PETITIONER:
ANIL KUMAR NEOTIA AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT26/04/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
OZA, G.L. (J)

CITATION:
1988 AIR 1353 1988 SCR (3) 738
1988 SCC (2) 587 JT 1988 (2) 227
1988 SCALE (1)817
CITATOR INFO :
R 1989 SC2105 (6)

ACT:
Swadeshi Cotton Mills Ltd. (Acquisition and Transfer of Undertakings) Act, 1986-Challenging constitutional validity of.

HEADNOTE:
This writ petition challenged the constitutional validity of the Swadeshi Cotton Mills Ltd. (Acquisition and Transfer of Undertakings) Act, 1986.

The Central Government had passed an order for taking over the management of six undertakings of the Swadeshi Cotton Mills, in respect whereof there were proceedings in the High Court, and this Court by its judgment dated the 12th February, 1988, in M/s. Doyarpack Systems Pvt. Ltd. v. Union of India & Ors.-SLPs (Civil) Nos. 4826 & 7405 of 1987-had disposed of the matter. The petitioners, claiming to be shareholders of the respondent No. 4-Swadeshi Cotton Mills Co. Ltd. and to have interest in its business, affairs and properties, filed this writ petition, contending that the effect of the decision of this Court above said was to take away valuable assets of the respondent No. 4, without paying any compensation therefor and to impose on respondent No. 4 liabilities without any corresponding assets available to discharge the liabilities, and further, that the acquisition virtually amounted to confiscation of the shares of respondent No. 5 and respondent No. 6 held by respondent No. 4, and that the rights of the shareholders of the respondent No. 4 were substantially damaged. The petitioners challenged the vires and constitutional validity of sections 3 and 4 of the Swadeshi Cotton Mills Ltd. (Acquisition and Transfer of Undertakings) Act 1986 ('The Act') in so far as those sought to divest respondent No. 4 of the shares in respondent No. 5 and respondent No. 6 and certain excluded assets, contending that the Act was violative of Articles 14 and 19(1)(g) of the Constitution.

Dismissing the petition, the Court,
^
HELD: The petitioners' contentions were not tenable because all the contentions had been directly or indirectly

dealt with in the judgment of this Court afore-said. It was not correct that no public
739
purpose was served by acquisition. It was held that section 8 provides for payment of compensation in lumpsum and the transfer and vesting of whatever is comprised in section 3. It was incorrect to state that there was no compensation for taking over of the shares. It was found by the said judgment that the net wealth of the company was negative and, therefore, sections 3 and 4 could be meaningfully read if all the assets including the shares were considered to be taken over by the acquisition. That was the only irresistible conclusion that followed from the construction of the documents and the history of the Act. The Act in question was passed to ensure the principles enunciated in clauses (b) and (c) of Article 39 of the Constitution. In that context, it was held that to leave a company, the net wealth of which was negative at the time of take-over of the management with the shares held by it as investment in other company, was not only to defeat the principles of Article 39(b) and (c) of the Constitution but it would permit the company to reap the fruits of its mismanagement. That would be as absurd situation. In this context, the contentions now sought to be urged were no longer open to the petitioners. It was held by the judgment of this Court aforementioned that there was a public purpose which was analysed and spelled out from the different provisions of the Act. There was compensation for the acquisition of the property. The contentions of the petitioners had been dealt with and repelled by the said judgment of this Court. The Court reiterated the reasoning of that judgment. [744B;746B;747F-H]

The acceptance of the petitioner's case would mean that the State would pump in Rs.15 crores of public money to release the shares from its liabilities and then hand over the shares free from such liability back to the company when the net worth of the company at the time of take-over of management was negative, and in the teeth of the present financial liabilities built up by the company the shares would inevitably have been sold in discharge of its liabilities and in any event the shares stood charged with the very liabilities which related to the undertakings of the company which were taken over by the Government. Therefore, it was incorrect to say that there was no public purpose for taking over these shares. It would be absurd to say that there was no compensation paid for the acquisition. The law as declared by this Court in Doypack Systems Pvt. Ltd. (supra) is binding on the petitioners and the question was no longer res integra in view of Article 141 of the Constitution. See the observations of this Court in M/s. Shenoy and Co. represented by its partner Bele Srinivasa Rao Street, Bangalore, and others v. The Commercial Tax Officer, Circle II, Bangalore and Ors., [1985] 3 SCR 659. [752C-E;753B-C]
740
In view of the preamble of the Act which states and proclaims that the Act was passed to carry out the object of Article 39(b) and (c) of the Constitution, and in view of the scheme of the Act as analysed before the Court and as apparent from the judgment of this Court aforesaid, it is clearly manifest that the Act was passed for a public purpose, and for the acquisition of shares there was a public purpose. The acquisition subserved the object of the Act. Compensation for such acquisition has been provided for. No separate compensation need be provided for in the

circumstances of the case for these shares. The factual basis for the legal challenge made in this writ petition was incorrect in the facts of this case. It was too late to contend that there was no compensation for the shares or that the acquisition of the shares amounted to confiscation or there was no public purpose in the Act. The petition was wholly devoid of any merit. [754G-H; 755A-B]

M/s. Doypack Systems Pvt. Ltd. v. Union of India & Ors., SLPs (Civil) Nos. 4826 and 7045 of 1987 decided by Supreme Court on 12.2.88; The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors., [1952] SCR 839; State of West Bengal v. Union of India, [1964] 1 SCR 371; Smt. Somvanti & Ors. v. The State of Punjab and Ors., [1963] 2 SCR 774; M/s. Shenoy and Co. represented by its partner Bele Srinivasa Rao Street, Bangalore and Ors. v. The Commercial Tax Officer, Circle II Bangalore and Ors., [1985] 3 SCR 659 and T. Govindraja Mudalier, etc. etc. v. The State of Tamil Nadu and Ors., [1973] 3 SCR 222, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 305 of 1988.

(Under Article 32 of the Constitution of India).

Soli J. Sorabjee, Harish, N. Salve, Vasant Mehta, Atul Tewari and Miss Bina Gupta for the Petitioners.

Satish Chandra, Anil B. Divan, Dr. Y.S. Chitale, P.V. Kapur, Anil Kumar Sharma, P.P. Malhotra, Naresh Sharma, (Solicitor General) T.V.S.N. Chari, Badri Nath, Ms. V. Grover, (Attorney General), A. Subba Rao, Miss A. Subhashini, K.J. John, S. Swarup and Miss Naina Kapur for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. By the order passed by us on 741
29th March, 1988, we had dismissed this petition under Article 32 of the Constitution. We had, further, observed that we will indicate our reasons by a separate judgment. We do so herein.

This petition under Article 32 of the Constitution challenges the constitutional validity of the Swadeshi Cotton Mills Limited (Acquisition and Transfer of Undertakings) Act, 1986 (hereinafter called 'the Act'). It appears that there was an order made by the Central Government under Section 18AA(1)(a) of the Industries (Development & Regulation) Act, 1951 (hereinafter called 'the IDR Act') for taking over the management of the six undertakings of Swadeshi Cotton Mills, namely, (i) Swadeshi Cotton Mills, Kanpur, (ii) Swadeshi Cotton Mills, Pondicherry, (iii) Swadeshi Cotton Mills, Naini, (iv) Swadeshi Cotton Mills, Maunath Bhanjan, (v) Udaipur Cotton Mills, Udaipur and (vi) Rae Bareli Textile Mills, Rae Bareli for a period of five years. There were several proceedings in the High Court of Delhi and in other High Courts. It is not necessary in view of the judgment of this Court in SLP (Civil) Nos. 4826 & 7045 of 1987, M/s. Doypack Systems Pvt. Ltd. v. Union of India and others, dated 12th February, 1988 to set out in extenso all these facts. By the aforesaid judgment it was held that the 10,00,000 shares in Swadeshi Polytex Limited and 17,18,344 shares in Swadeshi Mining and Manufacturing Company Limited held by the Swadeshi Cotton Mills vested in the Central Government and National Textile Corporation (hereinafter called 'NTC'), under sections 3 and

4 of the Act. It was further held that in view of the amplitude of the language used, the immovable properties, namely, the Bungalow No. 1 and the Administrative Block, Civil Lines, Kanpur had also vested in N.T.C. Directions were given by this Court in the said judgment to enter the name of the NTC in its register of members of the said Companies and to treat the NTC as their shareholder instead of other erstwhile shareholders.

This petition under Article 32 of the Constitution has been filed by the petitioners who claim to be shareholders of respondent No. 4, Swadeshi Cotton Mills Company Limited as they have an interest in the business, affairs and properties of the Swadeshi Cotton Mills Company Limited and Swadeshi Mining and Manufacturing Company Limited. It was contended that the effect of the aforesaid decision was to take away valuable assets of respondent No. 4, namely, Swadeshi Cotton Mills Limited without paying any compensation whatsoever therefore and further it imposed upon respondent No. 4 liabilities without any corresponding assets available to discharge the liabilities. It was the contention in this writ petition that the said acquisition
742
virtually amounted to confiscation of the shares of respondent No. 5 and respondent No. 6 held by respondent No. 4 and substantially damaged the rights of the shareholders of respondent No. 4. In the premises, it was submitted that they have the locus to challenge the vires and constitutional validity of sections 3 and 4 of the said Act in so far as these seek to divest respondent No. 4 of the shares in respondent No. 5 and respondent No. 6 and certain other excluded assets. It was submitted that so far as the said Act provided for the vesting of shares held by respondent No. 4 in respect of respondent Nos. 5 and 6 it constituted a fraud on legislative power. It was submitted that there was no public purpose in such acquisition. It is taxation and appropriation and not nationalisation. It was further urged that it was contrary to the preamble to the Act because according to the preamble it was to ensure continuance of the manufacture, production and distribution of different varieties of cloth and yarn which were vital to the needs of the country. The industrial undertaking of respondent No. 5 produces sugar. The industrial undertaking of respondent No. 6 produces synthetic fibre. Therefore, both these companies or undertakings are producing neither cloth nor yarn. Therefore, it was submitted that in any event, the stated public purpose has no nexus with the acquisition of shares of respondent No. 5 and respondent No. 6 and as such, the acquisition of the shares of respondent Nos. 5 and 6 is without there being any public purpose. It was submitted that if the Act was so read then it was violative of Article 14 and Article 19(1)(g) of the Constitution. It was submitted that the acquisition must be for a public purpose and there must be some compensation paid for that acquisition. It was submitted that implicit in the concept of acquisition which is akin to the power of eminent domain is the concept of payment of compensation. It was urged that after the legislative change made by the Constitution (Seventh Amendment) Act, 1956, the power of the State as well as of the Union to enact any law governing acquisition of property must necessarily be governed by the provisions of Entry 42 in List III of the Seventh Schedule to the Constitution. After the amendment, there was no specific Entry in List III which empowered the Union or the States to enact law for payment of compensation, so it is now implicit in the concept of acquisition and requisition

of property. It was further urged that under Article 300 A of the Constitution, no person could be deprived of his property save by the authority of law. It was further submitted that the law contemplated by this Article was obviously a law providing for acquisition of property and, therefore, it was inter-linked with Entry 42 of List III of the Seventh Schedule to the Constitution. All these contentions, in our opinion, are not tenable because all these contentions were directly or indirectly dealt with in
743
the aforesaid judgment. The preamble to the Act provides as follows:

> "An Act to provide for the acquisition and transfer of certain textile undertakings of the Swadeshi Cotton Mills Co. Ltd., with a view to securing the proper management of such undertakings so as to sub-serve the interests of the general public by ensuring the continued manufacture, production and distribution of different varieties of cloth and yarn and thereby to give effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution and for matters connected therewith or incidental thereto.
> WHEREAS the Swadeshi Cotton Mills Co. Ltd. has, through its six textile undertakings, been engaged in the manufacture and production of different varieties of cloth and yarn;
> AND WHEREAS the management of the said textile undertakings was taken over by the Central Government under section 18AA of the Industries (Development and Regulation) Act, 1951;
> AND WHEREAS large sums of money have been invested with a view to making the said textile undertakings viable;
> AND WHEREAS further investment of very large sums of money is necessary for the purpose of securing the optimum utilisation of the available facilities for the manufacture, production and distribution of cloth and yarn by the said textile undertakings of the Company;
> AND WHEREAS such investment is also necessary for securing the continued employment of the workmen employed in the said textile undertakings;
> AND WHEREAS it is necessary in the public interest to acquire the said textile undertakings of the Swadeshi Cotton Mills Company Ltd. to ensure that the interests of the general public are served by the continuance by the said undertakings of the Company of the manufacture, production and distribution of different varieties of cloth and yarn which are vital to the needs of the country;

744

> AND WHEREAS such acquisition is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution.

It is not correct that no public purpose was served by acquisition. The reason for the taking over had been canvassed and discussed in the aforesaid judgment. It was observed in the aforesaid judgment as follows:

> "It appears to us that sections 3 and 4 of the Act evolve a legislative policy and set out the parameters within which it has to be implemented. We cannot find that there was any special

intention to exclude the shares in this case as seen from the existence of at least four other Acquisition Acts which used identical phraseology in sections 3 and 4 and in other sections as well. Reference was made to the Aluminium Corporation of India Limited (Acquisition and Transfer of Aluminium Undertakings) Act, 1984, the Amritsar Oil Works (Acquisition and Transfer of Undertakings) Act, 1982, the Britannia Engineering Company Limited (Mohameh Unit) and the Arthur Butler and Company (Muzaffarpore) Limited (Acquisition and Transfer of Undertakings) Act, 1978 and the Ganesh Flour Mills Company Limited (Acquisition and Transfer of Under takings) Act, 1984.

In the present case we are satisfied that the shares in question were held and utilised for the benefit of the undertakings for the reasons that (a) the shares in Swadeshi Polytex Limited were acquired from the income of the Kanpur Unit. Reference may be made to page 23 of Compilation D-III, (b) the shares held in Swadeshi Mining and Manufacturing Company were acquired in 1955. Originally there were four companies and their acquisition has been explained fully in the Compilation D-III with index, (c) the shares held in SPL were pledged or attached for running the Kanpur undertakings, for payment of ESI and Provident Fund dues for the workers of the Kanpur undertaking, for wages and payment of electricity dues of the Kanpur undertaking, (d) the shares held in SMMC were pledged for raising monies and loans of Rs.150 lakhs from the Punjab National Bank for running the Kanpur undertaking.

745

These loans fall in category II of Part I of the Schedule which liabilities have been taken over by the Government, (e) the shares held in SPL were offered for sale by SCM from time to time and to utilise the sale proceeds thereof by ploughing them back into the textile business for reviving the textile undertakings acquired under the Act.

It appears to us that the expression "forming part of" appearing in section 27 cannot be so read with section 4(1) as would have the effect of restricting or cutting down the scope and ambit of the vesting provisions in section 3(1). The expression "pertaining to" does not mean "forming part of". Even assuming that the expression "pertaining to" appearing in the first limb of section 4(1) means "forming part of", it would mean only such assets which have a direct nexus with the textile mills as would fall under the first limb of section 4(1). The shares in question would still vest in the Central Government under the second limb of section 4(1) of the Act since the shares were bought out of the income of the textile mills and were held by the company in relation to such mills. The shares would also fall in the second limb of section 3(1) being right and title of the company in relation to the textile mills.

On the construction of sections 3 and 4 we have come to the conclusion that the shares vest in the Central Government even if we read sections

3 and 4 in conjunction with sections 7 and 8 of the Act on the well settled principles which we have reiterated before. The expression 'in relation to' has been interpreted to be the words of widest amplitude. See National Textile Corporation Ltd. and others v. Sitaram Mills Ltd. (supra). Section 4 appears to us to be an expanding section. It introduces a deeming provision. Deeming provision is intended to enlarge the meaning of a particular word or to include matters which otherwise may or may not fall within the main provisions. It is well settled that the word 'includes' is an inclusive definition and expands the meaning. See: The Corporation of the City of Nagpur v. Its Employees, [1960] 2 S.C.R. 942 and Vasudev Ramchandra Shelat v. Pranlal Jayanand Thakar and others, [1975] 1 S.C.R. 534. The words 'all other rights and interests' are words of widest amplitude. Section 4 also uses the words "ownership, possession,

746

power or control of the Company in relation to the said undertakings". The words 'pertaining to' are not restrictive as mentioned hereinbefore."

It was further held that section 8 provides for payment of compensation in lumpsum and the transfer and vesting of whatever is comprised in section 3. The compensation provided in section 8 is not calculated as a total of the value of various individual assets. It is a lumpsum compensation. It was observed in the said judgment as follows:

"Section 8 provides for payment of compensation is lumpsum and the transfer and vesting of whatever is comprised in section 3. As section 4 expands the scope of section 3, the compensation mentioned in section 8 is for the property mentioned in section 3 read with section 4. The compensation provided in section 8 is not calculated as a total of the value of various individual assets in the Act. It is a lumpsum compensation. See in the connection the principles enunciated by this Court in Khajamian Wakf Estates etc. v. State of Madras and another, (supra). There, it was held that even if it was assumed that no compensation was provided for particular item, the acquisition of the 'inam' is valid. In: the instant case section 8 provides for compensation to be paid to the undertakings as a whole and not separately for each of the interests of the company. Therefore, it cannot be said that no compensation was provided for the acquisition of the undertaking as a whole."

Therefore, it is incorrect to state that there was no compensation for taking over of the shares and the reasons for providing no separate compensation have been explained in the aforesaid judgment as follows:

"Section 7 of the Act, in our opinion, neither controls sections 3 and 4 of the Act nor creates any ambiguity. It was highlighted before us and in our opinion rightly that this sum of Rs.24.32 crores paid by way of compensation comes out of the public exchequer. The paid-up shares in its equity capital can necessarily have a face value only of the amounts so paid, irrespective of

whatever may be contended to be the value of the assets and irrespective of whether any asset or property in relation to the undertak-

747

ings, was taken into account. After providing for compensation of Rs.24.32 crores to be paid to the Commissioner for payment to discharge Part I liabilities, Government has to undertake an additional 15 crores at least for discharging these liabilities. To leave a company, the net wealth of which is negative at the time of take-over of the management, with the shares held by it as investment in other company, in our opinion, is not only to defeat the principles of Article 39(b) and (c) of the Constitution but it will permit the company to reap the fruits of its mismanagement. That would be an absurd situation. It has to be borne in mind that the net wealth of the company at the time of take-over, was negative, hence sections 3 and 4 can be meaningfully read if all the assets including the shares are considered to be taken over by the acquisition. That is the only irresistible conclusion that follows from the construction of the documents and the history of this Act. We have to bear in mind the Preamble of the Act which expressly recites that it was to ensure the principles enunciated in clauses (b) and (c) of Article 39 of the Constitution. The Act must be so read that it further ensures such meaning and secures the ownership and control of the material resources to the community to subserve the common good to see that the operation of the economic system does not result in injustice.

We therefore, reiterate that the shares vested in the Central Government. Accordingly the shares in question are vested in NTC and it has right over the said 34 per cent of the shareholdings."

It was found by the said judgment that the net wealth of the company was negative and therefore, sections 3 and 4 could be meaningfully read if all the assets including the shares were considered to be taken over by the acquisition. That was the only irresistible conclusion that followed from the construction of the documents and the history of the Act. The Act in question was passed to ensure the principles enunciated in clauses (b) and (c) of Article 39 of the Constitution. In that context, it was held that to leave a company, the net wealth of which was negative at the time of take-over of the management with the shares hold by it as investment in other company, was not only to defeat the principles of Article 39(b) and (c) of the Constitution but it would permit the company to reap the fruits of its mismanagement.

748

That would be an absurd situation. In this context, in our opinion, the contentions now sought to be urged are no longer open to the petitioners.

Shri Sorabjee drew our attention to the observations of this Court in The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and others, [1952] S.C.R. 889. He relied on the observations of Mahajan, J., as the learned Chief Justice then was at page 929 of the report. He said:

"Shorn of all its incidents, the simple definition of the power to acquire compulsorily or

> of the term 'eminent domain' is the power of the sovereign to take property for public use without the owner's consent. The meaning of the power in its irreducible terms is, (a) power to take, (b) without the owner's consent, (c) for the public use. The concept of the public use has been inextricably related to an appropriate exercise of the power and is considered essential in any statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term, is an essential element of the valid exercise of such power. Courts have defined 'eminent domain' so as to include this universal limitation as an essential constituent of its meaning. Authority is universal in support of the amplified definition of 'eminent domain' as the power of the sovereign to take property for public use without the owner's consent upon making just compensation.
>
> It is clear, therefore, that the obligation for payment of just compensation is a necessary incident of the power of compulsory acquisition of property, both under the doctrine of the English Common Law as well as under the continental doctrine of eminent domain, subsequently adopted in America."

He also drew our attention to the observations of Mahajan, J. at pages 934 and 935 to the effect that the existence of a "public purpose" is undoubtedly an implied condition of the exercise of compulsory power of acquisition by the State, but the language of Article 31(2) of the Constitution does not expressly make it a condition precedent to acquisition. It assumes that compulsory acquisition can be for a "public purpose" only, which is thus inherent in such acquisition. It
749
was further observed at page 935 of the report that public purpose is an essential ingredient in the very definition of the expression "eminent domain" as given by Nichers and other constitutional writers, even though obligation to pay compensation is not a content of the definition but has been added to it by judicial interpretation. The exercise of the power to acquire compulsorily is conditional on the existence of a public purpose and that being so, this condition is not an express provision of Article 31(2) but exists aliunde in the content of the power itself and that in fact is the assumption upon which this clause of the Article proceeds.

Our attention was drawn by Shri Sorabjee to the observations of Chandrasekhara Aiyar, J. at pages 1008 and 1009 of the aforesaid report, where the learned Judge observed as follows:

> "The payment of compensation is an essential element of the valid exercise of the power to take. In the leading case of Attorney-General v. De Keyser's Royal Hotel Ltd., [1920] A.C. 508 Lord Dunedin spoke of the payment of compensation as a necessary concomitant to the taking of property. Bowen L.J. said in London and North Western Ry. Co. v. Evans, [1893] 1 Ch. 16 & 18:
>
> The Legislature cannot fairly be supposed to intend, in the absence of clear words showing such intention, that one man's property shall be confiscated for the benefit of others, or of the public, without any compensation being provided

> for him in respect of what is taken compulsorily from him. Parliament in its omnipotence can, of course, override or disregard this ordinary principle .. if it sees fit to do so, but it is not likely that it will be found disregarding it, without plain expressions of such a purpose."

The learned Judge further observed that this principle is embodied in Article 31(2) of the Constitution. Our attention was also drawn by Shri Sorabjee to the observations of Chandrasekhara Aiyar J. at pages 1018 and 1019 of the report.

Reliance was also placed on the observations of this Court in State of West Bengal v. Union of India, [1964] 1 S.C.R. 371 where Sinha, CJ at pages 433 and 434 of the report observed as follows:

> "In Kavalappara Kottarathil Kochuni v. State of Madras,
> 750
> [1960] 3 S.C.R. 887 it was held that cls. (1) and (2) of Article 31 as amended grant a limited protection against the exercise of different powers. By cl. (2) of Article 31 property is protected against compulsory acquisition or requisition. The clause grants protection in terms of widest amplitude against compulsory acquisition or requisition of property, and there is nothing in the Article which indicates that the property protected is to be of individuals or corporations. Even the expression 'person' which is used in cl. (1) is not used in cls. (2) and (2A), and the context does not warrant the interpretation that the protection is not to be available against acquisition of State property. Any other construction would mean that properties of municipalities or other local authorities-which would admittedly fall within the definition of State in Part III either cannot be acquired at all or if acquired may be taken without payment of compensation. Entry 42 in List III and cl. (2) of Article 31, operate in the same field of legislation; the former enunciates the content of legislative power, and the latter restraints upon the exercise of that power. For ascertaining whether an impugned piece of legislation in relation to acquisition or requisition of property is within legislative competence, the two provisions must be read together. The two provisions being parts of a single legislative pattern relating to the exercise of the right which may for the sake of convenience be called of eminent domain the expression 'property' in the two provisions must have the same import in defining the extent of the power and delineating restraints thereon. In other words Article 31(2) imposes restrictions on the exercise of legislative power under Entry 42 of List III. Property vested in the State may not therefore be acquired under a statute enacted in exercise of legislative power under Entry 42 unless the Statute complies with the requirements of the relevant clauses of Article 31."

As mentioned hereinbefore these contentions are not open to the petitioners in the instant case. It was held by the judgment of this Court in M/s. Doypack Systems Pvt. Ltd. (supra) that there was a public purpose. The public purpose

was analysed and spelled out from the different provisions of the Act. Secondly, there was compensation for the acquisition of the property. Reference may be made to the observations of the said judgment to the following effect:

751

> "Shri Nariman referred us to the Statement of Objects and Reasons appended to the Bill and urged that it was not intended that the shares were included in the undertaking. He submitted that the Statement of Objects and Reasons showed that the acquisition of the undertaking had to be resorted to since the order of taking over the management of the company issued under section 18AA of the IDR Act could not be continued any further.
>
> The preamble to the Act, however, reiterated that the Act provided for the acquisition and transfer of textile undertakings and reiterated only the historical facts that the management of the textile undertakings had been taken over by the Central Government under section 18AA of the IDR Act and further that large sums of money had been invested with a view to making the textile undertakings viable and it was necessary to make further investments and also to acquire the said undertakings in order to ensure that interests of general public are served by the continuance of the undertakings. The Act was passed to give effect to the principles specified in clauses (b) and (c) of Article 39 of the Constitution. In our opinion, this was indicative of the fact that shares were intended to be taken over."

The contention of Shri Nariman that there was no public purpose for acquiring these shares had been noted in the judgment at pages 85 and 86 of the paper book. It read as follows:

> "Shri Nariman further submitted that Swadeshi Polytex Limited and Swadeshi Mining and Manufacturing Company Limited were two separate undertakings distinct from the six textile undertakings belonging to Swadeshi Cotton Mills Company Limited. Acquisition of these shares having controlling interests in the said two companies was never intended and could never be said to be within the scope of the Act. The expression "in relation to the six textile undertakings" appearing in sections 3 and 4 of the Act, was an expression of limitation, according to him, indicative of the intention of acquiring of only the textile undertakings and no other. There existed no public purpose, according to Shri Nariman, for acquiring these shares. The public purposes mentioned in the Act with

752

> reference to Article 39(b) and (c) related to the acquisition of only the textile undertakings of Swadeshi Cotton Mills and not acquisition of the synthetic fibre undertakings of Swadeshi Polytex or sugar undertakings of Swadeshi Mining and Manufacturing Company Limited."

These contentions were dealt with and repelled as mentioned in the passages set out hereibefore. We reiterate the said reasons. It has further to be borne in mind that the shares held in the Swadeshi Polytex Limited themselves were the subject matter of both pledge and attachment to secure loans from the U.P. State Government of about Rs.66

lakhs for payment of wages to workers of the Kanpur undertaking and Rs.95 lakhs being electricity dues of the Kanpur undertaking owing to the U.P. State Electricity Board. From all these, it would appear that the acceptance of the petitioners' case, would mean that the State would pump in Rs.15 crores of public money to release the shares from its liabilities and thereafter hand over the shares free from such liability back to the company when the net worth of the company at the time of take over of management was negative and in the teeth of the present financial liabilities built up by the company the shares would inevitably have been sold in discharge of its liabilities and in any event the shares stood charged with the very liabilities which related to the undertakings of the company which were taken over by the Government. Therefore, it is incorrect to say that there was no public purpose for taking over these shares. It would be absurd to say that there was no compensation paid for the said acquisition. The relevant observations in the judgment dealing with this contention have been set out hereinbefore.

Learned Attorney General drew our attention to the observations of this Court in Smt. Somavanti and others v. The State of Punjab and others, [1963] 2 S.C.R. 774 where at page 792 of the report, this Court analysed the submissions based on the observations of this Court in State of Bihar v. Maharajadhiraja Sir Kameswarsingh of Darbhanga (supra) that the exercise of power to acquire compulsorily is conditional on the existence of public purpose and that being so this condition is not an express provision of Article 31(2) but exists aliunde in the content of the power itself. That, however, was not the view of the other learned Judges who constituted the Bench. According to Mukherjea, J. as the learned Chief Justice then was, the condition of the existenc of a public purpose is implied in Article 31(2). See the observations in Maharajadhiraja Sir Kameswarsingh's case at pages 957 and 958. Das, J. as the learned Chief Justice then was, was
753
also of the same view. See the observations in the aforesaid decision at pages 986 and 988. Similarly, Patanjali Sastri C.J. had also taken the view that the existence of public purpose is an express condition of clause (2) of Article 31. This Court reiterated in Somavanti's case (supra) at page 792 of the report that the Constitution permitted acquisition by the State of private property only if it is required for a public purpose.

Furthermore, we are of the opinion that the law as declared by this Court in Doypack Systems Pvt. Ltd. is binding on the petitioners and this question is no longer res integra in view of Article 141 of the Constitution. See the observations of this Court in M/s. Shenoy and Co. represented by its partner Bele Srinivasa Rao Street, Bangalore and others v. The Commercial Tax Officer, Circle II Bangalore and others, [1985] 3 S.C.R. 659 where this Court observed that the judgment of this Court in Hansa Corporations' case reported in (1981 1 S.C.R. 823 is binding on all concerned whether they were parties to the judgment or not. This Court further observed that to contend that the conclusion therein applied only to the parties before this Court was to destroy the efficacy and integrity of the judgment and to make the mandate to Article 141 illusory.

In that view of the matter this question is no longer open for agitation by the petitioners. It is also no longer open to the petitioners to contend that certain points had not been urged and the effect of the judgment cannot be

collaterally challenged. See in this connection the observations of this Court in T. Govindaraja Mudaliar etc. etc. v. The State of Tamil Nadu and others, [1973] 3 S.C.R. 222 where this Court at pages 229 and 230 of the report observed as follows:

> "The argument of the appellants is that prior to the decision in Rustom Cavasjee Cooper's case it was not possible to challenge Chapter IV-A of the Act owing to the decision of this Court that Art. 19(1)(f) could not be invoked when a case fell within Art. 31 and that was the reason why this Court in all the previous decisions relating to the validity of Chapter IV-A proceeded on an examination of the argument whether there was infringement of Art. 19(1)(g), and clause (f) of that Article could not possibly be invoked. We are unable to hold that there is much substance in this argument. Bhanji, Munji and other decisions which followed it were based mainly on an examination of the inter-relationship between Article 19(1)(g) and Article
>
> 754
>
> 31(2). There is no question of any acquisition or requisition in Chapter IV-A of the Act. The relevant decision for the purpose of these cases was only the one given in Kochuni's case after which no doubt was left that the authority of law seeking to deprive a person of his property otherwise than by way of acquisition or requisition was open to challenge on the ground that it constituted infringement of the fundamental rights guaranteed by Art. 19(1)(f). It was, therefore, open to those affected by the provisions of Chapter IV-A to have agitated before this Court the question which is being raised now based on the guarantee embodied in Art. 19(1)(f) which was never done. It is apparently too late in the day now to pursue this line of argument, in this connection we may refer to the observations of this Court in Mohd. Ayub Khan v. Commissioner of Police Madras & Another, [1965] 2 S.C.R. 884 according to which even if certain aspects of a question were not brought to the notice of the court it would decline to enter upon re-examination of the question since the decision had been followed in other cases. In Smt. Somavanti & others v. The State of Punjab and others, [1963] 2 S.C.R.774 a contention was raised that in none of the decisions the argument advanced in that case that a law may be protected from an attack under Article 31(2) but it would be still open to challenge under Article 19(1)(f), had been examined or considered. Therefore, the decision of the Court was invited in the light of that argument. This contention, however, was repelled by the following observations at page 794:
>
> "The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided."

In view of the preamble to the Act which states and proclaims that the Act was passed to carry out the object of Article 39(b) and (c) of the Constitution and in view of the scheme of the Act as analysed before us and as also apparent

from the aforesaid judgment, it is clearly manifest that the Act in question was passed for a public purpose and for the acquisition of shares there was a public purpose. The acquisition subserved the object of the Act. The compensation in the manner indicated above and in the manner indicated in the
755
aforesaid judgment for such acquisition have been provided for. No separate compensation need be provided in the circumstances of the case for these shares. The factual basis for the legal challenge made in this writ petition was, therefore, incorrect in the facts of this case. It is apparently too late in the day to contend that there was no compensation for the shares or that the acquisition of the shares amounted to confiscation or there was no public purpose in the Act. The petition, in our opinion, is wholly devoid of any merit.

For these reasons, this writ petition fails and is accordingly dismissed.

S.L. Petition dismissed.
756