Abdul Husein Tayabali & Ors.

Vs

State of Gujarat & Ors.

Civil Appeals Nos. 369 to 375 of 1967

(J. C. Shah, S. M. Sikri, J. M. Shelat JJ)

20.09.1967

JUDGMENT

SHELAT, J. -

These appeals by certificate are directed against the judgment of the High Court of Gujarat dismissing the writ petitions filed by the appellants for quashing the notifications dated August 28, 1964 and October 18, 1965 respectively issued under section 4 and 6 of the Land Acquisition Act, 1 of 1894.

The appellants are the owners of the lands in question situate at Ranoli, District Baroda. The 3rd respondent Company also owns about 140 acres of land in the same village. The appellant's land are either situate adjacent to and between the Company's land and the railway lines or are enclaves surrounded by lands belonging to the Company. On July 22, 1961 the State Government issued a notification under sec. 4 of the Act to the effect that the appellants' said lands were or were likely to be needed for a public purpose, viz., for a fertilizer factory. That notification was withdrawn on September 11, 1961 as the lands were stated to be unsuitable for such a factory. The Government however issued the very next day a fresh notification under sec. 4 respect of the same lands, this time for the purpose of the 3rd respondent Company. Some of these appellants thereupon filed writ petitions challenging its validity. While these petitions were pending before the High Court this Court delivered its decision in what is known as the first Arora Case ([1962] Supp. 2 S.C.R. 149 : A.I.R. 1962 S.C. 764). To get over the difficulties arising from that decision, first an Ordinance and then the Amendment Act XXXI of 1962, were passed. The Amendment Act was brought into force from July 20, 1962 with retrospective effect. The Central Government thereafter made Rules under sec. 55 of the Act called the Land Acquisition (Companies) Rules which were brought into force from June 22, 1963. On July 24, 1963 the State Government withdrew the notification dated September 12, 1961 whereupon the writ petitions filed by the appellants challenging the said notifications were withdrawn. In the meantime one D. K. Master, who was then the Special Land Acquisition Officer, Baroda, started an inquiry under Rule 4 of the said Rules. On August 28, 1964 the State Government issued a notification under sec. 4 stating that the appellants' said lands were needed or were likely to be needed for the establishment of a factory of the 3rd respondent Company. The appellants filed their objections in the inquiry then held under sec. 5A but they were rejected. On October 18, 1965 the State Government issued sec. 6 notification declaring that the said lands were needed for the factory of the 3rd respondent Company Which it was stated was taking steps or engaging itself for manufacture of optical bleaching agents, intermediate dye-stuffs etc., which according to the Government was for a public purpose.

The appellants thereupon filed writ petitions from which these appeals arise challenging the two

notifications dated August 28, 1964 and October 18, 1965 respectively. When these writ petitions came on for hearing the State Government produced a notification dated October 11, 1963 authorising the Special Land Acquisition Officers of the State to perform the functions of the Collector under sec. 3(c). On certain contentions having been raised on the basis of this notification, the High Court adjourned the hearing enable the State Government to explain the circumstances and the reasons for issuing the said notification. On August 25, 1966 the said Master filed a further affidavit clarifying the Government's position and the circumstances in which he performed the functions of the Collector under sec. 3(c).

Before the High Court the appellants contended that the procedure laid down in the said Land Acquisition (Companies) Rules was not followed, that the purpose for which the acquisition was being made was not a public purpose within the meaning of sec. 40(1)(aa), that the acquisition was made mala fide and in colourable exercise of power, that the State Government had not applied its mind to the facts of the case and lastly that the inquiry under sec. 5A was quasi-judicial inquiry and that as an opportunity to be heard was not given to the appellants the proceedings under sec. 5A violated natural justice. Counsel, however, conceded that the inquiry under Section 5A was administrative but contended that the appellants were still entitled to be heard before the State Government formed its satisfaction that the lands were required for the Company. The High Court rejected all these contentions and dismissed the writ petitions. Hence these appeals.

Counsel for the appellants formulated the following five propositions on which he impugned the High Court's judgment :

> (1) that the inquiry under Rule 4 of the Land Acquisition (Companies) Rules and the consequent report made by Master to the Government were invalid; therefore there being no valid report under Rule 4 read with section 40, no notification either under s. 4 or sec. 6 could be validly issued;
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> (2) that sec. 6 notification was issued without complying with Part VII of the Act and without a valid consent of the State Government as required by sec. 39 and therefore no notification either under sec. 4 or sec. 6 could be lawfully issued;
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> (3) that the acquisition was made mala fide and without application of mind to the relevant facts;
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> (4) that the acquisition did not involve any public purpose; and
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> (5) that the State Government was bound to give an opportunity of being heard to the appellants before taking decision under sec. 5A, particularly when the report of the said Master was against the acquisition.

We shall consider these propositions in the order in which they were urged.

As regards propositions 1 and 2, the argument was that Master was only a Sp. L. A. officer but was not the Collector within the meaning of Rule 4 and therefore the inquiry held by him under that Rule and the report made consequent thereto were invalid; that even if Master can be held to have been authorised to perform the functions of the Collector he was not "specially appointed" as Collector; that the State Government had not given any direction to him to make a report as required by Rule 4 and that the notification dated October 11, 1963 did not "appoint" but simply authorised him to perform the functions of the Collector.

It is not in dispute that as required by the said Rules the State Government had appointed a Land Acquisition Committee before it issued the notification under sec. 4. The affidavit of Master establishes that he worked as a Sp.L.A. officer at Baroda from December 6, 1961 to April 29, 1965. On February 11, 1963 he was appointed to officiate as Special Land Acquisition Officer, Baroda. On October 1, 1963 the Government wrote a letter to him forwarding the application dated September 11, 1963 of the 3rd respondent Company requesting the Government to acquire the lands in question and directing him to hold an inquiry according to the said Rules and to make a report. The letter also stated that he was being authorised separately to perform the functions of the Collector and that on such authorisation he would be competent to make the inquiry. On the same day the Government issued a notification under sec. 3(c) authorising him to perform the function of the Collector within Baroda District. But on October 11, 1963 the Government issued another notification superseding the notification of October 1, 1963 and authorising all Special Land Acquisition Officers in the State to perform the functions of the Collector under the Act within the area of their respective jurisdiction. On October 10, 1963 Master had addressed a letter to the Company to supply information for his inquiry under Rule 4. On October 22, 1963 he issued notices to 27 owners of the lands proposed to be acquired but only 10 of them appeared before him and he recorded their statements on October 31, 1963. There is thus no doubt that Master was instructed by the State Government to hold an inquiry and to submit his report.

Rule 4 required the Collector to make an inquiry regarding the matters stated therein, such matters inter alia being that the land requested by the Company for acquisition is not excessive, that the Company has made efforts and offered reasonable price to buy the land from the owners, that if the land happens to be good agricultural land, there is no other alternative land suitable for the Company's purpose and the approximate amount of compensation which would be payable if the lands were acquired. The Collector after making such inquiry has to submit his report to the Government. The Government then forwards it to the Land Acquisition Committee and the Committee has to advise the Government. Rule 4 prohibits the Government from issuing notification under section 6 unless it has consulted the Committee and considered the said report as also the report made under section 5A and unless an agreement with the Company under section 41 has been executed.

The contention was that though Master held the inquiry and made the report he had functioned not as the Collector but in his capacity as the Special Land Acquisition Officer, Baroda, and therefore the notification under sec. 4 and s. 6 were invalid. The argument was, firstly, that Rule 4 does not define "collector" and therefore the word "collector" must mean the Collector of the District and secondly, that even if Master was appointed as the Collector as defined by sec. 3(c) his appointment as Collector was not valid as he was not specially appointed to perform the functions of the Collector. It was said that the notification dated October 11, 1963 did not "specially" appoint Master but was a general notification authorising not only Master but all the Special Land Acquisition Officers in the State appointed not only before the date of sec. 4 notification but also those who would be appointed in future. In our view, these contentions cannot be upheld. Section 3(c) defines a Collector to mean Collector of the District and includes Deputy Commissioner and any officer specially appointed by the Government to perform the functions of a Collector under the Act. Section 20 of the General Clauses Act, X of 1897 provides that where a Central Act empowers making rules, the expressions used in such rules, if made after the commencement of that Act shall have the same meaning as in the Central Act, unless there is anything repugnant in the subject or context. There being nothing repugnant in the subject or context, the word "collector" must have the same meaning in the rules as in sec. 3(c) which includes an officer specially appointed to perform the functions of the Collector. If therefore Master can be said to have been specially appointed to

perform the functions of to Collector under the Act no challenge can be entertained as to his competence to make the inquiry and the report under Rule 4 of the said Rules. Mr. Sanghi conceded that the notification dated October 1, 1963 did "specially" appoint Master as the Collector, Baroda, but argued that as that notification was superseded it would not avail the respondents and therefore the question was whether the notification dated October 11, 1963 can be said to have specially appointed Master as Collector. He argued that since that notification appointed all the Special Land Acquisition Officers to perform the functions of the Collector within their respective areas the appointments made thereunder must be regarded as general and not appointments specially made and therefore it cannot be said that Master or any one of them was specially appointed as required by sec. 3(c). The argument therefore resolves itself to what is the true meaning of the words "specially appointed". In our view, those words simply mean that as such an officer is not a Collector and cannot perform the functions of a Collector under the Act, he has to be "specially appointed", that is, appointed for the specific purpose of performing those functions. The word "specially" has therefore reference to the special purpose of appointment and is not used to convey the sense of a special as against a general appointment. The word "specially" thus connotes the appointment of an officer or officers to perform functions which ordinarily a Collector would perform under the Act. It qualifies the word "appointed" and means no more than that he is appointed specially to perform the functions entrusted by the Act to the Collector. It is the appointment therefore which is special and not the person from amongst several such officers. Besides, sec. 15 of the General Clauses Act provides that where a Central Act empowers an authority to appoint a person to perform a certain function, such power can be exercised either by name or by virtue of office. There would therefore be no objection if the appointment is made of an officer by virtue of his office and not by his name. Therefore even if the meaning of the word "specially" were to be that which is canvassed by Mr. Sanghi the Government could have issued separate notifications for each of the Sp.L.A. officers authorising them individually to perform the functions of the Collector within their respective area of jurisdiction. Instead of doing that, if one notification were to be issued authorising each of them to perform those functions there could be no valid objection. Such a notification would have the same force as a separate notification in respect of each individual Sp.L.A. officer. Such a notification would mean that the Government thereby appoints each of the existing Sp.L.A. officers to perform the functions of the Collector within their respective areas. It is true that the notification also declares that such of the Sp.L.A. officers as may be appointed in future are also authorised to perform the Collector's functions. That only means that whenever a person would be appointed as a Sp.L.A. officer for a particular area, the notification would in effect invest him at the same time with the authority to perform the Collector's functions. The appointment of each of these officers therefore must be held to be special and not general.

But Mr. Sanghi argued that even so the notification did not "appoint" Master but merely authorised him to perform the Collector's functions. In our view, the distinction is without difference. In the context of sec. 3(c) when an officer is authorised to perform the functions of the Collector it means that he is appointed to perform those functions. The clause does not contemplate a separate or an additional post. What it means is that some officer who is already in the Government employment is authorised to work as a Collector for the purposes of the Act. In this sense whether he is appointed or authorised to perform the Collector's functions he would be complying with the terms of that clause.

It was then urged that the inquiry under Rule 4 is a quasi- judicial inquiry and therefore it was incumbent on Master to give an opportunity to the appellants to be heard. The Rule however provides that the officer conducting the inquiry has to hear the Company before making his report. Whether he has also to hear the owners of the land or not need not be decided in these appeals as

Master had in fact given such an opportunity to the appellants by serving them with notices and recorded the statements of such of them who cared to appear before him. There is therefore no merit in that contention. Next it was urged that the inquiry under Rule 4 has to be held after the notification under sec. 4 is issued and not before and therefore the inquiry held by Master was not valid. We do not find anything in Rule 4 or in any other Rule to warrant such a proposition. The inquiry, the report to be made consequent upon such inquiry, obtaining the opinion of the Land Acquisition Committee, all these are intended to enable the Government to come to a tentative conclusion that the lands in question are or are likely to be needed for a public purpose and to issue thereafter sec. 4 notification. In our view, no objection to the appointment of Master to perform the functions of the Collector under sec. 3(c) or to his competence to make the inquiry and the report under Rule 4 or their legality can be validly made. If follows that the consent given by the State Government for initiating acquisition proceedings was validly given and was in compliance with the provisions of Part VII of the Act and the State Government could validly issue the impugned notifications. This disposes of Mr. Sanghi's propositions 1 and 2.

The third proposition is that the State Government exercised the power under the Act mala fide and without applying its mind to the facts of the case. Paragraph 10 of the petition containing the plea as to mala fides is in general terms without any particulars. Even such of the allegations that are to be found there are more against the 3rd respondent Company than against the State Government. These are based on the fact that the Company had sufficient land of its own and the acquisition was therefore being made so that the Company may acquire the neighboring lands without utilising its own lands. It is true that the Company owns 140 acres of land. But as the affidavit of the Company's officer shows out of these 140 acres 48 acres are ravine lands, unfit as factory sites. According to the Company, those land however will be utilised for housing accommodation for its 700 workmen and for amenities for them such as play grounds, a sports club, a recreation center and a co-operative consumer society. Forty acres out of the rest of the land have already been used for constructing some of the factories' warehouses and godowns. As regards the balance of 60 acres, they do not form a compact block and contain in them small pockets belonging to the appellants. The Company's case was that unless these pockets are acquired and these 60 acres are made into one compact lot it would not be possible to use them as factory site. These lands are, besides, divided by a Nal which if filled up would block access to the appellant's lands. Unless the enclaves are acquired, the said Nal which divides the Company's lands cannot be filled up. A portion of the lands in question is also necessary for an approach road leading to the proposed railway siding. Some of the land will have to be kept open as otherwise the noxious fumes omitted by the factories would prove detrimental to the health of the neighbours.

The documents produced by Master reveal that the inquiry, held by him was on the question whether the Company was trying to acquire excessive land. It is therefore not possible to say that the Government failed to apply its mind, having had Master's report before it as also the report under sec. 5A as regards the extent of land needed by the Company. It was however argued though somewhat vaguely that the Company would not require as much as 40 acres for housing it workmen and also that the Company has its own land near the railway lines which can well be used for the proposed railway siding. No effort however was made to show that the Company would not really need 40 acres for housing purposes. As regards the proposed railway siding also there is no date to show that the Company's land near the railway lines would be suitable for constructing such railway siding. The appellant's lands appear to be near the existing goods platform. It may be that the Government found on the basis of the reports before it that the appellants' lands near the goods platform would be more suitable for the railway siding than the Company's land near the railway lines.

Mr. Sanghi then contended that the fact that the Government had been trying to acquire these lands since 1962 and has been issuing one notification after another shows the exercise of the power to acquire was mala fide. No such inference can be drawn from such a fact only. The fact, on the other hand, that the Government cancelled its first notification on the ground that these lands were not suitable for a fertiliser factory gives a clear indication that it had applied its mind and negatives the allegation of mala fade exercise of power. The correspondence which the Company produced during the hearing of the petitions shows that as soon as the decision in the first Arora Case ([1962] Supp. 2 S.C.R. 149) was given the Government at once canceled the notification in spite of the Company's request to continue it. This negatives any suspicion as to collusion between the Company and the acquiring authority. It is true that Master's opinion was adverse to acquisition but the Government was not bound to accept it. However, the fact that a responsible officer of the Government gave an adverse opinion is yet another indication that he was acting independently without being influenced by the Government or the Company. In our view, the appellants failed to establish their allegation either as to mala fides or the non-application of mind by the State Government. The third proposition of Mr. Sanghi therefore must fail.

As regards proposition No. 4, the only argument urged was that when a particular land is being already used for one public purpose, in this case the manufacture of "sagol", a building material made from lime, the legislature could not have intended to empower the Government to destroy that purpose and substitute in its place another public purpose. We need only say that a similar argument was urged in Somavanti's Case ([1963] 2 S.C.R. 774) and rejected by this Court.

The last proposition of Mr. Sanghi was that even though an inquiry under s. 5A may be an administrative inquiry, the State Government was bound to give an opportunity to be heard to the appellants after receiving the report thereunder and before making up its mind for the purpose of issuing sec. 6 notification. It is not in dispute that during sec. 5A inquiry the appellants were heard and their objections were taken on record. Under sec. 5A, the Collector has to hear the objections of the owner, take them on record and then submit his report to the Government. The section also requires him to send along with his report the entire record of his inquiry which would include the objections. The report has merely recommendatory value and is not binding on the Government. The record has to accompany the report as it is for the Government to form independently its satisfaction. Both are sent to enable the Government to form its satisfaction that the acquisition is necessary for a public purpose or for the Company. It is then that sec. 6 notification which declares that particular land is needed for either of the two purposes is issued. The Government thus had before it not only the opinion of Master but also all that the appellants had to say by way of objections against the proposed acquisition. The appellants therefore had an opportunity of being heard. Neither sec. 5A nor any other provision of the Act lays down that a second opportunity has to be given before the issuance of section 6 notification. This contention also therefore cannot be sustained.

These were all the contentions urged before us. As none of them can be upheld the appeals have to be dismissed. The appellants will pay to the respondents the costs of these appeals. (One hearing fee).

R.K.P.S.

Appeals dismissed.

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