Ram Narain Prasad v. *Ram Kishun Parshad* (1). Now if this be the legal position with respect to section 80 and if a suit under Order XXI, Rule 63, be merely a continuation of the proceedings initiated under Order XXI, Rule 58, Code of Civil Procedure, then the Collector who was a party to those proceedings had full notice of the plaintiff's claim and the penal consequences imposed by the omission to give notice under the above section may not be attracted. In this view of the matter, I would prefer the authority of *Hiraluxmi Pandit* v. *Income-tax Officer* (2), to *Liquidator of Society Sangakheda Kalan Co-operative Bank's case* (3), and respectfully agreeing with the reasoning and ratio of Sinha, J. (as he then was), in the former decision, I would allow the appeal and setting aside the judgments and decrees of the two Courts below, remand the case to the trial Court for further proceedings in accordance with law and in the light of the observations made above. The costs so far incurred will be the costs in the cause.

The parties have been directed to appear in the trial Court on 28th April, 1959.

B. R. T.

LETTER PATENT APPEAL

Before G. D. Khosla and Bishan Narain, JJ.

BHAGWAT DAYAL AND OTHERS,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 41-D of 1957

1957

Apr., 8th

Constitution of India (1950)—Article 31 and Land Acquisition Act (I of 1894)—Section 6—"Public Purpose"—Meaning of—How to be achieved—Courts, whether can

(1) A.I.R. 1943 Pat. 354
(2) A.I.R. 1955 Pat. 404
(3) A.I.R. 1939 Nag. 232

determine if a particular purpose is a public purpose—Matters to be considered by the Court for determining whether an acquisition is for a public purpose—Construction of dwelling houses—Whether a public purpose—Land Acquisition Act (I of 1894)—Part VII—Procedure prescribed therein—Whether to be followed where acquisition is for a public purpose—Section 3(c)—Appointment of Land Acquisition, Collector with retrospective effect—Effect of—Award made by such officer—Whether valid—Constitution of India (1950)—Article 226—Petition under—Delay in filing—Effect of—Object of the petition to have the amount of compensation enhanced—Whether mala fide.

Held, that under the Constitution of India property including land can be acquired only for a public purpose. It cannot be acquired for a private purpose. This public purpose may be achieved through public agency or through private enterprize. The concept of public purpose is not static but dynamic and depends on needs and requirements of the public or community at a given time and place. If, however, the acquisition benefits a private person alone or only individuals then it is not public purpose. If the acquisition furthers the general interests of the community though incidentally it benefits individuals also then it does not cease to be a public purpose. Under the Land Acquisition Act the State Government must initially determine whether a particular purpose is or is not a public purpose and if acquisition of a particular piece of land would serve that public purpose. This determination, however, is not final and when the question is raised before courts of law then it is their duty to determine the nature of the purpose for whcih the particular piece of land has been acquired. In other words, the concept of public purpose as distinct from private purpose at a given time and place is a judicial question which must be determined by Courts of Law when called upon to do so. There is, however, a presumption that the decision of the State Government on this question is correct though this presumption is rebuttable. In this matter conflicting claims are involved. These conflicting claims must be determined judicially and the courts are under no obligation to uphold the acquisition on some ground or other by endeavouring to find reasons and excuses therefor. The approach of the courts must be strictly judicial, otherwise the protection guaranteed by the Constitution under Article 31 would become illusory and unreal

and the use of the expression "public purpose" in the Land Acquisition Act would become a surplusage. This matter has to be decided on the facts and circumstances of each case.

Held, that if the Legislature by a Statute declares a particular purpose to be a public purpose, then out of respect to the legislature the courts of law should accept it as such unless it is found impossible to do so or unless it involves violation of constitutional guarantee under Article 31 of the Constitution. No such consideration arises in a case where a purpose has been declared to be a public purpose by only an executive fiat. Further when Courts are considering whether or not a particular piece of land has been acquired for a public purpose, it is incumbent upon them to consider the agency selected for achieving that purpose. The agency selected for achieving a public purpose is an integral part of the public purpose. In any case such an agency is an important and relevant factor which can not be ignored when the purpose of an acquisition is under consideration. If the selected agency cannot achieve the public object of the acquisition, then it cannot be said that the land has been acquired for a public purpose. When the Government acquires land for a public purpose and decides to carry out the work itself or appoints a body which has been formed for the purpose of achieving this object by legislation or in other words when the work is to be done by a statutory body, then the Courts would readily hold that the public purpose will be furthered by the agency. When a private party is appointed to achieve this object then the Court should examine the matter more closely and see if proper steps have been taken by the Government to see that the purpose for which the land has been acquired will be achieved by this private agency. Obviously if the private agency appointed for the purpose is incapable of achieving the object, then the acquisition cannot be said to be for public purpose. Again if the acquisition is made wholly at the expense of the Co-operative Society only and no part of compensation is payable out of public funds, it cannot be said that the acquisition is not for a public purpose.

Held, that the purpose of construction of dwelling houses cannot be considered necessarily or *per se* to be a public purpose. Construction of houses in an area where

the dwelling accommodation is in excess of requirement cannot advance a public purpose. Similarly construction of houses in a heavily congested area or in slum area cannot be said to serve a public purpose because it would only worsen the congestion and thereby adversely affect the health of the public. On the other hand the construction of houses in an area where there is shortage of dwelling accommodation and there is suitable land available for constructing houses, then public purpose will be served by facilitating their construction. It, therefore, depends on the circumstances of each case whether construction of houses will further a public purpose or not.

Held, that the procedure laid down in Part VII of the Land Acquisition Act, 1894 need not be followed where the acquisition is made for a company but is for a public purpose.

Held, that where it is found that the officer who gave the award had not been appointed Land Acquisition Collector, in accordance with law, the Government can appoint him Land Acquisition Collector with retrospective effect and in that case the award made by him will be legal. The award is nothing but an offer of compensation on behalf of the Government.

Held, that mere laches in filng the petition for a writ under Article 226 of the Constitution will not deprive the petitioner of his right to challenge the act whereby his fundamental right has been infringed. Nor can it be said that a petition has been made *mala fide* or with ulterior motive because the object of the petitioners is to have the amount of compensation assessed enhanced. This motive will not and should not debar them to enforce their fundamental right if it is in fact infringed.

Letters Patent Appeal under Clause 10 of the Letters Patent Appeal against the order of Hon'ble Mr. Justice D. Falshaw in Civil Writ No. 264-D of 1957, dated the 18th December, 1957 dismissing the writ petition.

S. C. Isaac and Shri Keshav Dayal, for Petitioners.

Jindra Lal, Gurbachan Singh, Daljit Singh and Yogeshwar Dayal, for Respondents.

ORDER

BISHAN NARAIN, J.—Bhagwat Dayal and four others were owners of a garden known as Mubarak Bagh which is situated in village Malakpur Chhowni, Delhi. Its area is 215 Bighas and 5 Biswas. The Chief Commissioner, Delhi, acquired this area by issuing a notification, under section 6 of the Land Acquisition Act (hereafter called the Act), on 14th October, 1955. Thereafter proceedings under the Act were taken and the Land Acquisition Collector on 23rd February, 1957, made his award under section 11 of the Act. The erstwhile owners filed a petition under Article 226 of the Constitution challenging the validity of the notification issued under section 6 of the Act and also challenging the validity of the award. This petition was dismissed by Falshaw, J., on 18th December, 1957, and the present appeal under clause 10 of the Letters Patent has been filed against this decision. Bishan Narain, J.

The appellants' case is this. They purchased the land now in dispute in 1944-45 for Rs. 2,75,000 for the purposes of developing it. Since 1950 they have been trying to get the scheme for developing the area sanctioned. For this purpose they engaged the services of an architect who prepared a scheme for developing the area by converting the garden into building sites. On 20th August, 1953, the appellants submitted this scheme to the Delhi Improvement Trust for sanction. The Trust laid down certain conditions before sanctioning the scheme and these conditions were accepted by the appellants on 8th September, 1954. While this scheme was still under consideration of the Delhi Improvement Trust, a notification under section 4

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of the Act was issued on 23rd June, 1955 and notification under section 6 of the Act was issued on 14th October, 1955. Shri Murari Singh then took proceedings as a Land Acquisition Collector and gave his award on 23rd February, 1957, while the notification appointing him Land Acquisition Collector was not issued till 30th March, 1957, though with retrospective effect. The notification under section 6 of the Act reads:—

> "Whereas it appears to the Chief Commissioner of Delhi that Land is required for public purpose, namely for the construction of houses by the Dera Ismail Khan Co-operative House Building Society, Limited, it is hereby declared that the land described in the specification below is required for the above purpose."

I have reproduced above the notification under section 6 of the Act from the copy of the notification filed with the writ petition. There is, however, an obvious typing mistake in this copy in as much as the words "at the expense of the Dera Ismail Khan Co-operative House Building Society, Limited", do not occur therein. This mistake is clear from the fact that these words occur in the notification under section 4 of the Act and the petitioners in para 13(b) have challenged the validity of this notification on the ground that the compensation is to be paid from the funds of the society which is a private institution and not from public funds. It may, therefore, be taken that there is a specific mention in the notification under section 6 of the Act that the compensation shall be payable from the funds of the Dera Ismail Khan Co-operative House Building Society, Limited, and I

shall deal with the points raised in this case on this basis.

I may first dispose of the respondents' pleas which prevailed with the learned Single Judge as these pleas are in the nature of preliminary objections to the writ petition.

The respondents pleaded (1) that the petition under Article 226 of the Constitution in substance was directed against the notification, dated 14th October, 1955, and, therefore, the writ petition filed on 20th May, 1957, had been made after inordinate delay which has not been explained in the petition and (2) that the purpose of this writ petition was not to get the acquisition quashed but to get the compensation of the land enhanced.

The first objection relates to delay in challenging the validity of the notification under section 6 of the Act. In the present case the impugned notification was issued on 14th of October, 1955, while the writ petition was filed in this Court on 20th May, 1957. The challenge to the notification, however, involves the fundamental right of the petitioners and that is that they cannot be deprived of their property except in accordance with law. Our Constitution requires that property can be acquired only for a public purpose. Similarly, the Land Acquisition Act lays down that land can be acquired only for a public purpose. If the land has not been acquired for a public purpose then obviously the petitioners have a valid grievance inasmuch as they would have been deprived of their fundamental right to hold their property. It has now been held by the Supreme Court that it is not open to a party to waive a fundamental right

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by agreement. [*vide Basheshar Nath* v. *Commissioner of Income-tax, Delhi and Rajasthan and another* (1)]. If a party cannot waive his fundamental right by an agreement then obviously mere laches will not deprive him of this right. At this stage it may be pointed out that there has been no inordinate delay in challenging the power and jurisdiction of Shri Murari Singh to give the award as the award was given on 23rd February, 1957, and the writ petition was filed on 20th May, 1957. I, therefore, overrule this preliminary objection.

The second objection is also without any force. The owners allege that they had purchased the land for Rs. 2,75,000 in 1944-5. The Land Acquisition Collector took proceedings under the Land Acquisition Act. The owners claimed Rs. 13,00,000 but the Land Acquisition Collector assessed the marked value of the land at Rs. 2,58,300 by order; dated 23rd February; 1957. The respondents' contention is that in reality the petitioners are dissatisfied with the award and have filed the writ petition under Article 226 of the Constitution with the ulterior motive to get the amount of compensation increased and that this court in the exercise of discretion under Article 226 of the Constitution should not help the petitioners in this matter. It may be that the petitioners were induced to challenge the acquisition or to assert their fundamental right to hold the property because they were dissatisfied by the amount of compensation offered to the by the Land Acquisition Collector. But this motive in my opinion will not and should not debar them to enforce their fundamental right if it is in fact infringed. There is no doubt that if the market price had been assessed at a figure which

(1) A.I.R. 1959 S.C. 149

the claimants considered reasonable they may not have asserted their fundamental right. On the other hand if the compensation is assessed at a figure which the society considers unreasonably high then I have no doubt that it would refuse to take possession of it or to develop it. In this context in my opinion, the present petition cannot be said to have been made *mala fide* or with ulterior motive.

This brings me now to the petitioners' case. It has been argued on behalf of the petitioner-appellants that, (1) the property was not acquired for a "public purpose", (2) its acquisition for the Dera Ismail Khan Co-operative House Building Society, Limited, is invalid for non-compliance with the provisions laid down in Part VII of the Act, (3) the Government acted *mala fide* in acquiring the land and unjustly discriminated against the appellants and, (4) the award of the Land Acquisition Collector was without jurisdiction as on the day that he gave the award he was not a Land Acquisition Collector and the subsequent appointment with retrospective effect could not cure the invalidity.

I now proceed to deal with the points raised by the appellants. It has been argued on their behalf that the land has not been acquired for a public purpose because acquisition for a Co-operative House Building Society is not a public purpose and also because no part of the compensation is payable out of public funds.

It is true that according to the notification the land has been acquired wholly at the expense of the Co-operative Society only and that no part of compensation is payable out of public funds. This

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circumstance, however, does not necessarily exclude acquisition of land for a public purpose. Section 6(1) of the Act reads:—

> "Subject to the provisions of Part VII of this Act when the Provincial Government is satisfied, after considering the report, if any made under section 5A, sub--section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to the effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders:
>
> Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority".

Now it is not the petitioners' case that the respondent society is not a company within the Land Acquisition Act. That being so the proviso merely provides that no declaration under section 6(1) is to be made unless the compensation is to be paid by a company or out of the public funds. The compensation is to be paid in this case by the society and, therefore, this condition is satisfied. The section nowhere lays down that if the compensation is payable by a company then acquisition should not be and cannot be considered to be for a public purpose. As observed by Khosla, J., in *Jhandu Lal, etc.* v. *State of Punjab* (1); section 6

(1) L.P.A. 52 of 1958

deals with two categories of acquisitions, viz:, acquisition for a public purpose and acquisition for a private purpose for companies for the purposes mentioned in section 40 of the Act. It follows that there can be acquisition for a public purpose though compensation may be payable by a company. When the public purpose is to be secured through private agency then there is nothing in the Act or the Constitution to prohibit the Government from acquiring the land and from directing the private agency to pay the compensation. The impugned notification specifically states that the land is being acquired for a public purpose at the expense of the Dera Ismail Khan Co-operative House Building Society; Limited. The adoption of this course, therefore, can not be considered to be invalid under the Act nor under the Constitution. This contention, therefore, fails.

This brings me to the main point argued in the case and it is that the acquisition for the co-operative society for the construction of houses cannot be held to be for a public purpose.

The expression 'public purpose' as defined in section 3(f) does not determine its scope. In fact this expression is not capable of precise and comprehensive definition and it has been laid down by the Supreme Court in many cases that no useful purpose would be served to define it inasmuch as the concept of public purpose is not static but dynamic and changes from time to time in accordance with the requirements of the society.

It is, however, well-established that Courts can examine the purpose of the acquisition to determine

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whether or not it has been made for a public purpose. The Privy Council in *Hamabai Framjee Petit* v. *Secretary of State for India in Council and Moosa Hajee Hassam and others* v. *Secretary of State for India in Council* (1), stated the law in these words:—

> "*Prima facie* the Government are good judges of that ("public purpose"). They are not absolute judges. They cannot say "*Sic volo sic jubeo*", but at least a Court would not easily hold them to be wrong."

The Supreme Court in *State of Bombay* v. *R. S. Nanji* (2), laid down:—

> "*Prima facie* the Government is the best judge as to whether 'public purpose' is served by issuing a requisition order, but it is not the sole judge. The Courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a 'public purpose'."

It, therefore, follows that it is open to this Court to determine whether or not the acquisition in the present case had been made for a public purpose.

In the present case the real dispute is whether the property has been acquired for a public purpose or in the interests of individuals who have chosen to become members of the co-operative organization. It is in this context that I proceed to discuss this matter in this judgment.

(1) XLII I.A. 44
(2) A.I.R. 1956 S.C. 294

The scope and meaning of the expression 'public purpose' has been discussed in the *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and others* (1), and *Raja Suria Pal Singh* v. *The State of U.P. and another* (2). In these cases the Supreme Court considered the constitutionality of statutes relating to abolition of Zamindari in the States. In the second case Mahajan, J., wrote the main judgment. In the course of the judgment the learned Judge observed:—

> "The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individuals."
>
> (Page 1073)

Later the learned Judge observed:—

> "Dr. Ambedkar is right in saying that in the concept of public purpose there is a negative element in that no private interest can be created in the property acquired compulsorily; in other words, property of A cannot be acquired to be given to B for his own private purposes and that there is a positive element in the concept that the property taken must be for public benefit."
>
> (Page 1075).

(1) 1952 S.C.R. 889
(2) 1952 S.C.R 1056

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In the *Bihar Case* (1), Mahajan, J., emphasized the distinction between public and private purpose in these words:—

> "The sovereign power to acquire property compulsorily is a power to acquire it only for a public purpose. There is no power in the sovereign to acquire private property in order to give it to private persons. Public purpose is a content of the power itself."
>
> (P. 935).

Mahajan, J., then quoted from page 795 of Willaughby's Constitutional Law wherein it is stated:—

> "As between individuals, no necessity, however, great, no exigency, however; imminent; no improvement; however valuable, no refusal, however, unneighbourly, no obstinacy; however unreasonable; no offers of compensation, however, extravagant; can compel or require any man to part with an inch of his estate."

Das, J., (Now the Chief Justice of India), expressed the same principle in these words:—

> "Whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose."
>
> (Page 996).

(2) 1952 S.C.R. 889

Batchelor, J., in *Hamabai's case* (1), had described the public purpose as including a purpose, that is, an object or aim, in which the general interest of community, as opposed to the particular interest of individuals, is directly and vitally concerned. This description was approved by the Privy Council in *Hamabai's case* (1), and Das, J., in the *Bihar case* (2), observed:—

> "It is this element of the general interest of the community which transforms the purpose into a public purpose."

Nichols in his well-known book "The Law of Eminent Domain" in para 7.222 stated:—

> "If the use for which land is taken by eminent domain is public, the taking is not invalid merely because an incidental benefit will enure to private individuals."

From the opinions reproduced above the legal position that emerges is this. Under our Constitution property including land can be acquired only for a public purpose. It cannot be acquired for a private purpose. This public purpose may be achieved through public agency or through private enterprise. The concept of public purpose is not static but dynamic and depends on needs and requirements of the public or community at a given time and place. If, however, the acquisition benefits a private person alone or only individuals then it is not public purpose. If the acquisition furthers the general interests of the community though incidentally it benefits individuals also

(1) 42 I.A. 44
(2) 1952 S.C.R. 889

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then it does not cease to be a public purpose. Under the Land Acquisition Act, the State Government must initially determine whether a particular purpose is or is not a public purpose and if acquisition of a particular piece of land would serve that public purpose. This determination, however, is not final and when the question is raised before courts of law then it is their duty to determine the nature of the purpose for which the particular piece of land has been acquired. In other words the concept of public purpose as distinct from private purpose at a given time and place is a judicial question which must be determined by Courts of Law when called upon to do so. There is, however, a presumption that the decision of the State Government on this question is correct though this presumption is rebuttable. In this matter conflicting claims are involved. These conflicting claims in my opinion, must be determined judicially and the courts are under no obligation to unhold the acquisition on some ground or other by endeavouring to find reasons and excuses therefor. The approach of the courts must be strictly judicial otherwise the protection guaranteed by the Constitution under Article 31 would become illusory and unreal and the use of the expression "public purpose" in the Land Acquisition Act would become a surplusage. This matter has to be decided on the facts and circumstances of each case.

At this stage I may make it clear that in my opinion, if the legislature by a statute declares a particular purpose to be a public purpose then out of respect to the legislature the courts of law should accept it as such unless it is found impossible to do so or unless it involves violation of constitutional guarantee under Article 31 of the Constitution.

No such consideration arises in a case where a purpose has been declared to be a public purpose by only an executive fiat.

Further in my opinion, when Courts are considering whether or not a particular piece of land has been acquied for a public purpose it is incumbent upon them to consider the agency selected for achieving that purpose. The agency selected for achieving a public purpose is an integral part of the public purpose. In any case such an agency is an important and relevant factor which cannot be ignored when the purpose of an acquisition is under consideration. If the selected agency cannot achieve the public object of the acquisition then it cannot be said that the land has been acquired for a public purpose.

Now in the present case the land has been acquired by the State Government for the purpose of construction of houses through the agency of the Dera Ismail Khan Co-operative House Building Society. When the Government acquires land for a public purpose and decides to carry out the work itself or appoints a body which has been formed for the purpose of achieving this object by legislation or in other words when the work is to be done by a statutory body then the Courts would readily hold that the public purpose will be furthered by the agency. When a private party is appointed to achieve this object then the Court should examine the matter more closely and see if proper steps have been taken by the Government to see that the purpose for which the land has been acquired will be achieved by this private agency. Obviously if the private agency appointed for the

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purpose is incapable of achieving the object then the acquisition cannot be said to be for public purpose.

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The purpose of construction of dwelling houses cannot be considered necessarily or *per se* to be a public purpose. Construction of houses in an area where the dwelling accommodation is in excess of requirement cannot advance a public purpose. Similarly, construction of houses in a heavily congested area or in slum area cannot be said to serve a public purpose because it would only worsen the congestion and thereby adversely affect the health of the public. On the other hand the construction of houses in an area where there is shortage of dwelling accommodation and there is suitable land available for constructing houses then public purpose will be served by facilitating their construction. It, therefore, depends on the circumstances of each case whether construction of houses will further a public purpose or not.

It was pleaded and argued that building societies registered under the Co-operative Societies Act are presumably for public purpose and, therefore, acquisition of land for such society is necessarily for a public purpose. It is necessary to examine this contention. Under section 7 of the Co-operative Societies Act any ten or more persons can get registered as a Co-operative Society provided its object is to create funds to be lent to its members and further provides that they reside in the same town or village or are members of the same tribe, class or occupation. It is, however, open to the Registrar, Co-operative Societies to register a society even if the members do not belong to the same tribe, class or occupation. The Registrar registers

the society and its bye-laws under section 10 of the Act. The bye-laws can be amended only with the permission of the Registrar (Section 16). The Act defines a Housing Society to be one the object of which is to provide its members with dwelling-houses on conditions laid down in the bye-laws. The society so registered remains in my opinion a private enterprise. Where there is a shortage of dwelling accommodation and there is also shortage of available and suitable building sites it is not difficult for ten or more influential land speculators to combine together and get themselves registered as Housing Society under the Co-operative Societies Act. No public purpose is likely to be served in such circumstances by land speculators. Further the bye-laws of a society may be such that the members need not construct houses within a reasonable time. Obviously in such circumstances acquisition of land for such societies may not serve any public purpose. It is, therefore, necessary in each case to examine all the relevant circumstances even when a public purpose of construction of houses is intended to be served through a private agency of a co-operative society. It is true that in *P. Thambiran Padavachi and others* v. *The State of Madras represented by the Secretary to Government, Revenue Department, Government of Madras and others* (1), and in *Radha Raman* v. *State of Uttar Pradesh and others* (2), acquisition for Co-operative House Building Societies was upheld. These are, however, only illustrations as observed by Imam, J., in *State of Bombay* v. *R. S. Nanji* (3). In those cases considering the circumstances the

(1) A.I.R. 1952 Mad. 756
(2) A.I.R. 1954 All. 700
(3) A.I.R. 1956 S.C. 294

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learned Judges were satisfied that the acquisition for Co-operative House Building Societies served a useful purpose. It does not, however, follow that this object would be served in all cases of acquisition for Co-operative Building Societies. It depends, as I have already said, on the circumstances of each case.

The ground is now clear to examine the facts and circumstances of the present case.

In the Delhi State it is well known that there was no shortage of dwelling accommodation before the Second World War was declared in 1939. The shortage started from 1942 or so and began to become acute from 1945 or so. Then came partition of the country. Considerable immigration of the population from the territories now included in West Pakistan took place in 1947 onwards into the city of Delhi. Thereafter value of lands began to increase and is still increasing. From about 1952-53 the shortage of available residential accommodation and of building sites became extremely acute here. Every day agricultural lands surrounding Delhi are now being converted into building sites. The population of Delhi during 1947 to 1954 has increased enormously and it is now almost impossible to get building sites except at exorbitant rates.

The land now in dispute was a garden in 1944-45. It abuts the Grand Trunk Road and is situated in Malakpur Chhowni, Delhi and falls in the Civil Line Town Expansion Scheme of the Delhi Improvement Trust. The owners on 21st November, 1950, applied to the Trust for permission to develop the area and for erecting buildings

thereon. Another application for the same purpose was made on 21st May, 1951. The Trust Authorities, however, refused to grant the requisite permission and dismissed the applications on 29th September, 1951. About two years later the owners again started to apply to the Improvement Trust for constructing buildings. On 28th August, 1953, they submitted the lay-out plan and by letter dated 10th April, 1954, they agreed to get the internal development done by the Colonisers Co-operative Societies. From all this it is clear that the land in question was suitable as a building area where dwelling-houses could be immediately constructed.

The Dera Ismail Khan Co-operative House Building Society with its bye-laws was registered on 6th April, 1953. One of its objects is to purchase, develop and sell building sites, houses and building materials, to construct or arrange for the construction of buildings, roads and drainage. The membership of the society is open under para 4 of the bye-laws to the following persons:—

"4(1) No person shall be member, unless:

(a) he is a duly registered displaced person from District Dera Ismail Khan, West Pakistan in Delhi before the prescribed date or having been allotted some permanent accommodation, or has a place of business in Rajinder Nagar, Karol Bagh, Pahar Ganj, Sabzimandi and Kingsway Camp.

(b) * * * * * * * * * * * * *

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(c) * * * * * * * * * * * * *

(d) * * * * * * * * * * * *

(e) be a prospective builder of a house in Delhi or its suburbs.

* * * * * * * * * * * * * * *

* * * * * * * * * * * * * *

The value of shares is Rs. 100 each. The shares are transferable but only to those who are eligible to become members of the society. Other by-laws relate only to the administration of the Society and need not be discussed in this judgment. The Society applied to the State Government to acquire the land now in dispute for its benefit. The State Government agreed and issued notification under section 4 of the Act on 23rd June, 1955. It then issued notification under section 6 of the Act on 14th of October, 1955. Thereafter the State Government entered into an agreement with the society on 17th November, 1955. This agreement purports to be under section 41 of the Act. It was published in the official Gazette of 26th January, 1956. Clause (1) of the agreement states that the Society is liable to pay compensation as settled by the final Court of Appeal and that the Government is not bound to give possession of the land until all the moneys due to the Government under the agreement have been paid. Clause 2(b) lays down that the land shall be used only for constructing houses and for no other purpose. Clause 2(a) lays down that the society shall utilise the land for building

purposes within fifteen years of being put in possession. The Government did not put the society in possession of the land on the issue of the notifications under section 6 of the Act and started proceedings for assessing compensation. The owners in 1944-45 had purchased the land for Rs. 2,75,000. They claimed Rs. 13,00,000. The Land Acquisition Collector by award dated 23rd February, 1957, has assessed compensation at Rs. 2,58,300 *plus* 15 per cent.

In my opinion these are the only relevant facts which may be considered in determining whether the acquisition can be said to be for a public purpose in the present case.

Considering the acute shortage of dwelling accommodation and of building sites available in Delhi and considering also the locality of the area in dispute there can be no doubt that the acquisition of this land for construction of houses will serve public purpose. The owners knew this and according to them it is for this reason that they were trying to develop the area since 1950 while according to the State they were merely trying to create evidence for the purpose of getting higher compensation for it.

The only question that remains to be considered is whether the agency selected by the State Government will effectively serve that purpose. The compensation dispute considering the amount involved may take five to ten years before it is settled. The society is likely to be put in possession only after this dispute has been settled. There is nothing in the by-laws or the agreement to prevent the society after the lay-out plan has been

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sanctioned to distribute the land amongst the members and thereafter cease to function. It is then liable to be wound up. The members themselves may apply for the winding up of the society. It will then be open to individual members to sell the plots allotted to them and thus make considerable profits. There is nothing to prevent land speculators to step in and deal with the land thereafter. The houses then are not likely to be constructed till about 15 to 25 years after the date of the notification under section 6 of the Act. In these circumstances it appears to me to be rather doubtful that such an acquisition would relieve the congestion in Delhi for which purpose the land has been acquired. On the other hand the opinion of the State Government is that the purpose of constructing houses will be effected by the society. It was argued on behalf of the society that they are displaced persons and they are greatly in need of houses for their residence and they will not delay in constructing houses. That may be so although membership to the society is not limited to persons who have not got their own dwelling-houses. In my opinion, the material on the record is not sufficient to lead to the definite conclusion to the effect that the opinion of the State Government that the public purpose would be served by this acquisition is not correct. For these reasons though with reluctance I hold that the petitioners have failed to prove that the land has not been acquired for a public purpose. In this view of the matter this contention of the petitioners fails and is rejected.

It was then argued on behalf of the petitioners that provisions of Part VII have not been complied with in the present case and, therefore, the acquisition for the society is invalid. Under section 39

of the Land Acquisition Act when there is an acquisition for a company provisions of sections 6 to 37 cannot be complied with unless there is a previous consent of the Provincial Government nor unless the company has executed an agreement as laid down in section 1 of the Act. It follows that such an agreement must be obtained before a notification under section 6 of the Act is issued. In the present case the notification under section 6 of the Act was issued on 14th October, 1955, while the agreement between the parties was arrived at on 17th November, 1955. It follows that the provisions of Part VII have not been complied with in the present case. In my view, however, Part VII does not apply to the present acquisition. Section 40 included in Part VII describes the purposes for which land can be acquired for a society. These are in my opinion two specific instances of "Public purpose" for which land can be acquired. If the land is acquired for a company for the purposes specified in section 40 then the provisions of Part VII must be complied with. These specific purposes, however, do not cover the entire field of the expression "public purpose". Acquisition for construction of houses in a locality where there is acute shortage of dwelling-houses is for a purpose which is not covered by the specific instances mentioned in section 40 although as I have already held it is a public purpose. It, therefore, follows that the procedure laid down in Part VII need not have been followed in the present case. It is, however, not necessary to discuss this matter at length in view of the decision of a Division Bench of this Court in *Jhandu Lal, etc.* v. *State of Punjab* (1), in

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which it has been held that Part VII has no application to an acquisition made for a public purpose although that decision is based on rather different grounds. In either view of the matter this contention of the petitioners fails and is rejected.

The petitioners also challenged the acquisition on the ground of discrimination against them and on the ground that the acquiring authorities have acted *mala fide* in the matter. The petitioners' case is this. They had applied to the Improvement Trust for permission to develop the area and construct residential houses. For this purpose they submitted lay-out plans, etc., in 1953. The Improvement Trust imposed certain conditions. Negotiations were proceeding and the matter was still pending before the Improvement Trust when notification under section 4 of the Land Acquisition Act was published. The petitioners' grievance is that the Improvement Trust authorities did not deliberative grant the final sanction to develop the area *mala fide* and instead discriminating against the petitioners acquired the property for the same purpose for the benefit of the Dera Ismail Khan Co-operative House Building Society. The respondents' reply to this case is as under:—

> "The petitioners never wanted to put up a colony on the land in dispute. As land in the vicinity was being acquired by the Government, the petitioners seem to have started correspondence with the Delhi Improvement Trust with the object of creating evidence for claiming higher price for this land, in case it was acquired by the Government. It is not admitted that the petitioners accepted

the terms suggested by the Improvement Trust. I submit that the petitioners did not take any further effective steps towards implementation of the alleged colonization scheme. Their only object appeared to be to create evidence for claiming compensation at exorbitant rates."

This plea of the Government seems to a certain extent to be justified by the fact that although the petitioners, according to them, have been trying to get sanction since 1950 to develop the area they did not pursue the matter seriously and merely made applications from time to time expressing their intention to develop it. When the Government was not satisfied as to the *bona fides* of the petitioners in this matter it is difficult to see how the question of *mala fide* or discrimination arises in the case. It was for the Government to decide whether the petitioners really wanted to develop the area or not and if the Government came to the conclusion that they did not wish to do so then it is not possible for this Court in proceedings under Article 226 of the Constitution to express its opinion in the matter in the absence of any cogent proof by the petitioners. The question of discrimination does not arise because if the petitioners were not willing to develop the area it was open to the Government to get it developed through some other agency. In any case the Government has acquired the land for the purposes of a society which consists of displaced persons and in view of the general policy of the Government it cannot be said that assistance and preference shown to refugees amounts to discremination. I have no hesitation, therefore, in rejecting this contention of the petitioners.

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Lastly, the petitioners urged that the award made by Shri Murari Singh, Land Acquisition Collector under section 11 of the Land Acquisition Act is invalid. Notification under section 6 of the Act was published on 14th October, 1955. Thereafter Shri Murari Singh started taking proceedings under sections 9, 10 and 11 and on 23rd February, 1957, gave his award. Subsequently it was noticed that Shri Murari Singh had not been appointed Land Acquisition Collector in accordance with law. The Government thereupon issued a notification on 30th March, 1957, appointing him Land Acquisition Collector under section 3(c) of the Act with retrospective effect, i.e., with effect from 7th January, 1957. The result of this retrospective appointment is that his award dated 23rd February, 1957, becomes legal. The petitioners challenge the power of the authorities to issue a notification of this kind with retrospective effect.

The learned counsel for the respondents in reply urged that an award by a Land Acquisition Collector is only an offer on behalf of the Government. For this purpose the Collector acts only as an Agent and it is open to the principal, i.e., the Government to ratify it. In *Major S. Arjan Singh, etc.* v. *The State of Punjab, etc.* (1), I expressed my opinion that a Land Acquisition Collector not appointed in accordance with law cannot give a valid award under section 11 of the Act. It has, however, been brought to my notice by my learned brother that similar question was raised before a Full Bench of this Court at Chandigarh recently and in that case the notification with retrospective effect was held to be valid. In that case I am informed by my learned brother the Government appointed an Additional Director (Consolidation) to

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hear appeals under section 21(4) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. By an oversight, however, he was not given any power to hear the appeals. The Additional Director so appointed, heard the appeals and decided them. On discovering the mistake the Punjab Government issued a notification with retrospective effect. The Full Bench upheld the notification as valid. The principle laid down in the Full Bench case applies to the present case and more so when the consolidation proceedings are of a quasi-judicial nature while the Land Acquisition Collector acts only as an authority to make an offer on behalf of the Government. For these reasons this contention of the petitioners also fails.

Finally it was argued that the petitioners have been deprived of their business of house building and thus the fundamental right guaranteed to them under Article 19(1)(f) of the Constitution has been violated. There is no suggestion in the application of the petitioners that they are carrying on the business of house building. In any case they are not being debarred from doing that business if they so like. The notification merely takes away a piece of land which was owned by them and that notification cannot be said to affect their right to carry on their own business in any way. This contention also fails.

For all these reasons, I dismiss this appeal but in the circumstances leave the parties to bear their own costs.

G. D. KHOSLA, J.—I agree.

Khosla, J.

B. R. T.