

Ratilal Shakarabhai and Others

Vs

The State of Gujarat and Others

Civil Appeal No. 212 of 1967

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

11.03.1970

JUDGMENT

HEGDE, J. -

1. The only reason why this appeal had to be heard by this Court is that the appellants were entitled in law for a certificate under Article 133(1)(b) of the Constitution as against the order of the High Court summarily dismissing their writ petition on the strength of which they had a right of appeal to this Court.

2. The appellants are the owners of certain lands in village Wadaj in Ahmedabad. Some areas out of those lands were notified for acquisition under Section 4 of the Land Acquisition Act, 1894 on March 19, 1964 for a housing scheme prepared by the 3rd respondent, a Co-operative Society registered under the Co-operative Societies Act. The notification under Section 6 of that Act was issued on October 1, 1964. This was followed up by other proceedings, the appellants moved the High Court of Gujarat under Article 226 of the Constitution challenging the validity of the acquisition proceedings. That petition was summarily dismissed by the High Court.

3. The acquisition proceedings were challenged before us on various grounds. We shall now proceed to deal with the grounds urged before us. It was urged by the learned Counsel for the appellant that the proposed acquisition was for a company and as no steps were taken under Section 40 to 42 of the Land Acquisition Act, the proceedings are vitiated. It is conceded on behalf of the State that the agreements contemplated by Sections 40 to 42 were not entered into. But it was urged on behalf of the respondent that the acquisition in question was not for the purpose of a company but it was for a public purpose. Both the notifications under Section 4 to 6 say that the proposed acquisition was for a public purpose namely for a housing scheme undertaken by Shri Alapa Housing Co-operative Society Ltd., Ahmedabad with the sanction of the Government. Therefore, if the proposed acquisition is not for a company but for a public purpose then there was no need to comply with Sections 40 to 42.

4. Gujarat Legislature by Gujarat Unification and Amendment Act 20 of 1965 amended clause (f) of Section 3 of the Land Acquisition Act, 1894, which defines the expression "public purpose". As per that amendment after sub-clause (2) the following clause was added :

"and

(3) a housing scheme which the State Government may from time to time for the purpose of increasing accommodation for housing persons and shall include any such

scheme undertaken from time to time with the previous sanction of the State Government by a local authority or company."

5. The expression "company" as defined in the Land Acquisition Act includes a co-operative society within the meaning of Co-operative Societies Act, 1912. The third respondent is one such Society. Therefore, it is clear that the proposed acquisition is one for "public purpose". It may also be noted that the State Government contributed a substantial sum towards the compensation payable for the acquisition in question. Therefore the contention of the appellant that the proposed acquisition is invalid inasmuch as there was no compliance with Sections 40 to 42 must fail.

6. Our conclusion in this regard is supported by the decision of this Court in Pt. Jhandu Lal and Others v. State of Punjab and Other ((1961) 2 SCR 459)

7. We are unable to accede to the contention of the appellant that a housing scheme for a limited numbers of persons cannot be considered as a public purpose. It was said that there were hardly about 20 members in the co-operative society in question and therefore the housing scheme for their benefit cannot be considered as a public purpose. It was also urged that there was no need for acquiring any land for the scheme in question. Section 6(3) of the Land Acquisition Act provides that a declaration under Section 6 shall be conclusive evidence that the land proposed to be acquired is needed for a public purpose. Therefore this court cannot go into the question whether the need was genuine or not unless we are satisfied that the action taken by the Government was a fraudulent one. We are also unable to concede to the proposition that the need of section of the public cannot be considered as a public purpose. Ordinarily, the Government is the best authority to determine whether the purpose in question is a public purpose or not and further the declaration made by it under Section 6 is a conclusive evidence of the fact that the land in question is needed for a public purpose - see Smt. Somavanti and Others v. The State of Punjab and Others ((1963) 2 SCR 774). That decision lays down that conclusiveness in Section 6(3) must necessarily attach not merely to a 'need' but also to the question whether the purpose was a public purpose.

8. There is no substance in the contention that the notification under Sections 4 and 6 were vague. They are similar to notification usually issued under Section 4 and 6. Therein it is clearly mentioned that the proposed acquisition was for a public purpose. The public purpose in question was also stated therein.

9. We are also unable to accept the contention of the learned Counsel for the appellant that the Government did not apply its mind before issuing the notification under Section 6. Before issuing that notification, there was an enquiry under Section 5(a). The Government had issued that notification after examining the report submitted by the concerned officer. There is no material on record from which we can reasonably come to the conclusion that the Government had acted blindly in issuing that notification.

10. For the reasons mentioned above this appeal fails and the same is dismissed with costs.

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