

State of West Bengal and Another

Vs

Surendra Nath Bhattacharya and Another

Civil Appeal No. 140 of 1969

(Syed M. Fazal Ali, P. S. Kailasam JJ)

24.04.1980

JUDGMENT

FAZAL ALI, J. –

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

2. Although the case had a rather chequered career and was preceded by a full-fledged litigation starting from the trial Court and ending with the High Court regarding the question of title, we are not, however, concerned with the past history in view of the short point on the basis of which the appeal was decided by the Division Bench of the High Court. The case of the government was that on December 16, 1949, respondent 2 known as Calcutta Mineral Supply Company having its office at 31, Jackson Lane, Calcutta, applied to the Collector for acquiring the land in question in order to extend its business. The company was carrying on the business of manufacturing sodium silicate, plaster of Paris etc. which were formerly imported on a very large scale from foreign countries. The manufactured goods of the company are widely used all over India saving considerable foreign exchange which otherwise would have had to be spent in importing these materials. The company pleaded that it wanted to extend its business and improve the standards of its manufacture but for want of space for big underground storage tanks, the company was seriously handicapped. The company, therefore, prayed that the lands in dispute which were contiguous to the lands on which the existing factory of the company stood were best suited for this purpose and hence the Collector was requested to acquire the lands for public purpose. Consequent to the application, an agreement was executed between the government and the company on November 29, 1954. On December 9, 1954, a notification under Section 6 of the Act was published and the first respondent filed his objections which was rejected and was followed by a notification under Section 9 of the Act. After the land acquisition proceedings were complete a writ petition was filed by the first respondent before the High Court on January 14, 1957 which was dismissed by a Single Judge of the High Court and therefore the first respondent filed an appeal to the Division Bench of the High Court on February 21, 1957. While the appeal was pending before the High Court the Collector made an Award dated October 14, 1957 and after taking possession from the owners of the land, delivered the same to the company-respondent 2 on October 23, 1957. The first respondent filed an application for permission to urge additional grounds before the High Court which was permitted and ultimately the Division Bench of the High Court by the order under appeal allowed the appeal and quashed the land acquisition proceedings taken under the Act. Hence, this appeal before this Court after getting a certificate from the High Court.

3. The only point that has been canvassed before us by counsel for the parties is as to whether or not the acquisition of the land in dispute was valid in law. The appellant contended that in view of the amendment of Section 40 by Act 31 of 1962, acquisition of land for the purpose of the company was validated and all acquisitions made before the amendments were validated retrospectively provided certain conditions laid down under Section 7 of the amending Act were fulfilled.

4. We might mention here that prior to the amendment, this Court in *R. L. Arora v. State of U. P.* (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268) had held that any acquisition under the Act for purposes of a private company would not be a public purpose and would, therefore, be void. It was on the basis of this decision, which is usually known as the 'first Arora case' (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268), that the first respondent filed a petition in the High Court for quashing the land acquisition proceedings. The legislature, however, intervened by the amending Act, as mentioned aforesaid, and removed the basis of the judgment of this Court by adding clause (aa) to Section 40 of the Act so as to validate all acquisitions of private lands for purposes of a private company provided the conditions laid down in Section 7 were fulfilled. This amendment was also challenged before this Court in what is known as the 'second Arora case' ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487) where this Court by majority of 4 : 1 held that the amending Act was valid and that under Section 40 (aa) an acquisition could be made even for a private company if it was engaged in an industry which was for a public purpose. We are not concerned with the other amendments made which do not apply to the facts of the present case.

5. The High Court undoubtedly referred to the first Arora case (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268) as also to the second Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487) but, with due respect we might observe that the High Court relied mainly on the observations made in the first Arora case (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268) and has not correctly interpreted the later decision of this Court and the effect of the amendment which completely superseded the first Arora case (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268). The argument of the learned counsel before us centered round the interpretation of Section 40 (aa) as amended by the amendment as also Section 7 of the amending Act. In order to understand the scope of the argument it may be necessary to extract both Section 40 (aa) and Section 7 of the amending Act, which run thus :

7. Validation of certain acquisitions. - Notwithstanding any judgment, decree or order of any court every acquisition of land for a company made or purporting to have been made under Part VI of the principle 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 the Section 40 of the principal Act, be deemed to have been made for the purpose mentioned in clause (aa) of the said sub-section, and accordingly every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of Sections 40 and 41 of the principal Act, as amended by this Act were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was entered into or action was taken.

Explanations. - In this section "Company" has the same meaning as in clause (c) of Section 3 of the principal Act, as amended by this Act.

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

5-A. In this connection, this Court observed as follows : ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487)

Therefore before Section 7 can validate an acquisition made before July 20, 1962, it must first be shown that the acquisition is complete and the land acquired has vested in government. This means that the land acquired has vested in government either under Section 16 or Section 17(1) of the Act. Thus Section 7 of the amendment Act validates such acquisitions in which property has vested absolutely in government either under Section 16 or Section 17(1). Secondly Section 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 clause (a) or clause (b) of Section 40(1) and those clauses do not apply in view of the interpretation put thereon in R. L. Arora case (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268) it shall be deemed that the acquisition was for the purpose mentioned in clause (aa) as inserted in Section 40(1) of the Act by the amendment Act. Thirdly Section 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 Sections 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.

6. Thus, analysing the ratio of the second Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487), the following conditions must be satisfied before an acquisition made prior to July 20, 1962 could be said to be constitutionally valid :

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

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

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

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

7. On this aspect of the matter, the view taken by this Court in the second Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487) was followed in a recent decision of this Court in *Himalayan Tiles & Marble v. Francis Victor Coutinho* ((1980) 3 SCC 223). In the instant case, it is not disputed that the proceedings for acquisition were started long before July 20,

1962, that is to say, as early as December 9, 1954 when notification under Section 6 of the Act was issued. Secondly, it is also not disputed that after inviting objections, etc., an Award was made by the Collector on October 14, 1957 and after the property in dispute fully vested in the government, the Collector, then delivered the same to the company-respondent 2 on October 23, 1957. For these reasons, the facts of the present case squarely fall within the ambit of the conditions laid down by Section 7 of the amending Act and hence the challenge on the ground of the constitutional validity of the acquisition must necessarily fail.

8. Mr. V. S. Desai, appearing for respondent 1, however, submitted that Section 7 itself was violative of Article 31(2) of the Constitution. It is not necessary to examine this argument in detail because a similar argument was urged in the second Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487) and rejected.

9. It was then contended that even if we assume that Section 7 validated the present land acquisition proceedings, the conditions prescribed in clause (aa) of Section 40 were not fulfilled in this case inasmuch as the acquisition could not be said to be for a public purpose. It was submitted by the counsel for respondent 1 that as the company was a private one and there is nothing to show that there was any direct connection or close nexus between the articles produced by the company and the general good of the public, it could not be said that the acquisition was made for a company which was engaged in an industry which was for a public purpose. This argument, in our opinion is based on a misconception of the concept of the amending Act and the introduction of clause (aa) to Section 40. If we are persuaded to hold that Section 40 (aa) also requires proof of a public purpose in the restricted sense in that it must be for the general good of the people at large, then the very object sought to be achieved by the amendment would be completely frustrated and the provisions of Sections 7 would become otiose. A similar argument was advanced in the second Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487) and was fully considered by this Court which observed as follows ((1964) 6 SCR 784 : AIR 1964 SC 1230 (1964) 2 SCJ 652 : 34 Com Cas 487) :

In approaching the question of construction of this clause, it cannot be forgotten that the amendment was made in consequence of the decision of this Court in R. L. Arora case (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268) and the intention of Parliament was to fill the lacuna, which, according to that decision, existed in the Act in the matter of acquisitions for a company ... Further, a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute.

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Therefore, we have to see whether the provision in clause (aa) bears another construction also in the setting in which it appears and in the circumstances in which it was put on the statute book and also in view of the language used in the clause. The circumstances in which the amendment came to be made have already been mentioned by us and the intention of Parliament clearly was to fill up the lacuna in the Act which became evident on the decision of this Court in R. L. Arora case (1962 Supp 2 SCR 149 : AIR 1962 SC 764 : (1963) 1 SCJ 33 : 32 Com Cas 268) It was

only for such a company that land was to be acquired compulsorily and the acquisition was for the construction of some building or work for such a company i.e., a company engaged or about to be engaged in some industry or work which is for a public purpose. In this setting it seems to us reasonable to hold that the intention of Parliament could only have been that land should be acquired for such building or work for a company as would subserve the public purpose of the company; it could not have been intended considering the setting in which clause (aa) was introduced, that land could be acquired for a building or work which would not subserve the public purpose of the company ... Further, acquisition is for the construction of some building or work for a company and the nature of that company is that it is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose. When therefore the building or work is for such a company it seems to us that it is reasonable to hold that the nature of the building or work to be constructed takes colour from the nature of the company for which it is to be constructed. We are therefore of opinion that the literal and mechanical construction for which the petitioner contends is neither the only nor the true construction of clause (aa) and that when clause (aa) provides for acquisition of land needed for construction of some building or work it implicitly intends that the building or work which is to be constructed must be such as to subserve the public purpose of the industry or work in which the company is engaged or is about to be engaged. In short, the words "building or work" used in clause (aa) take their colour from the adjectival clause which governs the company for which the building or work is being in an industry or work of that kind and where the building or work is also constructed for a purpose of that kind, which is a public purpose, that acquisition can be made under clause (aa). As we read the clause we are of opinion that the public purpose of the company for which acquisition is to be made cannot be divorced from the purpose of the building or work and it is not open for such a company to acquire land under clause (aa) for a building or work which will not subserve the public purpose of the company.

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

when the amendment was enacted.

11. The High Court also seems to have accepted the argument of the first respondent that Section 40 (aa) violates Article 14 of the Constitution inasmuch as it permits acquisition of land for a company but not for an individual or a private company though these persons may also be engaged in an industry which was for a public purpose. This argument was repelled by this Court and it was held that Section 40 (aa) was not violative of Article 14. In this connection, this Court observed as follows : ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487)

Therefore a distinction in the matter of acquisition of land between public companies and government companies on the one hand and private individuals and private companies on the other is in our opinion justified, considering the object behind clause (aa) was not introduced into the Act. The contention under this head must therefore also fail.

12. Some of the High Courts also have taken a similar view which has found favour with us in view of the second Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487), referred to above. In the case of P. Girdharan Prasad Missir v. State of Bihar (AIR 1968 Pat 77) a Division Bench of the Patna High Court while dealing with this question observed as follows :

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

13. A Division Bench of the Gujarat High Court in Chhotubhai Babarbai Patel v. State of Gujarat (ILR 1964 Guj 472) while construing the second Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487) referred to above clearly held that Section 40 (aa) contemplated that the building or work which the company intended to construct was to subserve the public purpose of the industry or work for which it was being constructed. In that case also, the company concerned was manufacturing caustic soda, dyes, chemicals, colours and drugs (caustic soda is one of the products of the company in the instant case also). Dwelling on the importance of the public purpose of the industry concerned in that a case, Shelat, C.J., observed as follows :

Taking all these factors into consideration, it is not possible to deny that the industry in which the second respondent company is already engaged and is about to be engaged in and for the buildings or works for which the lands in question are being acquired is such that it will promote public purpose and will be in the interest of the public.

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

15. Finally, even in the second Arora case ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487), it would appear that the company in question was engaged in the production of textile machinery and its parts which were for the use of the general public. This was held by this Court to be a definite public purpose behind the acquisition. In this connection, this

Court observed as follows : ((1964) 6 SCR 784 : AIR 1964 SC 1230 : (1964) 2 SCJ 652 : 34 Com Cas 487)

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

16. The industrial venture in which respondent 2 was engaged was undoubtedly of much greater use than a company producing textile machinery because apart from being useful to the people at large and producing chemicals it has also resulted in saving a lot of foreign exchange and thus improving the economy of our country so as to be an efficient instrument of economic benefit. We are satisfied that all the conditions of Section 7 of the amending Act as also that of Section 40 (aa) have been fulfilled in the instant case and the High Court was wrong in law in quashing the said proceedings. The appeal is accordingly allowed, the judgment of the High Court is quashed and the Award of the Collector as also the proceedings before the Award are restored. In the circumstances of the case, the appellant will be entitled to costs in this Court against respondent 1.

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