in order that it should secure enough funds to carry out its obligations under the Improvement Act. Such a power has always vested in the Board and has now been statutorily conferred on it by s. 78A. Under s. 81, the Board can acquire more land than is absolutely necessary for the purpose of the scheme as such, and may later dispose of superfluous land. The existence of these powers cannot be disputed. But would it be consistent with the fair construction of s. 30(c) to hold that because the land in question can be made liable to pay betterment fee and the betterment fee thus realised from the land serves the purpose of s. 122 of the Improvement Act, the land itself

is required for carrying out the provisions of s. 122 ? In order that s. 30(c) should be applicable, the respondent must point out a specific provision of the Improvement Act for the carrying out of which the land as such is required. The provisions of s. 122 of the Improvement Act do not help the respondent, because it is not possible to hold that for carrying out the provisions of s. 122, the land in question is directly required.

There is another aspect of the question to which we ought to refer Section 78A, like s. 78, deals with lands which in terms are not required for the execution of the scheme. These two sections provide for two categories of lands, both of which were originally comprised in the scheme, but are later found to be not required for the scheme. Now, when s. 78A expressly says that the land in respect of which betterment fee can be levied, is not required for the scheme, it is not easy to accept the argument that such a land is nevertheless required for carrying out the provisions of s. 78A. In construing s. 30(c), it is necessary to distinguish between the carrying out the provisions of the Improvement Act, and the achievement or the accomplishment of the objects of the said provisions. In one sense, the land in question does serve the purpose of the Improvement scheme, because the betterment fee which is levied on it swells the funds of the Board and the funds are utilised by the Board for the purposes of carrying out the scheme; but the requirement of the land for carrying out the provisions of the Improvement Act which alone can invoke s. 30(c), cannot be said to be satisfied by this indirect connection between the land and the general purpose of the Improvement Act.

There is one more aspect of this problem which is not irrelevant. Betterment fee is levied against a land, because its value is increased as a result of the improvement scheme, and so, s. 78A authorises the Board to levy betterment fee presumably on the ground that the Board is justified in recouping itself by such levy in respect of unearned increment in the value of the land of which the land-holder gets a benefit. If the land-holder pays betterment fee for such unearned increment in the value of the land, he may apply under s. 25 of the Act for enhancing the rent payable by the thika tenants to him. But there appears to be no reason why a landlord, the value of whose land had increased by the improvement scheme introduced in the area in which his land is situated, should get the additional benefit of exemption from the application of the provisions of the Act which give protection to the tenants.

Having carefully considered the question of construing s. 30(c), we have come to the conclusion that the words used in s. 30(c) do not justify the conclusion that a private landholder is intended to be equated with Government or with the other special bodies or authorities whose lands are exempted from the operation of the Act by s. 30. We do not think that the Legislature intended that the provisions of the Act should cease to apply to all lands which are comprised in the scheme, because such a provision would appear to be inconsistent with the categories of cases covered by cl. (a) & (b) of s. 30. Besides, if that was the intention of the Legislature in enacting s. 30(c), it would have been easy for the Legislature to say that lands comprised in the improvement schemes should be exempted from the application of the Act. Section 30, as we already emphasised, provides for an exception to the application of the beneficent provisions of the Act, and it would, we think, not be unreasonable to hold that even if s. 30(c) is reasonably capable of the construction for which Mr. Pathak contends, we should prefer the alternative construction which is also reasonably possible. In construing the provisions which provide for exceptions to the applicability of beneficent legislation, if two constructions are reasonably possible, the Court would be justified in preferring that construction which helps to carry out the beneficent purpose of the Act and does not unduly expand the area or the scope of the exception. Therefore, we are satisfied that the Court of Appeal was in error in reversing the conclusion of the trial Judge that the present suits filed on the original side of

the Calcutta High Court were incompetent.

There is, however, one more point to which we ought to refer before we part with these appeals. Both the learned Judges in the Court of Appeal have observed that if s. 30(c) is held not to apply to the land in question on the ground that it is not required for carrying out any of the provisions of the Improvement Act, s. 30(c) would, in substance, become redundant. The argument which was thus urged before the Court of Appeal and has been accepted by it, assumes that the Board is a local authority within the meaning of s. 30(b)(iv) and as such, the land which has vested in the Board is already excepted from the operation of the Act by the said provision; and that means that the lands acquired by the Board under the provisions of the Improvement Act have already been provided for by s. 30(b)(iv). If that is so, there would be no cases to which s. 30(c) can apply. Since this point arises incidentally in construing s. 30(c), we do not propose to decide in the present appeals whether the Board is a local authority within the meaning of s. 30(b)(iv). In dealing with this particular argument, however, we are prepared to assume that the Board is such a local authority. Even so, it is possible to hold that s. 30(c) does not become redundant, because though s. 30(b)(iv) may include lands acquired by the Board, there may still be some other lands which are not acquired by the Board but which, nevertheless, may be required for carrying out some provisions of the Improvement Act. Take, for instance, s. 42 of the Improvement Act. Section 42(b) lays down that any improvement scheme may provide for raising, lowering, or levelling any land in the area comprised in the scheme. Section 42(c) provides for the formation and retention of open spaces. Similar provisions are made by s. 35C(1)(i) and (j) as introduced by the Amending Act 32 of 1955. It is possible to take the view that the lands required for the purposes specified in these provisions of s. 42 or s. 35C of the Improvement Act are required within the meaning of s. 30(c) of the Act, though they may not have been acquired. But apart from this consideration, the argument that s. 30(c) would become redundant cannot, we think, be treated as decisive, because it is not unknown that the Legislature sometimes makes provisions out of abundant caution. When s. 30(c) was enacted in 1949, the Legislature may have thought that in order to avoid any doubt, dispute or difficulty in regard to the question as to whether the Board would be a local authority or not, it would be better to make a specific provision in respect of lands which are acquired by the Board as well as those which would be required for the purpose of carrying out the provisions of the Improvement Act. It is true that the lands which are required within the meaning of s. 30(c) would include lands which are actually acquired as well as those which might not have been acquired but are, nevertheless, required for carrying out the provisions of the Improvement Act. But having specified respective authorities or bodies in cl. (a) & (b) of s. 30, the Legislature may have thought that it would be better to refer to the Improvement Act and lands required for carrying out its provisions, specifically and expressly. Having regard to the considerations on which our interpretation of s. 30(c) is based, we are not prepared to attach undue significance to the argument based on the assumption that the Board is a local authority within the meaning of s. 30(b)(iv) and that would make the provisions of s. 30(c) either superfluous or would deprive the said provisions of any significance or importance.

The result is, the appeals are allowed, the decrees passed by the Division Bench are set aside and those of the trial Judge restored with costs throughout.

Appeals allowed.

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