

Bai Malimabu and Others

Vs

State of Gujarat and Others

Civil Appeal Nos. 1406 and 1726 of 1968

(R. S. Sarkaria, N. L. Untwalia JJ)

13.02.1978

JUDGMENT

UNTWALIA, J. -

1. In or about the year 1964 or 1965 certain lands situated in the city of Surat were sought to be acquired by the Government of Gujarat for the purposes and the benefit of the employees under the Employee's State Insurance Scheme. Several notifications under Section 4 of the Land Acquisition Act, 1894 - hereinafter referred to as the Act, were issued. Objections under Section 5A of the Act were filed in relation to several of the proposed acquisitions. They were heard by officers especially appointed as Collectors by the State Government in accordance with Section 3(c) and reports were submitted by them to the State Government. After considering the reports, the State Government issued notifications under Section 6 of the Act. Several writ petitions were filed in the High Court of Gujarat challenging the proposed acquisitions and the notifications under Sections 4 and 6, on various grounds. The grounds of attack were mostly common but in some of the cases the acquisitions were assailed on some special grounds also. The High Court dismissed the writ petitions by a common judgment including the two with which we are concerned in these two appeals. Special Civil Application 1117 of 1966 has given rise to Civil Appeal 1726 of 1968 and Civil Appeal 1406 of 1968 arises out of Special Civil Application 745 of 1966. In this judgment it would be convenient to deal with the two appeals and the point urged by the respective counsel for the appellants separately.

Civil Appeal 1726 of 1968

2. The appellants in this civil appeal claimed to be in occupation of the land sought to be acquired in Ward 7 of Surat city as annual tenants. A notification under Section 4 of the Act was issued on September 17, 1965 for acquiring two parcels of land for constructing a dispensary and staff quarters for the Employees' State Insurance Scheme. The notification under Section 6 of the Act was issued on June 10, 1966. The writ petition was filed on August 22, 1966. It is a matter of helpless regret that the appeal remained pending in this Court for about a decade and the completion and implementation of the acquisition has been delayed so long. All possible objections were taken by the appellants in the High Court to assail the acquisition proceeding. Most of them were useless and devoid of any substances even when the matter was pending in the High Court and they have all fallen flat now in view of several decisions of this Court handed down during the last decade. Yet Mr. J. B. Nagarsheth, learned Counsel for the appellants picked up and chose to press several points out of those mentioned in the statement of the case. But none of them stood scrutiny even for a while. We propose to briefly state the points urged before us merely to be rejected in a few lines without any elaboration as no useful purpose will be served by repeating all that has been said in the

several earlier decisions of this Court.

3. The first point urged was with respect to the constitutional validity of Section 4 of the Act. The attack on the section was on the ground that it was confiscatory in nature and it sought to deprive the appellants of their valuable lands thus violating their fundamental rights guaranteed under Articles 19(1) and 81 of the Constitution. The point did not merit any consideration and we, therefore, did not at all feel the necessity of following the constitutional mandate of Article 144A of the Constitution. It will be sufficient to refer to only two earlier decisions of the Court on this point namely *Smt. Somavanti v. State of Punjab* ((1963) 2 SCR 774 : AIR 1963 SC 151 : (1963) 33 Com Cas 745), and *Smt. Ratni Devi v. Chief Commissioner, Delhi* (AIR 1975 SC 1699 : 4 SCC 467). We may also add that, even otherwise on the well settled principles of law, the attack on the constitutional validity of the section was completely devoid of any substance.

4. The second submission for the appellants was that the Section 4 notification was bad because -

(i) in the notification the land was specified but the superstructure standing thereon was not mentioned; and

(ii) construction, of a dispensary may be for a public purpose, but building staff quarters for the employees of the State Insurance Scheme cannot be a public purpose. Such an expenditure is not warranted by Section 28 of the Employees' State Insurance Act, 1948.

The definition of 'land' in clause (a) of Section 3 of the Act will include the superstructure, if any, existing upon it. It was not the requirement of the law to mention the structure, if any, separately in the notification. Construction of staff quarters for the employees of the dispensary and other employees working under the State Insurance Scheme was surely and closely connected with the working and the implementation of the Scheme. Apart from the legal position that the declaration made under Section 6 of the Act shall be conclusive evidence of the fact that the land is needed for a public purpose (vide *Smt. Somavanti's case*, supra) the purpose of construction of staff quarters will undoubtedly be a public purpose. It would be stretching one's imagination to a breaking point to say that acquisition of land for such a purpose is a colourable exercise of power. Apropos the point of Section 28 of the Employees' State Insurance Act, we may point out that construction of staff quarters will in no way violate the said provision of law. The Employees' State Insurance Fund can very well be expended for such a purpose under clauses (i) and (iv) and if necessary by a special authorisation by the Corporation in accordance with clause (xii). We may also add that even assuming that technically or strictly speaking such an expenditure is not sanctioned by Section 28, that will not invalidate the acquisition as being not for a public purpose, if otherwise the purpose is one such, as obviously it is.

5. Mr. Nagarsheth then submitted that no special notice was given to the appellants of the notification under Section 4(1) as required by the Gujarat Rules, the objections filed by the appellants under Section 5A were not properly inquired into and heard, the State Government did not give any opportunity to them to make their submissions vis-a-vis the report submitted by the Collector, and the aforesaid infirmities vitiated the declaration under Section 6 of the Act. The High Court has rightly held that no special notice was necessary to be given to the appellants in regard to the notification under Section 4(1). Our attention was drawn to the alleged Rule 30B of the Gujarat Rules in support of the contention that such notice was necessary to be issued to the parties interested. There is no such requirement in the said rule. It merely pre-supposes that the Collector

has issued notices to the parties interested under Section 4(1). The requirement of the section is giving of a general notice and by two methods (1) by the publication of the notification in the Official Gazette and (2) causing public notice of the substance of such notification to be given at convenient places in the locality. The appellants do not contend that there was no compliance with the requirements aforesaid. Proper inquiry was held under Section 5A of and Act and full opportunity was given to the appellants. It was not the requirement of the law to give any further opportunity after a report was made to the State Government. It is the function of the State Government to consider the report of the Collector and proceed further in the matter as they think fit and proper to do.

6. The next submission for the appellants was that contribution of only Re. 1 from the Public Exchequer by the State Government for the purposes of acquiring land for the use of the Employees' State Insurance Corporation was a colourable exercise of power and did not in effect and substance fulfil the requirement of law as engrafted in Section 6 of the Act. A complete answer is to be found in the majority decision of this Court in Somavanti's case (*supra*) and in the case of Inderjit C. Parekh v. State of Gujarat (AIR 1975 SC 1182 : (1975) 1 SCC 824).

7. The above were the main points urged for the appellants in this appeal and there are numerous decisions of this Court showing that none of them had any substance. Apart from the cases which we have mentioned above, we may mention a few more and they are : (1) Munshi Singh v. Union of India ((1973) 1 SCR 973 : (1973) 2 SCC 337), (2) Aflatoon v. Lt. Governor of Delhi ((1975) 1 SCR 802 : (1975) 4 SCC 285), and (3) Lila Ram v. Union of India ((1976) 1 SCR 341 : (1975) 2 SCC 547). It has been reiterated by this Court in State of Gujarat v. Ambalal Haiderbhai (1976 Supp SCR 33 : (1976) 3 SCC 495), that whether the inquiry under Section 5A is of an administrative nature or a judicial one, it is plain that principles of natural justice cannot be violated. In the instant case no such principle was violated.

8. For the reason stated above, we affirm the decision of the High Court and dismiss the appeal with costs.

Civil Appeal 1406 of 1968

9. Mr. Hardev Singh, learned Counsel for the appellants in this appeal finding that it was no use beating about the bush on the general and common points argued in the High Court very discreetly and rightly decided to press only two points for our consideration in this appeal. They are :

(1) That the land in question in this appeal was a land belonging to a Public Trust used as a burial ground, hence it could not be and ought not to have been acquired for the purpose of constructing a dispensary for the employees of the State Insurance Scheme; and

(2) That the report under Section 5A was made by the Special Lands Acquisition Officer who was not an authorised Collector and had not heard objections under Section 5A and, therefore, the declaration made by the State Government under Section 6 of the Act after considering his report was invalid.

10. The High Court has considered the statements in the writ petitions and the counters filed on behalf of the Government. It has come to the conclusion that the land was not being used as a burial ground. We find no sufficient ground to induce us to take a view different from the one taken by the

High Court. According to the counter, the Collector and the Special Land Acquisition Officer had visited the locality and found only two old tombs in a corner of the big area of the land which measures about three-fourths of an acre. The said tombs were in a dilapidated condition also. The rest of the land was lying open, dormant, unused and uncared for without there being any enclosure or the like. In some parts of the land only cow-dung cakes were being prepared. Mr. Hardev Singh was not right when he submitted on the basis of this statement in the counter that inquiry under Section 5A was held by the Special Land Acquisition Officer. It could not be clearly ascertained as to when he had visited the locality. His observations were merely used for the purpose of supporting the fact asserted by the respondent that the land was not being used as a burial ground.

11. Indisputably the City Survey Officer was appointed a Collector under Section 3(c) of the Act. He had heard the objection under Section 5A and submitted his report to the State Government. The case was thereafter transferred by the Collector to the Special Land Acquisition Officer on September 6, 1965 from the City Survey Officer. But nothing effective or substantial appears to have been done by him. The notification under Section 6 was published on April 5, 1966. An erratum was issued by the Government on June 7, 1966, appointing the Special Land Acquisition Officer as the Collector in place of the City Survey Officer with retrospective date. The stand taken on behalf of the appellants before the High Court was just contrary to the one taken before us. We did not find any substance even in the second point urged before us. On examination of the supplementary counter-affidavit filed on behalf of the Government, it is clear that the City Survey Officer had dealt with the objections under Section 5A and made his report to the State Government. There was no infirmity in issuing the declaration under Section 6 of the Act on consideration of his report.

12. For the reasons stated above, we affirm the decision of the High Court in this case also and dismiss the appeal with costs.

</html