

Kanaiyalal Maneklal Chinai and Another

Vs

State of Gujarat and Others

Civil Appeal No. 1102 of 1967

(J.C. Shah, K.S. Hegde JJ)

17.10.1969

JUDGMENT

SHAH, J. -

1. The appellants are owners of "China Baug" situated on the southern bank of the river Sabarmati within the limits of the Municipal Corporation of Ahmedabad. The Ahmedabad Municipal Corporation resolved to move the State Government to acquire a part of the land of the appellants for setting up a Samadhi of Mahatma Gandhi. On September 10, 1959, the Commissioner, Ahmedabad Division in the State of Bombay, issued a notification under Section 4 of the Land Acquisition Act, stating :

"Whereas it appears to the Commissioner, Ahmedabad Division, that the lands specified in the schedule hereto are likely to be needed for public purpose viz., for 'The Mamorial of Rashtrapita Mahatma Gandhi' :

It is hereby notified under the provisions of Section 4 of the Land Acquisition Act, 1894 (1 of 1894) 'that the said lands are likely, to be needed for the purpose specified above'.

Enquiry was made under Section 5-A of the Land Acquisition Act and after receiving the report of the Collector, the Commissioner, Baroda Division of the State of Gujarat (who by virtue of the Bombay Reorganization Act, 1960, was the appropriate authority) issued a notification under Section 6 of the Land Acquisition Act on August 31, 1961, that the lands were required for the public purpose specified in Column 4 of the Schedule to the notification i. e., "Memorial of Mahatma Gandhi".

2. The appellants moved a petition in the High Court of Gujarat for a writ quashing the proceeding under the Land Acquisition Act and the two notifications, dated September 10, 1959 and August 31, 1961 and for a writ restraining the Commissioner, Baroda Division, and the Government of the State of Gujarat from enforcing the notifications. The High Court rejected the petition. With certificate granted by the High Court under Article 133(1)(c) of the Constitution this appeal is preferred by the appellants.

Counsel for the appellants contended that :-

(1) that the Commissioners of Divisions Act 8 of 1958 pursuant to which the Commissioners of Divisions were vested with authority to discharge statutory

functions vested in the State Commissioner Was ultra vires the Legislature;

(2) that in any event the Commissioner, Baroda Division, State of Gujarat was incompetent to issue the notification under Section 6 without issuing a fresh notification under Section 4;

(3) that since the land was notified for acquisition for the purposes of the Municipal Corporation the provisions of Sections 77 and 78 of the Provincial Municipal Corporations Act, 1949, should have been complied with. In any event acquisition of land for "a Memorial to Mahatma Gandhi" was not acquisition for a Municipal purpose and the notifications were without the authority of law;

(4) that the "instrumentality" which was to carry out the purpose not having been set out in the notifications under Sections 4 and 6 the notifications were illegal and on that account unenforceable; and

(5) that the Commissioner, Baroda Division, in issuing the notification under Section 6 did not apply his mind to the evidence before him and on that account the notification was liable to be struck down.

3. To appreciate the two branches of the first contention, it is necessary to set out the relevant statutory provisions. By Section 4 of the Land Acquisition Act, as amended by the Adaptation of Laws Order, 1950, it was enacted that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Section 6(1), in so far as it is relevant, provided :

"Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders X X X"

The Legislature of the State of Bombay enacted the Commissioners of Divisions Act 8 of 1958. By Section 3 of that Act it was provided :

"(1) For the purposes of constituting offices of Commissioners of divisions and conferring powers and imposing duties on Commissioners and for certain other purposes, the enactments specified in Column 1 of the Schedule to this Act shall be amended in the manner and to the extent specified in Column 2 thereof.

(2) The Commissioner of a division, appointed under the law relating to land revenue as amended by the said Schedule, shall exercise the powers and discharge the duties conferred and imposed on the Commissioner by any law for the time being in force, including the enactments referred to in sub-section (1) as amended by the said Schedule.

#(3) X X X X##

(4) The State Government may confer and impose on the Commissioner powers and duties under any other enactment for the time being in force and for that purpose may, by a notification in the Official Gazette, add to or specify in the Schedule the necessary adaptations and modifications in that enactment by way of amendment; and thereupon -

(a) every such enactment shall accordingly be amended and have effect subject to the adaptations and modifications so made, and

(b) the Schedule to this Act shall be deemed to be amended by the inclusion therein of the said provision for amending the enactment."

4. The Government of the State of Bombay issued on September 5, 1958 a notification under Section 3(4) of the Commissioners of Divisions Act, conferring and imposing on the Commissioners concerned the powers and duties under the enactments specified therein and for that purpose added to and specified in the Schedule to that Act certain adaptations and modifications in those enactments by way of amendment. In the Land Acquisition Act, in Section 4(1) after the words "appropriate Government" the words "or the Commissioner" were inserted, and in Section 6(1)(a) after the words "appropriate Government" the words "or, as the case may be, the Commissioner" will be inserted.

5. It is unnecessary to consider the elaborate arguments which were presented before the High Court that Sections 3(3) and 3(4) of the Commissioners of Divisions Act 8 of 1958 constituted excessive delegation of legislative power to the State Government resulting in abdication of the functions of the State Legislature, and were on that account invalid. This Court has in *Arnold Rodricks and Another v. State of Maharashtra and Others* by majority held that the powers conferred by Section 3(4) on the State Government are not unguided and that the State Legislature has by enacting Section 3(4) not abdicated its powers in favour of the executive, for it has laid down the legislative policy and has left it to the State Government to reorganise the administration consequent on the setting up of Commissioners' Divisions. The challenge to the vires of the Commissioners of Divisions Act 8 of 1958 must fail.

6. The notification under Section 4 of the Land Acquisition Act was issued by the Commissioner, Ahmedabad Division, exercising powers as an officer of the State of Bombay. But after the notification was issued, the State of Bombay was reorganised and the area in which the land is situated was included in the new State of Gujarat. The Commissioner of Baroda Division was competent to exercise the powers under the Commissioners of Divisions Act which continued to remain in force in the new State of Gujarat in respect of the Land Acquisition Act and had on that account power to issue a notification under Section 6 of the Act. The notification under Section 4 was issued by the Commissioner, Ahmedabad Division, who was competent to issue it in the set-up then in existence and the Commissioner competent to issue the notification under Section 6 had issued that notification. The authority of the Commissioner of the State of Gujarat to issue the notification under Section 6 not being open to challenge, there is nothing in the Land Acquisition Act or the Commissioners of Divisions Act, which requires that to invest the notification under Section 6 with validity, the Commissioner of the State of Gujarat had in the first instance to issue a notification under Section 4 of the Act declaring that the land was needed or was likely to be needed for any public purpose.

7. Turning to the second contention, the relevant statutory provisions may first be read. Section 77

of the Provincial Municipal Corporations Act, 1949, in so far as it is relevant, by sub-section (1) provides :

"Whenever it is provided by this Act that the Commissioner may acquire or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms or prices and at such rates or prices or at rates or prices not exceeding such maxima as shall be approved by the Standing Committee either generally for any class of cases or specially in any particular case."

Section 78(1) provides :

"Whenever the Commissioner is unable under Section 77 to acquire by agreement any immovable property, X X X the Provincial Government may, in its discretion, upon the application of the Commissioner, made with the approval of the Standing Committee and subject to the other provisions of this Act, order proceedings to be taken, for acquiring the same on behalf of the Corporation, as if such property X X X were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894."

There is nothing in Sections 77(1) and 78(1) which supports the contention that before initiation of a proceeding for acquisition of land, which it is necessary or expedient for any purpose of the Municipal Act to be acquired, the Commissioner of the Municipality must start negotiations for purchase by private agreement, and if he is unable to so purchase the land the State Government may be moved for acquiring the land for the Municipality and that otherwise.

8. Exercise of power to move the State under Section 78 of the Provincial Municipal Corporations Act, to acquire land is not conditioned by any such limitation as suggested by counsel for the appellant. The opening clause of Section 78(1) merely indicates an alternative and not a condition. Even if no attempt is made under Section 77 to acquire the land by agreement, it is open to the Commissioner of the Municipal Corporation, with the approval of the Standing Committee and subject to the other provisions of the Act, to move the Provincial Government to take steps for acquisition of the land. By statutory provisions, it is expressly enacted that where the purpose is one for which the Commissioner of the Municipality may require the land under the provisions of the Provincial Municipal Corporations Act, 1949, or is a purpose of the Act for which it is deemed necessary or expedient by the Commissioner of the Municipality to acquire the land, such a purpose shall be regarded as a public purpose within the meaning of Section 4(1) of the Land Acquisition Act, even if it does not fall within the expression "public purpose" as normally understood.

9. The High Court was of the view that setting up of a memorial to Mahatma Gandhi falls within : the clause (42) of Section 66 of the Provincial Municipal Corporation Act, and therefore within the competence of s the Municipal, Corporation. Section 66(42) authorises the Corporation, in its discretion, to provide from time to time either wholly or partly, in the matters, inter alia, of any measure likely to promote public safety, health, convenience or instruction, and in the view of the High Court "setting up a Samadhi or memorial of the type could be fairly regarded as incidental to the right and power to give public instruction which is a matter within the competence of the Municipal Corporation under clause (42) of Section 66". It is not necessary for us to express any opinion on this part of the case, for, we are clearly of the view that the notification under Section 4

of the Land Acquisition Act does not refer to any, purpose of the Ahmedabad Municipal corporation. nor is the acquisition for a purpose for which the Commissioner is required by the provisions of the Provincial Municipal Corporations Act, 1949, to acquire the land. The land is needed for setting up a memorial to Mahatma Gandhi at a place associated with him, and we regard, because of the universal veneration in which the memory of Mahatma Gandhi is held in our country, that the purpose was a public purpose. Counsel for the appellants has not attempted to argue that acquisition of land for setting up a memorial to Mahatma Gandhi at a place which has some association with him is not a public purpose. He merely argued that setting up of a memorial to Mahatma Gandhi is not a purpose for which the Commissioner is required by the Provincial Municipal Corporations Act, 1949 to acquire the land, nor is it a purpose of the Municipality under the Municipal Corporations Act. The purpose of acquisition being one which falls within the normal connotation of the expression "public purpose" within the meaning of Section 4. of the Land Acquisition Act, it is unnecessary to rely upon the extended meaning of the expression "public purpose" as provided by Section 78(1) of the Provincial Municipal Corporation Act, 1949.

10. It was urged that Municipal funds were, contrary to the provisions of the Provincial Municipal Corporations Act, 1949, intended to be utilised for setting up a memorial to Mahatma Gandhi. But we are not concerned in the present case to determine whether if the funds are utilised, they will be lawfully utilised; that is a matter which is not within the periphery of the inquiry in this appeal. The land is being acquired for a purpose which is a public purpose, and once that condition is fulfilled no further inquiry need be made, whether if the municipal funds are to be utilised for setting up a memorial to Mahatma Gandhi, after the land is vested in the State after acquisition, the Municipality will be acting within the limits of its authority. We may observe that a notification issued under Section 6 is by subsection (3) conclusive evidence that the land is needed for a public purpose.

11. The Land Acquisition Act does not provide that the instrumentality which is to carry out the purpose must be set out in the notifications under Sections 4 and 6 of the Act. The Gujarat High Court in Special Civil Application No. 800 of 1961 : Chandulal Patel v. The State of Gujarat held that if the public purpose for which land is notified for acquisition is to be executed through "an instrumentality other than the State Government", failure to specifically mention "the instrumentality" in the notifications renders the notifications invalid. But in Ramji Popatbhai v. Jamnadas Shah((1969) Guj LR 164.) a Full Bench of the High Court has overruled that earlier judgment. In Vishnu Prasad Ramdas Gohil and Others v. The State of Gujarat(C.A. No. 1983 of 1966, decided on October 9, 1969.) we have held, agreeing with the view of the Full Bench of the Gujarat High Court, that failure to specify the instrumentality which is to execute the public purpose does not affect the validity of the notification either under Section 4 or under Section 6 of the Land Acquisition Act.

12. There is no substance in the argument that the Commissioner, Baroda Division, did not apply his mind in issuing the notification under Section 6. The land notified for acquisition under Section 4 was 3,423 sq. yards 3 sq. ft. out of Survey No. 348-B, and 494 sq. yards 5 sq. ft. out of Survey No. 349. The area of the land notified under Section 6 was stated to be, 3,562 sq. yards out of Survey No. 348-B and 387 sq. yards out of Survey No. 349. Even though the area of land out of Survey No. 348-B exceeded the area originally mentioned in the notification under Section 4, the Commissioner stated in the impugned notification that "the remaining area of the said lands notified under Section 4 is hereby abandoned. It was urged that there was no "remaining area" of the land out of Survey No. 348-B which could be abandoned and the recital indicated that the Commissioner did not apply his mind to the relevant materials on which the notification was to be issued. It is, however, to be noticed that the entire Survey No. 348-B was not notified for acquisition; only a part

of the land was notified for acquisition under the notification under Section 4. Under that, notification 3,423 sq. yards 3 sq. ft. were notified, but the notification under Section 6 the declaration related to .3,562 sq. yards. Under the notification under Section 6 it was recited that the remaining area of the land out of Survey No. 348-B was declared as not likely to be needed for a public purpose. The use of the expression "the remaining area of the said lands notified under Section 4.... is hereby abandoned" does not justify an inference that the Commissioner did not apply his mind. It may be reasonably inferred that it was intended to be conveyed thereby that a part of the land out of Survey No. 348-B which was not needed for a public purpose was excluded from the notification.

13. The appeal fails and is dismissed. Having regard to the circumstances of the case, there will be no order as to costs.

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