HARI CHARAN KURMI AND JOGIA HAJAM

v.

STATE OF BIHAR

1964

February, 3

(P. B. GAJENDRAGADKAR, C. J. K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Evidence Act—Confession of co-accused—Not "evidence" within the meaning of s. 3 Evidence Act—Not substantive evidence against co-accused—Can be used only to give assurance to conclusion of guilt based on other evidence—Sections 30 and 133 Evidence Act—Distinction between—Indian Evidence Act, 1872 (1 of 1872), ss. 3, 30, 133.

The appellants along with four others were tried and convicted by the Sessions Judge for the offences of dacoity and murder and sentenced to undergo imprisonment for life. On appeal the High Court confirmed the conviction and sentence. Pending that appeal it issued a rule for enhancement of the sentence, and finally the rule was made absolute and they were ordered to be hanged. The appellants thereupon filed the present appeals by special leave granted by this Court.

The main point raised before this Court was that the High Court misconceived the ambit and scope of the decision of this Court in *Ram Prakash* v. *State of Punjab* [1959] S.C.R. 121 and that the High Court committed an error in law in treating the confession made by the co-accused as substantive evidence against the appellants.

Held: (i) Though a confession mentioned in s. 30 of the Indian Evidence Act is not evidence as defined by s. 3 of the Act, it is an element which may be taken into consideration by the criminal courts and in that sense, it may be described as evidence in a non-technical way. But in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person, it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to lend assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

Kashmira Singh v. *State of Madhya Pradesh*, [1952] S.C.R. 526, *Emperor* v. *Lalit Mohan Chukerbutty*, [1911] I.L.R. 38 Cal. 559, *In re: Perivsswami Moopan*, [1913] I.L.R. 54 Mad. 75 and *Bhuboni Sahu* v. *The King*, [1949] 76 I.A. 147, followed.

(ii) The distinction between evidence of an accomplice under s. 133 and confession under s. 33 Evidence Act is that the former is evidence under s. 3 and the court may treat it as substantive evidence and seek corroboration in other evidence but the latter is not evidence under s. 3 and the court should first start from other evidence and then find assurance in the confessional statement for conviction.

1964

Hari Charan Kurmi v. *State of Bihar*

(iii) The High Court was in error in taking the view that the decision in *Ram Prakash's* case was intended to strike a dissenting note from the well-established principles in regard to the admissibility and the effect of confessional statement made by accused persons.

Ram Prakash v. *State of Punjab* [1959] S.C.R. 1219, explained.

(iv) On examining the evidence in the present case on the above principles it is found that there is no sufficient evidence to prove the prosecution case.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 208 and 209 of 1963.

Appeals by special leave from the judgment and order dated August 17, 1963, of the Patna High Court in Criminal Appeals Nos. 554 and 556 of 1961.

T. V. R. Tatachari, for the appellants.

D. P. Singh and *R. N. Sachthey*, for the respondents.

February 3, 1964. The Judgment of the Court was delivered by

Gajendragadkar C. J.

GAJENDRAGADKAR C.J.—The two appellants Haricharan Kurmi and Jogia Hajam were charged along with four other persons with having committed an offence punishable under section 396 of the Indian Penal Code, in that during the night intervening the 24th and the 25th March, 1960, they committed dacoity in the house of Deokinandan Jaiswal, and during the course of the said dacoity, they committed the murder of Damyanti Devi, wife of the said Deokinandan Jaiswal. The names of the four other accused persons are; Ram Bachan Ram, Joginder Singh, Ram Surat Choudhury and Achheylal Choudhury. The learned Sessions Judge, Muzaffarpur, who tried the case, found all the six accused persons guilty of the offence charged. He accordingly convicted them of the said offence and sentenced them to suffer imprisonment for life.

This order of conviction and sentence was challenged by the said six accused persons by preferring appeals before the Patna High Court. The High Court has held that the

learned trial Judge was right in convicting five of the six appellants because, in its opinion, the evidence led by the prosecution proved the charge against them beyond reasonable doubt. In regard to Joginder Singh, however, the High Court was not inclined to agree with the conclusion of the trial Judge and gave the benefit of doubt to him. Pending the hearing of these appeals, a rule for the enhancement of sentence was issued by the High Court against all the appellants. This rule has been discharged in regard to Joginder Singh who has been acquitted, as well as Ram Bachan Ram, Ram Surat Choudhury and Achheylal Choudhury, and the sentence of imprisonment for life imposed on them by the trial Judge has been confirmed. In regard to the two appellants, however, the High Court took the view that the ends of justice required that the sentence of imprisonment for life imposed on them should be enhanced to that of death. Accordingly, the rule against them was made absolute and they have been ordered to be hanged. It is against this order of conviction and sentence that the present appeals have been brought before us by special leave; and the short question of law which has been raised before us by Mr. Tatachari is that the High Court has erred in law in treating the confession made by the co-accused Ram Surat Choudhury as substantive evidence against them. This course adopted by the High Court in dealing with the case of the appellants on the basis of the confession made by the co-accused person is, it is urged, inconsistent with the consensus of judicial opinion in regard to the true scope and effect of section 30 of the Indian Evidence Act (hereinafter called 'the Act').

These appeals were argued before a Division Bench of three learned Judges of this Court and it was brought to the notice of the said Bench that in dealing with the case of the appellants in the light of the confession made by a co-accused person, the High Court had relied on the observations made by this Court in *Ram Prakash* v. *The State of Punjab.*(1) Since these observations, *prima facie*, supported the view taken by the Patna High Court, the Division Bench thought it necessary to refer this matter to a

(1) [1959] S.C.R. 1291.

1964

Hari Charan Kurmi v. State of Bihar

Gajendragadkar C. J.

larger Bench in order that the correctness of the said observations may be examined. That is how these appeals have come before a Constitution Bench.

The facts leading to the prosecution of the appellants lie within a narrow compass, and so far as the point which falls to be considered in the present appeals is concerned, there is no dispute in respect of the said facts. Deokinandan Jaiswal is a fairly wealthy businessman and lives in village Dumarbana within the police station of Bairgania in the district of Muzaffarpur. He has a house of his own. Achheylal and Ram Bachan served under him as *munims*. Jogender Singh was Jaiswal's sepoy and Ram Surat was his personal servant. The appellants are the co-villagers of Jogender Singh who was one of the accused persons. It appears that on the 24th March, 1960, Jaiswal had received Rs. 15,000 in currency notes from his partner Nathmal Marwari in the presence of his *munims* Achheylal and Ram Bachan; in fact, as the said amount was handed over to Jaiswal in the form of different currency notes, Ram Bachan and Achheylal were asked by him to count the said amount. The said amount was then put in different bundles by Jaiswal and to it was added another amount of Rs. 2,000 which he took out from his iron safe. The two bundles were then put together in a bigger bundle and to it was attached a slip containing his signature and date. According to Jaiswal, he handed over the amount of Rs. 17,000 thus put in two bundles to his wife Damyanti Devi, and in her turn, she put the said bundles into the iron safe which had been kept at the first floor of the house in the room adjoining the bed-room. About this time, some functions were organised by the Bharat Sevak Samaj in the village and Jaiswal was the convener in regard to the said functions. Naturally, he had to attend to the delegates who had come to the village for the said functions. During the days of these functions, Jaiswal used to return home by about 10 P.M., but on the night of the 24th March, 1960, the function went on late, and so, Jaiswal slept at the *Dharamshala* where the function took place and did not return home. That is how Damyanti Devi was left alone in the house on the first floor and her only companion was her

child Mina about 3½ years old. Apparently, Damyanti Devi retired to her bed-room with her little child and on the ground floor were sleeping three of the accused persons, Achheylal, Ram Bachan and Jogender Singh. Ram Surat was on leave, so that out of the four servants employed by Jaiswal, three were sleeping on the premises. Batahu, the cook of the family, was sleeping in a verandah attched to the motor garage.

Next day Batahu was awakened by Achheylal who reported to him that the door of the hall was open. Thereupon Achheylal and this witness went on the first floor and found that Damyanti Devi was lying dead in a pool of blood. There were cut injuries in her neck which had presumably caused severe bleeding. The little girl Mina was fast asleep. The bundles of currency notes had been removed by the miscreants who had committed the murder of Damyanti Devi. Thereupon, word was sent to Jaiswal and on his return to the house, steps were taken to report to the police station about the commission of the offence; and that set the investigation machinery into operation. As a result of the investigation, the six accused persons were put up for their trial for the offence under s. 396 I.P.C. That, in brief, is the nature of the prosecution case.

The prosecution sought to prove its case against the six accused persons by relying on the confessions made by three of them, the recovery of the stolen property and discovery of bloodstained clothes in respect of the two appellants. There is no direct evidence to show how, when, and by whom the offence was committed. Besides the confessions, the evidence on which the prosecution relies is circumstantial and it is on this evidence that the case has been tried in the courts below. For our purpose in the present appeals it is unnecessary to refer to the details set out by the confessional statements in regard to the commission of the offence and the part played by each one of the accused persons.

Ram Surat, Achheylal and Ram Bachan made confessions and it has been held by the High Court as well as the learned Sessions Judge that the charge against them is

1964

Hari Charan Kurmi
v.
State of Bihar

Gajendragadkar C. J.

proved. With the correctness or propriety of the conviction of these accused persons we are not concerned in the present appeals. The only point to which reference must be made at this stage is that there is a concurrent finding of the courts below that the confession made by Ram Surat is voluntary and true. In fact, both the courts did not feel any hesitation in taking the said confession into account against Ram Surat who made the said confession and convicting him on the said confession read in the light of other evidence adduced against him. The charge against the two appellants has been sought to be proved by the prosecution by the statements contained in the confession made by the three accused persons and certain other discoveries, such as blood-stained clothes with both of them and stains of blood in the house of the appellant Haricharan. We will presently refer to this evidence. The High Court took the view that having regard to the decision of this Court in the case of *Ram Prakash*(1), it was open to the High Court to consider the evidence supplied by the confessional statements made by the co-accused persons and enquire whether the said evidence received corroboration from any other evidence adduced by the prosecution. Approaching the question from this point of view, the High Court came to the conclusion that the blood stains on the clothes found with both the appellants and blood stains found in the house of the appellant Haricharan afforded sufficient corroboration to the confession of Ram Surat, and so, it has confirmed the conviction of the two appellants under s. 396 I.P.C.

The High Court then considered the question about the sentence which should be imposed on the two appellants. It appeared from the confession of Ram Surat as well as the confessional statements of Achheylal and Ram Bachan that the two appellants had played a major part in the commission of the offence. In fact, the injuries which proved fatal are alleged by all the 3 accused persons who confessed to have been caused by the two appellants. It is in the light of these statements that the High Court was persuaded to enhance the sentence imposed by the trial Judge against the appellants and it has directed that instead of imprisonment for life, the sentence of death ought to be imposed on

(1) [1959] S.C.R. 1219.

them. That is how the only question which calls for our decision in the present appeals is: is the approach adopted by the High Court justified by the provisions of s. 30 of the Act as it has been consistently interpreted by judicial decisions for more than half a century?

Before we address ourselves to this question of law, we may briefly indicate the nature of the other evidence on which the prosecution relies against the appellants. The appellants were arrested the next day after the commission of the offence on the report made by Jaiswal that he suspected that the murder of his wife had been committed by his four employees and their accomplices, the two appellants before us. On the 26th March, 1960, at about 3.30 P.M. the investigation officer visited the lane between the southern wall of Jaiswal's godown and the northern wall of the east-facing room of the appellant Haricharan and found some blood stains in the lane and on the walls of the grain godown. Later, a shirt bearing blood stains was also found. Pieces of earth containing blood stains and the shirt were subsequently sent to the Chemical Analyser. The origin of the blood found on the pieces of earth sent to the Chemical Analyser could not be determined by him, but the stains of blood on the shirt which was seized from the person of the appellant Haricharan were found to have traces of human blood. Similarly, the nails of Haricharan's hands showed traces of blood and they were got cut by a barber and sent to the Chemical Analyser. The report shows that these blood stains were too small for serological test. The High Court thought that "the presence of human blood on the shirt which Haricharan was wearing, his nails and at several places beginning from the lane leading to his house and on so many materials kept in his house is a factor" which had to be taken into account. These discoveries were made about 8 A.M. following the night of the murder.

In regard to the appellant Jogia, a red-coloured check gamcha which bore blood-like stains was recovered from the top of the earthern granary in his house at about 6 A.M. on 27th March, 1960. This gamcha was sent to the Chemical Analyser and it is reported to bear stains of human blood. It may be added that when the house of Jogia was searched on the 26th March, 1960 this gamcha was not found. As

1964

Hari Charan Kurmi v. State of Bihar

Gajendragadkar C. J.

we have just indicated, the judgment of the High Court shows that it took the view that the confessional statement by the co-accused persons of the appellants, particularly Ram Surat was corroborated by the discovery of blood stains and that justified the conviction of the appellants under s. 396 of the Indian Panel Code.

The question about the part which a confession made by a co-accused person can play in a criminal trial, has to be determined in the light of the provisions of s. 30 of the Act. Section 30 provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. The basis on which this provision is found is that if a person makes a confession implicating himself, that may suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly, and so, s. 30 provides that such a confession may be taken into consideration even against a co-accused who is being tried along with the maker of the confession. There is no doubt that a confession made voluntarily by an accused person can be used against the maker of the confession, though as a matter of prudence criminal courts generally require some corroboration to the said confession particularly if it has been retracted. With that aspect of the problem, however, we are not concerned in the present appeals. When s. 30 provides that the confession of a co-accused may be taken into consideration, what exactly is the scope and effect of such taking into consideration, is precisely the problem which has been raised in the present appeals. It is clear that the confession mentioned in s. 30 is not evidence under s. 3 of the Act. Sec. 3 defines "evidence" as meaning and including—

> (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the Court; Such documents are called documentary evidence.

Technically construed, this definition will not apply to a confession. Part (1) of the definition refers to oral statements which the court permits or requires to be made before it; and clearly, a confession made by an accused person is not such a statement: it is not made or permitted to be made before the court that tries the criminal case. Part (2) of the definition refers to documents produced for the inspection of the court; and a confession cannot be said to fall even under this part. Even so, s. 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person; that is to say, though such a confession may not be evidence as strictly defined by s. 3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. But it is significant that like other evidence which is produced before the Court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the Court, it is the duty of the Court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the Court. But a Court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the Court in dealing with a confession, because s. 30 merely enables the Court to take the confession into account.

As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that

1964

Hari Charan Kurmi v. State of Bihar

Gajendragadkar C. J.

the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor* v. *Lalit Mohan Chuckerbutty*(1) a confession can only be used to "lend assurance to other evidence against a co-accused". In *In re. Peryaswami Noopan*,(2) Reilly J. observed that the provision of s. 30 goes not further than this : "where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in s. 30 may be thrown into the scale as an additional reason for believing that evidence." *In Bhuboni Sahu* v. *King*(3) the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board observed that a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in s. 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence." It would be noticed that as a result of the provisions contained in s. 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of s. 30, the fact remains that it is not evidence as defined by s. 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must

(1) (1911) I.L.R. 38 Cal. 559 at p. 588.
(2) (1913) I.L.R. 54 Mad. 75 at p. 77.
(3) (1949) 76 I.A. 147 at p. 155.

begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in s. 30. The same view has been expressed by this Court in *Kashmira Singh* v. *State of Madhya Pradesh*(1) where the decision of the Privy Council in *Bhuboni Sahu's*(2) case has been cited with approval.

In appreciating the full effect of the provisions contained in s. 30, it may be useful to refer to the position of the evidence given by an accomplice under s. 133 of the Act. Section 133 provides that an accomplice shall be a competent witness against an accused person; and that conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Illustration (b) to s. 114 of the Act brings out the legal position that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Reading these two provisions together, it follows that though an accomplice is a competent witness, prudence requires that his evidence should not be acted upon unless it is materially corroborated; and that is the effect of judicial decisions dealing with this point. The point of significance is that when the Court deals with the evidence by an accomplice, the Court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is evidence under s. 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars.

The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the Court cannot begin with the examination of the said statements. The stage to consider

(1) [1952] S.C.R. 52 (2) (1949) 76 I.A. 147 at p. 155.

1964

Hari Charan Kurmi
v.
State of Bihar

Gajendragadkar C. J.

the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the Court has to adopt in dealing with these two types of evidence is thus clear, well-understood and well-established. It, however, appears that in *Ram Prakash's* case(1), some observations have been made which do not seem to recognize the distinction between the evidence of an accomplice and the statements contained in the confession made by an accused person. "An examination of the reported decisions of the various High Courts in India," said Imam J., who spoke for the Court in that case, "indicates that the preponderance of opinion is in favour of the view that the retracted confession of an accused person may be taken into consideration against a co-accused by virtue of the provisions of s. 30 of the Act, its value was extremely weak and there could be no conviction without the fullest and strongest corroboration on material particulars." The last portion of this observation has been interpreted by the High Court in the present case as supporting the view that like the evidence of an accomplice, a confessional statement of a co-accused person can be acted upon if it is corroborated in material particulars. In our opinion, the context in which the said observation was made by this Court shows that this Court did not intend to lay down any such proposition. In fact, the other evidence against the appellant Ram Prakash was of such a strong character that this Court agreed with the conclusion of the High Court and held that the said evidence was satisfactory and in that connection, the confessional statement of the co-accused person was considered. We are, therefore, satisfied that the High Court was in error in this case in taking the view that the decision in *Ram Prakash's*(1) case was intended to strike a discordant note from the well-established principles in regard to the admissibility and the effect of confessional statements made by co-accused persons.

Considering the evidence from this point of view, we must first decide whether the evidence other than the confessional statements of the co-accused persons, particularly Ram Surat, on whose confession the High Court has substan-

(1) [1959] S.C.R. 1219.

tially relied, is satisfactory and tends to prove the prosecution case. It is only if the said evidence is satisfactory and is treated as sufficient by us to hold the charge proved against the two appellants, that an occasion may arise to seek for an assurance for our conclusion from the said confession. Thus considered, there can be no doubt that the evidence about the discovery of blood stains on which the prosecution relies is entirely insufficient to justify the prosecution charge against both the appellants. In our opinion, it is impossible to accede to the argument urged before us by Mr. Singh that the said evidence can be said to prove the prosecution case. In fact, the judgment of the High Court shows that it made a finding against the appellants substantially because it thought that the confessions of the co-accused persons could be first considered and the rest of the evidence could be treated as corroborating the said confessions. We are, therefore, satisfied that the High Court was not right in confirming the conviction of the two appellants under s. 396 of the Indian Penal Code.

It is true that the confession made by Ram Surat is a detailed statement and it attributes to the two appellants a major part in the commission of the offence. It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants may also be true; and in that sense, the reading of the said confession may raise a serious suspicion against the accused. But it is precisely in such cases that the true legal approach must be adopted and suspicion, however grave, must not be allowed to take the place of proof. As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly

1964

Hari Charan Kurmi v. State of Bihar

Gajendragadkar C. J.

unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals.

In the result, the appeals are allowed and the orders of conviction and sentence passed against the two appellants Haricharan Kurmi and Jogia Hajam are set aside and the accused are ordered to be acquitted.

Appeals allowed.

1964

February, 3

SHYAM BEHARI AND OTHERS

v.

STATE OF MADHYA PRADESH AND OTHERS

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Land Acquisition—Whole compensation to be paid by the company—No declaration that the land was needed for a company—Validity—Test—Land Acquisition Act, (1 of 1894), ss. 4, 6(1).

The Government issued a notification on December 3, 1960 under s. 6 of the Land Acquisition Act stating that the land described in the annexure to the notification was required for a public purpose, namely, for the construction of buildings for godowns and administrative office. The appellants challenged the validity of the notification in the High Court contending that the notification under s. 6 of the Act did not describe the land to be acquired with sufficient particularity and that although the notification mentioned that the land was required for a public purpose, in fact it was required for a company, which was entirely different from Government and was therefore invalid. Soon after the writ petition was filed, the State Government issued a fresh notification on April 19, 1961 mainly under s. 17(1) read with s. 17(4) of the Act. The notification stated that it was declared under s. 6 of the Act that the land was required for a public purpose, namely, "for the Premier Refractory Factory and work connected therewith." At the time of hearing of the writ petition in the High Court, it was urged on behalf of the appellants that both the notifications under s. 6 of the December 3, 1960 and April 19,