# State Of West Bengal And Ors. And ... vs P.N. Talukdar And Ors. And Abdul Kadar ... on 13 August, 1964

## Equivalent citations: AIR1965SC646, AIR 1965 SUPREME COURT 646

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## Bench: A.K. Sarkar, K.N. Wanchoo, S.M. Sikri

JUDGMENT

K.N. Wanchoo, J.

1. These four appeals on certificates granted by the High Court of Calcutta arise out of the same land acquisition proceedings and raise the same points and will be dealt with' together. There were two petitions before the High Court under Article 226 of the Constitution challenging the land acquisition proceedings which were dealt with together. The learned Single Judge who originally dealt with the matters dismissed the petitions. Then followed two appeals to the Division Bench of the High Court, which were allowed. Four applications were then made for certificates to appeal to this Court, two of them by the State of West Bengal and two by the Ramakrishna Mission (hereinafter referred to as the Mission) in whose favour the acquisition proceedings were taken. That is why we have four appeals, before us, two by the State of West Bengal and two by the Mission. We propose to deal with them together in this judgment.

2. The Mission is a society registered under the Societies Registration Act of 1860 and the object of the society inter alia, is to impart and promote the study of Vedanta and its principles as propounded by Sri Ramakrishna and of comparative theology in its widest form and also to propagate religious, social and educational teachings and activities for the benefit of the public. In that connection the Mission had acquired by private purchase or acquisition under the Land Acquisition Act No. 1 of 1894, (hereinafter referred to as the Act) a large tract of land at a place called Narendrapur. In order to carry out its objects, the Mission, inter alia establishes, maintains and carries on schools, colleges, orphanages, workshops, laboratories, hospitals, dispensaries, houses for the infirm, the invalid and the afflicted, famine relief works and other educational and charitable works and institutions of a like nature. For that purpose it constructs, maintains or alters any house buildings or works necessary or convenient therefore. In the recent past the Mission had started various public works in the locality known as Narendrapur and established there (a) a residential degree college with hostel building and staff quarters, (b) a residential multi-purpose school, (c) a residential senior basic school and an institution for the blind with similar amenities, (d) a students' home for the residence of students who study in the University or other colleges, and an institution for the promotion of adult and social education with hostels etc., (e) a school of shorthand and typewriting, (f) a dairy farm, (g) a poultry farm and fishery for training purposes, (h)

a center for training carpentry and book binding etc., (i) a fully equipped hospital, (j) a library, a gymnasium, workshops for the boys of schools and colleges, agricultural farms for the multi-purpose schools.

3. In October 1960, the Mission applied to the Land Acquisition Collector, Alipore, for acquisition of certain lands as the land at its disposal at Narendrapur was not sufficient: for its purpose. The Land Acquisition Collector was requested to start proceedings beginning, with Section 4 read with Section 38 of the Act for the acquisition of 14-11 acres of land and most of this land was in the shape of pockets in the existing land of the Mission or adjacent to it. The Mission informed the Collector that it was willing and ready to enter into necessary agreement with the Government as provided for in the Act for purposes of this acquisition and pay also all reasonable costs in respect thereof. Thereafter a notification was issued under Section 4 of the Act on July 24, 1961, in which it was recited that the land was likely to be needed for a public purpose, namely, for the construction of staff quarters, hostel building and playground of the Mission and that the area needed was about 14.11 acres. Notice was given to persons interested in the land specified in the notification to file objection, if any, within thirty days.

4. It appears that thereafter proceedings were taken under Section 5-A of the Act and a report was made to Government. It further appears that as the land was required for the Mission which was to pay the entire expenses and as the Mission came within the definition, of the word "company" as given in Section 3(e) of the Act being a society registered under the Societies Registration Act of 1860, proceedings were taken under Part VII of the Act. Sections 39 and 40 lay down that land acquisition proceedings under Part VII will only betaken with the previous consent of the appropriate government, and that such consent shall not be given unless the appropriate government is satisfied either on the report of the Collector under Section 5-A or by an. enquiry held as provided in Section 40 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 that the acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public. Under Section 41 of the Act an agreement is required to be executed in favour of the State Government by the company, and it is after the consent has been given and the agreement executed that notification under Section 6 can be issued in view of the provisions of Section 39. It appeal's that an enquiry was made under Section 5-A of the Act and a further enquiry was made under Section 40 of the Act later on and thereafter the notification under Section 6 was issued on October 4, 1962. In the meantime the Land Acquisition (Amendment) Act (No. XXXI of 1962) had been passed by which Sections 40 and 41 had been amended by insertion of Clause (aa) in Section 40 and of Clause (4-A) in Section 41. The notification under Section 6 having been issued after the amendment, the additions in Sections 40 and 41 made by the Amendment Act will have to be taken into account in judging the validity of the proceedings. As an argument has been raised as to the efficacy of the notification under Section 6, it is necessary to set it out in full as under:--

> "Whereas the Governor is satisfied that land is needed for a public purpose not being a purpose of the Union, namely for the construction of staff-quarters, hostel building and playground of Ramakrishna Mission at Narendrapur in the village of Ukhila

Paikpara, jurisdiction list No. 56, P.S. Sonarpur, parganas Maidanmal Zilla 24 Parganas, it is hereby declared that a piece of land comprising portion of cadastral plot No. . . . . .and measuring more or less 14.05 acres, is needed for the aforesaid public purpose at the public expenses of the Ramakrishna Mission within the aforesaid village of Ukhila Paikpara.

"This declaration is made under the provisions of section 6 of Act I of 1894, to all whom it may concern.

"A plan of the land may be inspected in the office of the Special Land Acquisition Officer, Alipore 24 Parganas."

5. After this notification possession was taken of most of the land by the Mission in November 1962. Then followed the two petitions under Article 226, one on November 16 and the other on November 17, 1962. A large number of points were raised in the petitions to attack the validity of the land acquisition proceedings. We do not think it necessary how-' ever to refer to all those points, particularly those which have been decided against the respondents. But the main argument before the learned Single Judge was that the land acquisition proceedings were bad because the agreement between the State and the Mission was not in compliance with the conditions mentioned in Section 41, inasmuch as the terms on which the public would be entitled to use the work to be erected on the acquired land were not set out therein and therefore there could be no issue of a notification in view of Section 39 of the Act. The learned Single Judge held that the notification was covered by Clause (b) of Section 40(1). As to the provision in the agreement for the use of the work by the public, the learned Single Judge felt bound by a Division Bench decision of his own court, where a similar provision had been held to be within, the fifth term of Section 41. He therefore dismissed the petitions.

6. The respondents then went in appeal to the Division Bench. The main contention before the appeal court again was that the land acquisition proceedings were bad inasmuch as the agreement between the State and the Mission was invalid as the terms on which the public was entitled to use the work were not set out in the agreement and the provision in Clause 8 of the agreement in that behalf was not a sufficient compliance with the fifth term in Section 41 of the Act. It was also contended before the appeal court that consent could be given on any one of the three grounds provided in Section 40(1) and that it was not open, to the State Government to give consent on a combination of the grounds provided in Clauses (a), (aa) and (b) of Section 40(1). Certain other points were raised before the appeal court but they were rejected and we shall refer to them in appropriate places while dealing with arguments raised in this Court.

7. The two learned Judges composing the appeal court gave separate judgments, though in the result both allowed the appeals. Bose C. J. held that though the construction of playgrounds and hostels might fall within Clause (b) of Section 40(1), the construction of staff-quarters could not fall within that clause. He repelled the contention that acquisition could not be made for the combined purpose of Clause (a), Clause (aa) or Clause (b) of Section 40(1). But he was of the view that there was nothing to show that the State Government applied its . mind to Clause (a), or Clause (aa) of Section

40(1) when giving consent. He therefore held that as the State Government had applied its mind only to Clause (b) of Section 40(1) and as construction of staff-quarters did not come within that clause and as there was nothing to show what part of the land to be acquired was meant for staff-quarters and what part for hostels and playgrounds, the entire acquisition must be held to be bad. On the question whether the fifth term of Section 41 had been complied with, the learned Chief Justice relied on the view he had taken in an earlier case and held that it did. Eventually he allowed the appeals.

8. Mitter J., who was the other learned Judge of the appeal court, also held that the consent of the State Government was given only under Clause (b) of Section 40(1). He then went on to hold that the fifth term of Section 41 was not complied with and therefore the acquisition must be struck down on that ground. He further held that the notification under Section 6 said that the acquisition was for a public purpose, but as the entire compensation was to be paid by the Mission and no part of it was to be paid by the State Government, the notification itself was bad. He therefore agreed with the learned Chief Justice that the appeals should be allowed. Then followed the present four appeals on certificates granted by the High Court.

9. The law on the subject relating to land acquisition whether for a public purpose or for a company is now well settled after the decisions of this Court in Babu Barkya Thakur v. State of Bombay, ; Jhandu Lal v. State of Punjab, ; R.L. Arora v. State of U.P., and Smt. Somawanti v. State of Punjab, . We may refer to the gist of these decisions as given in Arora's case, with respect to the notification under Section 6 of the Act, whether acquisition is for a public purpose or for a company:--

> "In one case, the notification under Section 6 will say that the acquisition is for a public purpose, in the other case the notification will say that it is for a company. The proviso to Section 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where however the acquisition is for a company, the compensation would be paid wholly by the company. Though therefore this distinction is there where the acquisition is either for a public purpose or for a company, there is not a complete dichotomy between acquisitions for the two purposes and it cannot be maintained that where the acquisition is primarily for a company it must always be preceded by action under Part VII and compensation must always be paid wholly by the company. A third class of cases is possible where the acquisition may be primarily for a company but it may also be at the same time for a public purpose and the whole or part of compensation may be paid out of public, revenues or some fund controlled or managed by local authority. In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of Section 6 which lays down that acquisition may be made for a public purpose if the whole or part of the compensation is to be paid out of: the public revenues or some fund controlled or managed by a local authority."

10. The first question that falls for consideration is whether the acquisition in this case was for a public purpose in which case the whole or part of the compensation is to come out of public

revenues etc. or for a company in which case the whole of the compensation has to be paid by the company. The argument on behalf of the respondents is that as one reads the notification under Section 6 issued in this case, it appears that the acquisition is for a public purpose and not for a company, and therefore in order that the notification may be valid the whole or part of the compensation had to come out of public revenues or some fund controlled or managed by a local authority. It is urged that it is clear in this case that the entire compensation was to be paid by the Mission and therefore when the notification said that the acquisition was for a public purpose it must be held to be invalid. Reliance in this connection has been placed on a decision of this Court in Shyam Behari v. State of Madhya Pradesh, C.A. No. 177 of 1963 D/- 3-2-1964: . That decision referred to the law on the subject which we have quoted above from R.L. Arora's case, (1962) Supp 2 SCR 149: and then turned' to the interpretation of the particular notification under challenge in that case. It is therefore of no help in the present case where we have to consider the interpretation of the notification quoted above. The notification here says that the land is needed for a public purpose, namely, for construction of staff quarters, hostel buildings and playground of Ramakrishna Mission at Narendrapur. Though therefore the notification begins by saying that the land is needed for a public purpose and does not say that it is needed for a company, it does specify for what particular purpose the land is needed, namely, for construction of staff-quarters, hostel buildings and playground of the Mission which as we have already said is a company. The notification therefore does indicate that the land is needed for a company, though it does not say so in so many words. Finally, the notification says that the land is needed for "the aforesaid public purpose at the public expense of the Ramakrishna Mission". We must say that this language is rather curious, for if the compensation was to be paid by the Mission it could not be at the "public expense", and in any case the words "the public expenses of the Ramakrishna Mission" are a contradiction in terms. The reasonable interpretation of these words therefore is that the acquisition will be at the expense of the Mission. This is borne out by the fact that the agreement under section 41 which preceded the notification and which must precede it in view of Section 39 provides in Clause (1) thereof that "all and every compensation in respect of the said land shall be paid by the Mission". There is no doubt that the notification under Section 6 is very clumsily drafted and we cannot fail to condemn such clumsy drafting where the notification is the basis of all subsequent proceedings. But on a fair and reasonable reading of the notification under Section 6 in this case there can be no doubt that it means that the land is required for a company (namely, the Mission) and that it is to be acquired at the expense of the company (namely, the Mission). Therefore the contention on behalf of the respondents that the notification is bad inasmuch as it says that the land is needed for a public purpose and there is no provision for payment of compensation in part or in whole from the public revenues or some fund managed or controlled by a local authority, must fail.

11. A contrary contention has been raised on behalf of the Mission on the basis of this notification under Section 6, and it is urged that in fact no proceedings under Part VII were necessary in this case because the notification was for a public purpose as recited therein and not for a company. It is also urged that compensation in whole or in part was to be paid in the particular case out of public revenues. It may be mentioned that this contention was not urged on behalf of the State of West Bengal for it is not the State's case that any part of the compensation was to be payable out of the public revenues. Learned counsel for the Mission, however, relied on the presumption contained in Section 6 (3) of the Act which lays down that the declaration shall be conclusive evidence that the

land is needed for a public purpose or for a company, as the case may be. It is urged that in view of this presumption the notification is conclusive evidence of the fact that the land is needed for a public purpose as it says so in the opening part. That however in our opinion does not mean that the court is precluded from enquiring whether the notification that the land was needed for a public purpose was made in fraud of the Act, namely, against the proviso to Section 6(1), which requires that such a notification cannot be made unless part or whole of the compensation comes out of public revenues or some fund managed or controlled by a local authority. In the present case there is evidence in the notification itself that compensation was to be paid by the Mission and not out of public revenues to which we have already referred while dealing with the contention on behalf of the respondents that this was not a notification for acquisition of land for a company. Besides we cannot overlook the agreement which immediately preceded the notification, and that shows that the entire compensation money is to be paid by the Mission. There is on the other hand no evidence to show that any part of the compensation is to be paid out of public revenues as stated by learned counsel for the Mission. We have no doubt that if such was the case learned counsel for the State would have immediately supported the validity of the notification and of subsequent proceedings on this simple ground on the basis of the decision in Jhandu Lal's case, . We have no doubt therefore that this clumsily drafted notification is really a notification for acquisition of land for a company, the compensation for which acquisition is wholly to come from the company. Therefore it was necessary to comply with Part VII of the Act, and the argument on behalf of the Mission that no proceedings under Part VII of the Act were necessary and what was done under that Part was entirely redundant, must fail.

12. The next question that requires consideration is whether the acquisition is valid and whether the terms of Sections 40 and 41 of the Act were complied with. Consent can be given under Section 40 of the Act for any of the three purposes provided therein, namely, (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, (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; 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. It has been held by the appeal court that in the present case the State Government only considered Clause (b) before giving its consent and did not apply its mind to Clause (a) and (aa), though the appeal court turned down the argument that it was not possible when giving consent to consider more than one clause out of the three mentioned above. Now generally speaking the appropriate government would not state in so many words whether it was proceeding under Clause (a), or Clause (aa) or Clause (b). The question whether consent has been given under one clause or the other or more than one clause has to be decided on the basis of the agreement and the notification under Section 6. We have also no doubt that it is open to the appropriate government to give consent on being satisfied as to one of the three clauses only or as to more than one clause. In the present case reliance has been placed on behalf of the State Government on all the three clauses and particularly on clauses (aa) and (b), to show that the consent was given after keeping in mind all the three clauses of Section 40(1). The question as to which clause of Section 40(1) was acted upon by the State Government to give consent is important because on that will depend the nature of the agreement which has to be made under Section 41. Where the purpose of the acquisition is .as

mentioned in Clause (a), the agreement has to provide for the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided. Where the consent is based on Clause (aa), the agreement is to provide for .the time within which and the conditions on which, the building or work shall be constructed or executed. Where the consent is given on the basis of Clause (b), the agreement, is to specify the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work. It will be seen from the above that there are bound to be differences in the terms to be embodied in an agreement under Section 41 depending upon whether the consent was given. In this connection we have already mentioned that (we) have therefore to scrutinise the agreement to find out under which clause the consent was given. In this connection we have already mentioned that in the view of the appeal court the consent was given only under Clause (b) of Section 40(1).

13. Now the three purposes which are specified in the notification under Section 6 for which the land is to be acquired are construction of (i) staff-quarters, (ii) hostel buildings and (iii) playground. The appeal court, and in particular the learned Chief Justice, has held that construction of hostel buildings and playground comes within Clause (b) of Section 40(1), but that construction of staff-quarters cannot come under that clause. We are of opinion that this view is correct. Hostel buildings and playground are obviously meant for the students of the institution and such students as a body are a section of the public and therefore the hostels and playground can be directly useful to this section of the public, and may in certain circumstances be used by other sections of the public also, as, for example, the parents or guardians of the students concerned. But so far as staff-quarters are concerned, they are meant for occupation of individual members of the staff. We cannot accept the argument that an individual member of the staff must also be held to be a section of the public and therefore staff-quarters would be useful to the public. That would in our opinion be reducing the idea of what is useful or can be used by a section of the public to absurdity. When we speak of a section of the public we must exclude from it an individual and what can be used by an individual cannot be said to be used by a section of the public which must always be more than one. We therefore agree with the High Court that construction of staff-quarters cannot be brought within the ambit of Clause (b) of Section 40(1).

14. The next question then is whether construction of staff-quarters can be brought within the ambit of Clause (a) or Clause (aa). It is urged that it can come under Clause (aa) which provides that 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. It is urged that the Mission is a company. Staff-quarters are obviously buildings. The question however is whether the Mission is engaged or is taking steps for engaging itself in a work which is for a public purpose. In this connection it is urged that the word "work" used in Clause (aa) is much wider than the word "industry" used in the same clause, and that if the Mission is engaged in any work which is for a public purpose and the land is required for staff-quarters in connection with that work, the case would be covered by Clause (aa). We do not think it necessary for present purposes to decide whether the word "work" used in Clause (aa) in the phrase "industry or work" refers to some kind of productive activity which would result in production of goods useful to the public. We shall assume it is wider. But the Mission did not lay any foundation for the argument that the case was covered by

Clause (aa) in its reply. If the case is to be. covered by Clause (aa) and the word "work" in the phrase "industry or work" has a wider meaning, it was the duty of the Mission to explain what was the work within this wide meaning for which staff-quarters were required, so that the court may be in a position to judge whether the work was of such a nature as to come within the words "any industry or work which is for a public purpose". 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 Clause (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. We may refer in this connection to the decision of this Court in R. L. Arora v. State of Uttar Pradesh, W. P. No. 137 of 1962, D/- 14-2-1964 : in which this Court has held that it is not only to be shown that the company is engaged in any work or industry which is for a public purpose but that it must also be shown that the building or work which is to be constructed on the land to be acquired subserves the same public purpose. It is impossible to hold this unless one knows what is the particular work for which the land is needed. We have already pointed out that the Mission is engaged in a large number of activities and we do not know for what work, out of its so many activities, staff-quarters are required. What we have said above is reinforced by the preamble to the agreement which says that the land is needed for the aforesaid purpose, namely, construction, of staff-quarters, hostel buildings and playground, and that the said work is likely to be useful to the public, which clearly indicates that it was Clause (b) which was under consideration of the Government and not Clause (aa), as: otherwise we would have found words in the preamble which would be appropriate to Clause (aa) also and not merely appropriate to Clause (b).

15. Then it is urged that the case is covered by Clause (a) in any case because that provides for erection of dwelling houses for workmen employed by the company. It is said that staff-quarters are meant for the employees of the Mission and they would be covered by the general words i. e., "workmen employed by the company". It may be conceded that building of staff-quarters by the Mission may be included within Clause (a) of Section 40(1). The High Court has however found that there was nothing to show that this aspect of the matter was considered by the State Government. But, as we have said earlier, one would not generally find the appropriate government saying when giving consent whether it is acting under one clause or the other of Section 40(1), and that has to be gathered from the agreement and the notification under Section 6 following thereon. When we look at the agreement which preceded the notification we do find specific mention of hostel buildings, playground and staff-quarters for the Ramakrishna Mission. As the construction of staff-quarters may very well come within Clause (a) of Section 40(1), it cannot necessarily be said that the Government only considered Clause (b) of Section 40(1) and did no consider Clause (a) at all. But if one looks at the preamble to the agreement there is in our opinion justification for the view taken by the High Court. The preamble puts all the three purposes together and makes no distinction between them. The State Government apparently thought that construction of staff-quarters stands on the same footing as construction of hostel buildings and playground and considered the necessity

of giving consent on the basis of Clause (b) only. This is clear from that part of the preamble which says that the State Government being satisfied by an enquiry held under Section 40 of the Act that the proposed acquisition is needed for the purpose of constructing staff-quarters, hostel buildings and playground, and that the said work is likely to prove useful to the public, has consented to acquire the land on behalf of the Mission. The said work in this part of the preamble includes all three, namely, staff-quarters, hostel buildings and playground, and all that the State Government says in connection with the giving of consent is that the said work is likely to prove useful to the public, which are the very words to be found in Clause (b). If the State Government was considering Clause (a) we would have found words in the preamble which would be appropriate to Clause (a). In the circumstances the view taken by the learned Chief Justice that Clause (a) was not considered at all by the State Government appears to be correct. His further conclusion that if that is so and the land required for the construction of staff-quarters cannot be brought under Clause (b) and the extent of such land is not known, the whole of the notification must be struck down, is in our view correct. On this view of the matter the appeals must fail and it is unnecessary to consider the other two points raised before us.

16. The appeals therefore fail and are dismissed with costs--one set of hearing fee.