

State of Gujarat and Others

Vs

Ambalal Haiderbhai and Others

Civil Appeal Nos. 967-969 of 1971

(CJI A. N. Ray, M. H. Beg, Jaswant Singh JJ)

14.04.1976

JUDGMENT

JASWANT SINGH, J.

1. These three appeals Nos. 967 to 969 of 1971 by special leave which are directed against the common judgment of the High Court of Gujarat dated April 17/18, 1970 in Special Civil Application Nos. 116 of 1967, 1621 of 1967 and 1622 of 1967 arise thus.
2. Proceedings under the Land Acquisition Act, 1894, (hereinafter referred to as 'the Act') for acquisition of certain lands in villages Sayajipuri, Bapod and Savad, district Baroda, taluka Baroda were initiated by the Government of Gujarat at the instance of Sardarnagar Co-operative Industrial Society Limited, registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as 'the Company') for the purpose of establishing an industrial estate for smallscale industries. The acquisition being for the company, a notification was issued under Section 4 of the Act on July 2, 1964 after following the provisions of Part VII of the Act. An agreement under Section 41 of the Act between the State Government and the company was entered into on April 2, 1965 and was published on October 15, 1966. The final notification under Section 6 of the Act was issued on October 18, 1966. The owners of the aforesaid lands who are contesting respondents herein challenged the aforesaid notifications issued under Sections 4 and 6 of the Act by filing petitions under Article 226 of the Constitution of India inter alia on the ground that the provisions of Rule 4 of the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as 'the Rules') made by the Central Government in exercise of the powers conferred under Section 55 of the Act, which by virtue of Rule 1(2) of the Rules apply to acquisition of land for all companies under Part VII of the Act, have not been complied with particularly as they had not been given a right to be heard in accordance with the principles of natural justice at the enquiry held by Special Land Acquisition Officer, Baroda, appellant No. 2 herein. The plea raised by the owners of land found favour with the High Court which allowed the petitions, set aside the notification under Section 6 of the Act, and issued a mandamus commanding appellant No. 2 to complete the statutory enquiry under Rule 4 of the Rules in accordance with the principles of natural justice.
3. The short but important question which we are called upon to decided in these appeals is whether the enquiry under Rule 4 of the Rules requires compliance with the rules of natural justice.
4. As observed by this Court in Suresh Koshy George v. University of Kerala ((1969) 1 SCR 317 : AIR 1469 SC 198) and reiterated in A. K. Kraipaik V. Union of India ((1970) 1 SCR 457 : (1969) 2 SCC 262) rules of natural justice are nor rules embodied always expressly in a statute or in rules framed thereunder. They may be implied form the nature of the duty to be performed under a

statute. What particular rule of natural justice should be implied and what its content should be for a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held, and the constitution and nature of duties of the tribunal or the body of persons appointed for that purpose. Let us, therefore, advert to the provisions of Rule 4 of the Rules which requires the appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings. The rule is in these terms :

4. Appropriate Government to be satisfied with regard to certain matter before initiating acquisition proceedings. - (1) Whenever a Company makes an application to the appropriate Government for acquisition of any land, the Government shall direct the Collector to submit a report to it on the following matters, namely :-

- (i) that the Company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;
- (ii) that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;
- (iii) that the land proposed to be acquired is suitable for the purpose;
- (iv) that the area of land proposed to be acquired is not excessive;
- (v) that the Company is in a position to utilise the land expeditiously; and
- (vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity to make any representation in his behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall, -

- (i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;
- (ii) determine, having regard to the provisions of Section 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land which, in the opinion of the Collector, should be acquired for the Company; and
- (iii) ascertain whether the Company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation. - For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector

shall submit a report to the appropriate Government and a copy of the same shall be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government under Section 6 of the Act unless -

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted under Section 5A of the Act; and

(ii) the agreement under Section 41 of the Act has been executed by the Company.

5. To sum up, sub-rule (1) of the abovequoted rule requires the appropriate Government to which an application is made by a company for acquisition of land to direct the Collector to submit a report on six matters set out therein.

6. Sub-rule (2) of the said rule re-emphasizes what is contained in sub-rule (1) by making it obligatory for the Collector to hold an enquiry for the Collector while holding the enquiry (1) to consult the Senior Agricultural Officer of the district in case the land is agricultural land, (2) to determine the approximate amount of compensation likely to be payable in respect of the land in question keeping in view the provisions of Sections 23 and 24 of the Act, and (3) to ascertain whether the company offered a reasonable price (which is not less than the compensation so determined) to the persons interested in the land which is proposed to be acquired.

7. A conjoint reading of sub-rules (1) and (2) leaves no room for doubt that the enquiry by the Collector, which is meant inter alia to find out whether all reasonable efforts have been made by the company to get the land by negotiation on payment of reasonable price and such efforts have not fructified and to determine the approximate amount of compensation likely to be payable in respect of the land keeping in view the provisions of Sections 23 and 24 of the Act, is of vital importance to the persons interested in the land.

8. Sub-rule (3) of the rule requires the Collector to submit his report to the concerned Government which in turn is required before making a declaration under section 6 of the Act to consider that report as well as the report, if any, submitted by it under Section 5A of the Act after ascertaining the view of the committee constituted under Rule 3 of the Rules in regard to the "Collector's report under Rule 4 of the Rules.

9. Although the abovementioned rule is silent regarding the mode and method of the enquiry to be held by the Collector and the report of the Collector is of a recommendatory character, yet regard being had to the legislative history and purpose of the rule, and the mischief sought to be prevented, we have no hesitation in holding that, in conducting the enquiry, the Collector has, in the interest of fair play, to observe the principles of natural justice by affording the persons interested in the land a reasonable opportunity of being heard and of adducing material before the Collector to refute the allegations of the company. The concept of natural justice which is evident from the observations made in *A. K. Kraipak's case*, has undergone a great deal of change in recent years. The dividing line between an administrative and quasi-judicial function is often blurred.

10. Our view is reinforced by the following illuminating observations made by the learned Chief Justice in *State of Gujarat v. Patel Chaturbhai Narsibhai* ((1975) 3 SCR 284 : (1975) 1 SCC 583) : [SCC pp. 596-587, para 15]

The contention of the State that the enquiry under Rule 4 is administrative and that the owner of the land is not entitled to be given an opportunity to be heard at the enquiry cannot be accepted for these reasons. The enquiry under Rule 4 shows that the Collector is to submit a report among other matters that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed. The persons interested therein are the owners of the land which is proposed to be acquired. The company at such an enquiry has to show that the company made negotiations with the owners of the land. The owners of the land are, therefore, entitled to be heard at such an enquiry for the purpose of proving or disproving the reasonable efforts of the company to get such land by negotiation. The contention on behalf of the State that the owners of the land will get an opportunity when an enquiry is made under Section 5-A of the Act is equally unsound. Section 17 of the Act provides that the appropriate Government may direct that the provisions of Sections 5-A shall not apply and if it does so direct a declaration may be made under Section 6 at any time after the publication of the notification under Section 4 of the Act. Therefore, the enquiry under Section 5-A may not be held.

11. For the foregoing reasons, the question is answered in the affirmative and the appeals are dismissed. The parties are left to bear and pay their own costs in these appeals.

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