

Municipal Corporation of the City of Ahmedabad and Others

Vs

State of Gujarat and Others

Civil Appeals Nos. 135-149 of 1968, 2091, 2092 of 1968, 2120-22 of 1968, 41, 42 of 1969 and 574 of 1969

(CJI S. M. Sikri, D. G. Palekar, A. N. Grover, M. H. Beg, A. N. Ray JJ)

27.03.1972

JUDGMENT

PALEKAR, J. -

1. These Civil Appeals by certificate arise out of 23 Writ Petitions filed by owners of lands and buildings within the Municipal limits of the City of Ahmedabad. The petitioners challenged Section 212 and some other allied sections of the Bombay Provincial Municipal Corporations Act, 1949, (hereinafter called the Corporations Act) and prayed for the issue of a writ of mandamus directing the Municipal Corporation of the City of Ahmedabad to treat the notice or notices issued to them under Section 212 of the Corporations Act as null and void and further directing the Municipal authorities not to act upon the same or in furtherance of the said notice or notices. Besides the Municipal Corporation, the Municipal Commissioners were also made parties to the petitions. Since the validity of the provisions of the Corporations Act was challenged the State of Gujarat was also made a respondent. All the writ petitions raised the same questions and, therefore, the High Court of Gujarat disposed of all the petitions by a common judgment. As the decision was against the Municipal authorities, they have now come in appeal.

2. For the purpose of disposal of these appeals it would be sufficient to refer to the allegations made in Special Civil Application No. 1454 of 1965, which is the subject-matter of appeal in Civil Appeal No. 135 of 1968, before us. The petitioner Girdharlal Ganpatram was the owner of Survey Nos. 4222, 4223, 4224/A-B-C and 4225/A-B of Jamalpur, Ward No. 2 Ahmedabad. On these survey numbers there is a building belonging to Girdharlal, on the ground floor of which there are a shops occupied by Girdharlal and his tenants.

3. The Corporations Act being Act No. LIX of 1949, was enacted on December 29, 1949 and came into force on July 1, 1951. By this Act, the previous statute namely the Bombay Municipal Boroughs Act, 1925 was repealed.

4. Under Section 210 of the Corporations Act the Municipal Commissioner is entitled to prescribe what is known as the "regular line of a public street". After following the necessary formalities, the regular line of the public street was prescribed by the Commissioner. Parts of the building of Girdharlal came within this regular line and so on April 3, 1962, the Commissioner issued a show-cause notice under Section 212(1)(b) of the Corporations Act calling upon Girdharlal to show cause why the superstructure standing upon the aforesaid Survey numbers and lying within the regular line of the street be not removed and the land thereunder be acquired under the provisions of the Act for the purposes of a street. Girdharlal filed objections but they were over-ruled. Therefore, with the

approval of the Standing Committee, the Commissioner acting under sub-section (2) of Section 212 of the Corporations Act issued final notices to Girdharlal requiring him to pull down the building or parts thereof which offended against the regular line of the street within seven days of the receipt of the notice. Certain proceedings followed with which we are not now concerned and thereafter on February 6, 1965, Girdharlal filed the Writ petition in the High Court for the relief already referred to. His contention was that Section 212 and certain other allied sections of the Corporations Act were ultra vires and unconstitutional and hence the notices issued under Section 212 were illegal.

5. Section 212 which is found in Chapter XIV of the Corporation Act deals with streets, their construction, maintenance and improvement. Section 212 is one of the several sections devoted to this subject. It is as follows :

"Section 212. (1) If any building or any part thereof is within the regular line of a public street and if, in the opinion of the Commissioner, it is necessary to set back the building to the regular line of the street he may, if the provisions of Section 211 do not apply, by written notice -

(a) require the owner of such building to show cause within such period as is specified in such notice by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, why such building or any part thereof which is within the regular line of the street shall not be pulled down and the land within the said line acquired by the Commissioner; or

(b) require the said owner on such day at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf and show cause why such building or any part thereof which is within the regular line of the street shall not be pulled down and the land within the said line acquired by the Commissioner.

(2) If such owner fails to show sufficient cause to the satisfaction of the Commissioner why such building or any part thereof, which is within the regular line of the street shall not be pulled down and the land within the said line acquired as aforesaid the Commissioner may, with the approval of the Standing Committee, require the owner by a written notice, to pull down the building or the part thereof which is within the regular line of the street (and where a part of a building is required to be pulled down, to also enclose the remaining part by putting up a protecting frontage wall) within such period as is prescribed in the notice.

(3) If within such period the owner of such building fails to pull down such building or any part thereof coming within the said line, the Commissioner may pull down the same (and where a part of a building is pulled down, may also enclose, the remaining part by putting up a protecting frontage wall) and all the expenses incurred in so doing shall be paid by the owner.

(4) The Commissioner shall at once take possession on behalf of the Corporation of the portion of the land within the said line theretofore occupied by the said building, and such land shall thence forward be deemed a part of the public street and shall vest as such in the Corporation.

#(5)....."##

6. It is common ground that the provisions of Section 211 do not apply. It is also not disputed that a part of the building comes within the regular line of the public street and notices have been issued by the Commissioner, as in his opinion, it was necessary to set back the building to the regular line of the street. In pursuance of the power given to him, the Commissioner required the owner of the building to show cause. Objections raised by the owner were considered and over-ruled. Thereafter under Section 212(2) the Commissioner required the owner Girdharlal to pull down the building or the part thereof which was within the regular line of the street within seven days. It is obvious that on his failure to do so, the Commissioner was entitled under sub-section (3) of Section 212 to pull down the offending part of the building at the cost of the owner. After such pulling down of the building the land so vacated was to vest in the Corporation under sub-section (4) of that section.

7. For the loss thus caused to the owner by the action of the Commissioner, provision was made for payment of compensation under Section 216 which is as follows :

"216. (1) Compensation shall be paid by the Commissioner to the owner of any building or land required for a public street under Section 211, 212, 213, or 214 for any loss which such owner may sustain in consequence of his building or land being so acquired and for any expense incurred by such owner in consequence of the order made by the Commissioner :

Provided that -

(i) any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part likely to accrue from the set-back to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation;

(ii) if any such increase in value exceeds the amount of loss sustained or expenses incurred by the said owner, the Commissioner may recover from such owner half the amount of such excess as a betterment charge."

8. Chapter XXIV of the Act deals with the subject of compensation generally. Section 389(1) provides as follows :

"389. (1) in the exercise of the powers under the following provisions of this Act by the Commissioner or any other municipal officers or servant or any other person authorised by or under this Act to execute any work, as little damage as can be shall be done and compensation assessed in the manner prescribed by or under this Act shall be paid to any person who sustains damages in consequence of the exercise of such powers, namely.....

(f) acquiring any building or land required for a public street - under Section 216."

Section 390 is a follows :

"Subject to the provision of this Act, the Commissioner or such other officer as may be authorised by him in this behalf shall, after holding such inquiry as he thinks fit, determine the amount of compensation to be paid under Section 389."

This determination, however, is not final because two appeals are provided. Under Section 391 it is provided as under :

"Any person aggrieved by the decision of the Commissioner or other officer under Section 390 may within a period of one month, appeal to the Judge in accordance with the provisions of Chapter XXVI."

"The Judge" means under Section 2, clause (29) the Judge of the Court of Small Causes in the City of Ahmedabad. Section 411 provides for a second appeal to the District Court. It says "An appeal shall lie to the District Court (aa) from a decision of a Judge in an appeal under Section 391 against an assessment of compensation under clause (f) of sub-section (1) of Section 389". As regards the procedure to be followed in respect of these appeals, provision is made in Section 434, Sub-section (1) whereof is "Save as expressly provided by this Chapter (Chapter XXVI) the provisions of the Code of Civil Procedure, 1908, relating to appeals from original decrees shall apply to appeals to the Judge from the orders of the Commissioner and relating to appeals from appellate decrees shall apply to appeals to the District Court".

9. These relevant provisions which have been quoted above at one place show that where the Commissioner acquires land for the purposes of the street by asking the owner of the land to pull down his building or part of it, the owner is entitled to be paid compensation for the loss suffered by him. The compensation must, in the first instance, be determined by the Commissioner or an officer authorised by him in that behalf and if, on determination of such compensation, the owner of the building who loses any part of the land to the street is aggrieved by the amount of the compensation offered to him, he is entitled to appeal to the Judge of the Small Causes Court and to the District Court in second appeal. It is obvious that if the owner is not sufficiently compensated for the loss suffered by him by the Commissioner or his authorised Officer, the Judge in the Court of the Small causes or the District Judge as the case may be, would be entitled to determine the proper compensation to be paid to him.

10. The complaint of the owner in the Writ Petition took various forms. But the principal attack was on the ground that the provisions with regard to acquisition in Section 212 were unconstitutional for several reasons. The Corporations Act was passed before the Constitution came into force when the Government of India Act, 1935 was in force. Sub-section (1) and (2) of Section 299 of the Government of India Act, 1935, which are roughly similar in content to clauses (1) and (2) of Article 31 of the Constitution, both before and after the Constitution 4th Amendment Act, 1955, required that the law authorising compulsory acquisition for a public purpose, (1) should provide for the payment of compensation for the property acquired; (2) fix the amount of compensation; or (3) specify the principles on which and the manner in which it is to be determined. It is common ground that the Corporations Act is a law which by itself does not fix the amount of compensation. While the submission of the Municipal Corporation is that it provides for the payment of compensation for the property acquired and also specifies the principles on which and the manner in which it is to be determined, the contention of the petitioners is that it does neither. Therefore, the petitioners contended that Section 212 of the Corporations Act was unconstitutional in so far as it violated the provisions of Section 299 of the Government of India Act, 1935 and also of Article 31 of the Constitution.

11. Certain other challenges were also made in the petitions to the validity of Section 212 and some

other allied sections of the Corporations Act on the ground that they infringed the constitutional safeguards embodied in Articles 14 and 19 of the Constitution. The High Court rejected in challenged under Article 19(1)(g). It did not think it necessary to consider the challenge under other heads in view of its finding that the challenge under Section 299 of the Government of India Act, 1935 was successful. Learned counsel for the respondents before us did not press the challenge under Article 19(1)(g). Therefore, the only question which survives for consideration is whether the High Court was right in holding that Section 212 of the Corporations Act is unconstitutional on the ground of its alleged violation of the provisions of Section 299 of the Government of India Act or Article 31 of the Constitution. If the view of the High Court in this respect is not upheld, it is obvious that the case will have to go back to the High Court for the consideration of points not finally decided for the purpose of the disposal of the petitions.

12. The contention on behalf of the property owners was that the Corporations Act did not provide (1) for the payment of compensation for the property acquired and (2) did not specify the principles on which and the manner in which it is to be determined. The High Court only partially accepted this contention. It did not agree with the contention that the Corporations Act did not provide for the payment of compensation for the property acquired. On the second question, however, the High Court agreed that the Act neither specified the principles of compensation nor the manner in which it was to be determined.

13. We are in agreement with the view of the High Court that the Corporations Act does provide for the payment of compensation for the property acquired. We have only to refer to Section 216 and Section 389 of the Act for this purpose. Section 216(1) clearly lays down that compensation shall be paid by the Commissioner to the owner of any building or land required for public street under Sections 211, 212, 213 and 214 for any loss which such owner may sustain in consequence of his building or land being so acquired, and for any expense incurred by such owner in consequence of the order made by the Commissioner. Then Section 389(1) provides that compensation assessed in the manner prescribed by or under the Act shall be paid to any person who sustains damage in consequence of the exercise of such power, namely, "(f) acquiring any building or land required for a public street under Section 216". The two sections read together make it clear that full indemnification in terms of money for the loss caused is to be made to the owner of the property or other interests affected by reason of the exercise of power under Section 212. Under the latter section what is acquired for the purposes of the street is the land of the owner which falls within the regular line of the street. Several provisions are made in Chapter XIV for the widening of streets within the limits of the Corporation. With the enormous increase in traffic in the more congested parts of a growing City, Municipal authorities are constantly under pressure to widen the streets and one of the several methods prescribed in Chapter XIV is contained in Section 212. The regular line of the street as prescribed under Section 210 often passes through the properties of owners abutting on the streets and it is impossible to widen the streets unless parts of lands belonging to the owners are acquired. Sometimes a building or a structure or part of it stands on such land and unless that portion of the building which falls within the line is removed the acquisition of the land for the purpose of the street is not possible. Therefore, in the first instance the section requires that the Commissioner shall issue a show-cause notice why the building or a part of the building which falls within the line of street should not be pulled down with a view to release the land underneath for the purposes of the street. If after hearing the owner the Commissioner is of the opinion that the building or part thereof should be pulled down, he must obtain the approval of the Standing Committee and then serve a notice on the owner to pull down the offending building or the part of building within a certain time. If the owner cooperates, he will himself remove the offending structure and release the land underneath it for being absorbed in the street. If he does not, the

Commissioner is empowered to pull down the offending structure at the cost of owner. Then sub-section (4) of Section 212 provides that the Commissioner shall at once take possession on behalf of the Corporation of the portion of the land within the said line (line of the public street) theretofore occupied by the said building, and such land shall thenceforward be deemed a part of the public street and shall vest as such in the Corporation. The provisions of Section 212, therefore, clearly declare that what is acquired under that section is the land lying within the line of the public street. The technical question as to whether there is acquisition of the building when the owner himself does not pull down the offending part of the structure but the Commissioner does it at the owner's expense is not necessary for the disposal of the question whether the Act provides for the payment of compensation. Since every kind of loss is required to be compensated as a consequence of the order passed by the Commissioner under Section 216 of the Act, the question whether the Act need have provided for compensation as on the acquisition of the building or a part of the building which is pulled down under Section 212, does not survive. The owner has to be compensated for every deprivation or loss and, therefore, prima facie it must be held that the Corporations Act provides for the payment of compensation for the property acquired.

14. It was, however, argued that the two provisos to sub-section (1) of Section 216 when given effect to may not only nullify the direction given in sub-section (1) for payment of compensation but also in certain contingencies compel the owner to pay Corporation something out of his own pocket. When sub-section (1) provides for payment of compensation for the loss suffered it provides for adequate indemnification or compensation. When such compensation is reduced in the contingencies visualized in the two provisos the compensation, it was submitted, may turn out to be illusory and the provision for the payment of compensation an empty assurance. Proviso (1) prescribes that "any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part likely to accrue from the set-back to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation". Proviso (ii) states that "if any such increase in the value exceeds the amount of loss sustained or expenses incurred by the said owner, the Commissioner may recover from such owner half the amount of such excess as a betterment charge". Proviso (i) implies that the compensation payable under sub-section (1) is liable to be increased or reduced after the set-back. It envisages that by reason of the set-back or the widening of the street the property which still remained with the owner is likely, on account of the new situation, either to increase or decrease in value. If that happens, that is to be taken into consideration and the amount determined under sub-section (1) will have to be adjusted accordingly. The High Court is of the view that proviso (1) is unobjectionable as it is a principle governing the determination of compensation and can be rightly employed in determining the compensation for the property acquired. The High Court, however, was not inclined to hold that proviso (ii) lays down any principle for determination of compensation payable for the property acquired. It held, nevertheless, that the proviso was severable from the main part of the section and did not affect the provisions of sub-section (1) for payment of compensation. It is obvious that it is only in very rare contingencies that proviso (ii) may become operative. But in considering the question as to whether the Act provides for compensation for acquisition or not, there can be little doubt that it does so in sub-section (1) of Section 216. That it may in some rare contingencies be very much reduced after taking into account the value of the benefit conferred on the owner by reason of the widening of the street is no adequate reason to hold that the Act does not provide for payment of compensation. As a matter of fact in an actual enquiry for determining the amount of compensation to be paid the authority charged with the duty will have to assess, in the first instance, the value of the total loss or deprivation actually suffered. The provisos may in some rare contingencies go to reduce the amount so determined. Proviso (ii) envisages a situation where

the widening of the street has so much benefited the owner that the value of the benefit even exceeds the actual loss suffered by him. In such a case instead of getting any compensation for the loss the owner might have to pay out of his own pocket. As to whether proviso (ii) prescribes any principle for determination of compensation or not is not relevant for our present purpose. Both the provisos come into play only after the compensation for loss is determined under sub-section (1) of Section 216 and since that sub-section declares that full compensation must be paid for the loss or deprivation suffered by the owner it will be incorrect to say that the Act does not make the provision for the payment of compensation for the property acquired. We have, therefore, no hesitation in agreeing with the High Court that the Corporations Act provides for the payment of compensation for the property acquired under Section 212.

15. The next question is whether the Act specifies the principles on which and the manner in which compensation is to be determined. The High Court has been of the view that neither principles for determination of compensation nor the manner of its determination has been specified and that is the ground on which it has held that the provisions of Section 212 are unconstitutional. We are unable to agree with that view. What is meant by specification of principles for determining compensation ? In the State of Gujarat v. Shri Shantilal Mangaldas and Others, [(1969) 3 SCR 341 at p. 357 : (1969) 1 SCC 509] this Court observed :

"Specification of principles means laying down general guiding rules applicable to all persons or transactions governed thereby. Under the Land Acquisition Act compensation is determined on the basis of 'market-value' of the land on the date of the notification under Section 4(1) of that Act. That is a specification of principle."

At a later stage the Court again observed at page 362 :

"Rules enunciated by the courts for determining compensation for compulsory acquisition under the Land Acquisition Act vary according to the nature of the land acquired. For properties which are not marketable commodities, such as lands, buildings and incorporeal rights, valuation has to be made on the application of different rules. Principle of capitalisation of not rent at the current market rate on gilt-edged securities, principle of reinstatement, principle of determination of original value less depreciation, determination of break-up value in certain types of property which have out-grown their utility, and a host of other so-called principles are employed for determination of compensation payable for acquisition of lands, houses, incorporeal rights, etc."

The Land Acquisition Act makes market-value at a certain date the basis for the determination of compensation. But there is no one sure way of applying the principle. As is well-known when set-back is imposed by the line of the street, the land actually acquired by the Corporation may be in some cases a few square yards or even a few square inches. Then again the land acquired may be of no significant use to anybody except to the Corporation as a part of the street. The land acquired may be wedge-shaped, sometimes irregular in contour and often shapeless. If the principle of a willing seller and willing buyer is applied there can possibly be no market at all for the property acquired. It is not suggested that in every case of acquisition of land for the street this principle will break down. But having regard to the fact that in the course of widening the street the Corporation may have to acquire very irregular, shapeless and small pieces of land for the purposes of the street, a host of principles may have to be employed to determine the compensation. We asked learned counsel for the respondents what one general principle of determination of compensation in such

cases could have been appropriately specified. We did not get any satisfactory reply. It appears to us that this very difficulty in specifying any known rule of compensation is responsible for the wording of Section 216 and Section 389 of the Act which, in our opinion, gets over the difficulty by providing full indemnification for the loss or deprivation suffered by the owner of the building or other interests in the property. We have referred to the provisions with regard to appeals. The first appeal lies to the Judge of the Small Causes Courts and a second appeal to the District Judge. The involvement of Civil Courts in finally determining compensation imports judicial norms. Since full indemnification in accordance with judicial norms is the goal set by the Act it is implicit in such a provision that the rules for determination of compensation shall be appropriate to the property acquired and such as will achieve the goal of full indemnity against loss. In other words, the Act provides for compensation to be determined in accordance with judicial principles by the employment of appropriate methods of valuation so that the person who is deprived of property is fully indemnified against the loss. This, by itself, in our opinion, is a specification of a principle for the determination of compensation.

16. As regards the manner of determination of compensation, it is provided in Section 390 of the Corporations Act. Under that section the Commissioner or such other officer as may be authorised by him shall hold such enquiry as he thinks fit and determine the amount of compensation to be paid. Either the Commissioner or an Officer authorised by him has to hold an appropriate enquiry before determining the amount of compensation. Since, as already seen, there is an appeal from such determination to the Judge of the Small Causes Court Section 391 and a second appeal to the District Court under Section 411 it is clear that the enquiry must be made on broad judicial lines. Any arbitrary determination is bound to be set aside in appeal because the Judge in appeal will be chiefly concerned to see whether the enquiry is made in accordance with normal judicial procedures for evaluating the loss by the application of methods of valuation appropriate to the particular acquisition before them. Since no limitations are placed on the powers of the Appellate Judges in determining the loss in a just and appropriate manner, it is expected that the Commissioner or his authorised officer, who holds the enquiry in the first instance, will be guided by principles which meet with the approval of the Appellate authorities. In our opinion, therefore, the manner of the determination of compensation is also specified by the Act.

17. It is conceded before us that if this Court holds that the Corporations Act has provided for the payment of compensation and also specified the principle on which and the manner in which compensation is to be determined, it would not be possible to say that the Act is either in violation of the provisions of Section 299 of the Government of India Act, 1935 or Article 31 of the Constitution.

18. Since the High Court had not considered the challenge to the validity of Section 212 and the allied sections of the Act on the ground of infringement of fundamental rights under Article 14 and partially under Article 19 of the Constitution and the learned counsel for both sides agree that the cases should be remanded to the High Court for disposal after considering the points raised in that regard, we send down the cases accordingly for disposal.

19. The appeals are allowed. The order passed by the High Court is set aside and the proceedings are ordered to be transmitted to the High Court for disposal in accordance with the law after hearing the parties on points kept open and undecided by the High Court in its Judgment, dated December 5, 1966. The appellants shall get one set of costs from the respondents other than the State of Gujarat in this court.

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