State of Gujarat and Another

Vs

Bhogilal Keshavlal and Another

Civil Appeal No. 1479 of 1971

(P.N. Shinghal, A.P. Sen JJ)

27.11.1979

JUDGMENT

SEN, J. –

1. This appeal on certificate from a judgment of the Gujarat High Court raises a question as to the validity or otherwise of a fresh notification issued by the Government of Gujarat under Section 6 of the Land Acquisition Act, 1894, consequent upon an earlier notification under Section 6 of the Act being discovered to be invalid.

2. The first respondent in this case owned certain land bearing Final Plot No. 38 forming part of Town Planning Scheme No. III (Ellisbridge) situate within the city of Ahmedabad. At the request of the second respondent Sri Ayodhya Nagar Co-operative Housing Society Ltd., registered under the Bombay Co-operative Societies Act, 1925, now deemed to be registered under the Gujarat Co-operative Societies Act, 1961, formed with the object of enabling its members to construct houses, the State Government on August 3, 1960 issued a notification under Section 4 stating that the land was likely to be needed for a public purpose. This was followed by a notification of the State Government dated August 21, 1961 under Section 6 of the Act stating that the land was to be acquired at the expense of Sri Ayodhya Nagar Co-operative Housing Society Ltd. for the public purpose specified in column 4 of the schedule annexed thereto. The public purpose specified in column 4 of the schedule was 'For construction of houses for Sri Ayodhya Nagar Co-operative Housing Society Ltd., Ahmedabad'. The entire expense of the acquisition was to be borne by the second respondent, i.e., the Co-operative Housing Society. The first respondent moved the High Court under Article 226 of the Constitution challenging the validity of the notification under Section 6 on the ground that the acquisition of the land for a public purpose at the expense of the second respondent was legally invalid. On December 4, 1961 the High Court issued an ad interim injunction restraining the appellant from proceeding with the acquisition proceedings. While this writ petition was pending, the State Government by its notification dated May 27, 1963 cancelled the notification under Section 6. On September 10, 1964 the State Government issued a fresh notification under Section 6 stating that the land was to be acquired at the public expense, for the public purpose specified in column 4 of the schedule. The public purpose specified in column 4 of the schedule was 'For housing scheme undertaken by Sri Ayodhya Nagar Co-operative Housing Society Ltd.'

3. The High Court following its earlier decision in Dosabhai Ratansha Keravala v. State of Gujarat ((1970) 11 Guj LR 361) struck down the second notification under Section 6 dated September 10, 1964. It held inter alia that (1) the first notification under Section 6 issued on August 21, 1961 being an acquisition for a society at its cost, was valid and the government could have proceeded to

complete the acquisition under it but, under a false sense of apprehension as to its validity, the government cancelled it on May 27, 1963. There was no justification for cancelling the first notification under Section 6 and even if the government wanted to cancel it out of a feeling of apprehension as to its validity, the government need not have taken one year and ten months to do so. (2) After the issue of the first notification under Section 6 on August 21, 1961, the notification dated August 3, 1960 under Section 4 was exhausted and, therefore, could not be used to support the second notification issued under Section 6 on September 10, 1964. (3) The cancellation of the first notification under Section 6 by the notification dated May 27, 1963 did not have the effect of reviving the notification under Section 4 so as to make it available for supporting the second notification under Section 6. The second notification under Section 6 not being supported by any notification under Section 4 was consequently invalid. (4) A notification under Section 6 in order to be valid must follow within a reasonable time after the issue of a notification under Section 4. The notification under Section 4 was issued on August 3, 1960 and the second notification under Section 6 on September 10, 1964 and there was thus an interval of about four years and one month between the two notifications. This interval of time, could not be regarded as reasonable. Even tested by the yardstick of reasonable time provided by the legislature in the second proviso introduced in Section 6 by the Land Acquisition (Amendment and Validation) Act, 1967, namely three years, the period of about four years and one month between the two notifications under Section 4 and Section 6 would be clearly unreasonable. The second notification must, therefore, be held to be invalid on this ground also.

4. We are clearly of the opinion that the High Court was in error in striking down the second notification under Section 6 issued on September 10, 1964. In Valjibhai Muljibhai Soneji v. State of Bombay ((1964) 3 SCR 686 : AIR 1963 SC 1890) the Court held that the government has no power to issue a notification for acquisition of land for a public purpose, where the compensation is to be entirely paid by a company. The first notification issued by the government under Section 6 for acquisition of the land for a public purpose, at the expense of the second respondent, the Co-operative Society, was, therefore, invalid. The State Government was, therefore, justified in issuing the second notification under Section 6 after removing the lacuna i.e., by providing for acquisition of the land for the said public purpose, at public expense.

5. In an endeavour to support the judgment, counsel for the first respondent advanced a three-fold contention. It was urged, firstly, that successive notifications cannot be issued under Section 6 placing reliance on State of Madhya Pradesh v. Vishnu Prasad Sharma ((1966) 3 SCR 557 : AIR 1966 SC 1593 : (1966) 2 SCJ 231). It was pointed out that the Land Acquisition (Amendment and Validation) Act, 1967 had a limited scope and it validated only successive notifications issued under Section 6 in respect of different parcels of land but did not validate successive notifications in respect of the same land. Further, it was urged that the Act was not retrospective in operation and, therefore, the validity of the second notification dated September 10, 1964 had to be adjudged with reference to the pre-amendment law, i.e., according to the law as declared by this Court in Vishnu Prasad Sharma case ((1966) 3 SCR 557 : AIR 1966 SC 1593 : (1966) 2 SCJ 231). Secondly, it was urged, on the strength of the decision in Dosabhai Ratansha Keravala case ((1970) 11 Guj LR 361) that a notification under Section 4 is exhausted when it is followed by a declaration under Section 6. It was urged that the first notification under Section 6 dated August 21, 1961 was valid and the High Court was, therefore, justified in holding that with its cancellation, the notification under Section 4 lapsed. Thirdly, it was urged that there was unreasonable delay in issuing the second notification under Section 6 and, this, by itself, was sufficient to invalidate it.

6. In Vishnu Prasad Sharma case ((1966) 3 SCR 557 : AIR 1966 SC 1593 : (1966) 2 SCJ 231) the

Court held that Sections 4, 5-A and 6 are integrally connected and present a complete scheme for acquisition and, therefore, it was not open to the government to make successive declarations under Section 6. Wanchoo, J. (as he then was), speaking for himself and Mudholkar, J. observed :

> It seems to us clear that once a declaration under Section 6 is made, the notification under Section 4(1) must be exhausted, for it has served its purpose. There is nothing in Sections 4, 5-A and 6 to suggest that Section 4(1) is a kind of reservoir from which the government may from time to time draw out land and make declarations with respect to it successively. If that was the intention behind Sections 4, 5-A and 6 we would have found some indication of it in the language used therein. But as we read these three sections together we can only find that the scheme is that Section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the government what particular land out of that locality it needs. This is followed by a declaration under Section 6 specifying the particular land needed and that in our opinion completes the process and the notification under Section 4(1) cannot be further used thereafter. At the stage of Section 4 the land is not particularised but only the locality is mentioned; at the stage of Section 6 the land in the locality is particularised and thereafter it seems to us that the notification under Section 4(1) having served its purpose exhausts itself.

Sarkar, J., in a separate but concurring judgment, observed :

My learned brother has said that Sections 4, 5-A and 6 of the Act have to be read together and so read, the conclusion is clear that the Act contemplates only a single declaration under Section 6 in respect of a notification under Section 4.

After rejecting the contention that the government may have difficulty in making the plan of its projects complete at a time, particularly where the project is large, and therefore, it is necessary that it should have power to make successive declarations under Section 6, he observed :

> I cannot imagine a government, which has vast resources, not being able to make a complete plan of its project at a time. Indeed, I think when a plan is made, it is a complete plan. I should suppose that before the government starts acquisition proceedings by the issue of a notification under Section 4, it has made its plan for otherwise it cannot state in the notification, as it has to do, that the land is likely to be needed. Even if it had not then completed its plan, it would have enough time before the making of a declaration under Section 6 to do so. I think, therefore, that the difficulty of the government, even if there is one, does not lead to the conclusion that the Act contemplates the making of a number of declarations under Section 6.

7. In the present case, the question, however, does not arise as the first notification under Section 6 dated August 21, 1961 being invalid, the government was not precluded from making a second notification. Due to the invalidity of the notification under Section 6, the notification under Section 4 still held the field and on its strength another notification under Section 6 could be issued. It is, therefore, not necessary to deal with the effect of the validating Act.

8. The matter is squarely covered by the decision of the Court in Girdharilal Amratlal Shodan v.

State of Gujarat ((1966) 3 SCR 437 : AIR 1966 SC 1408 : (1966) 2 SCJ 528). The Court rejected the contention that by cancelling the first notification under Section 6, as here, the government must be taken to have withdrawn from the acquisition and consequently could not issue a second notification under Section 6. There also the first notification under Section 6 was invalid and of no effect, as the government had no power to issue a notification for acquisition for a public purpose where the compensation was to be paid entirely by a company, as held by this Court in Shyam Behari v. State of Madhya Pradesh ((1964) 6 SCR 636 : AIR 1965 SC 427 : (1964) 2 SCJ 226).

9. It will be noticed that in Girdharilal Amratlal Shodan case ((1966) 3 SCR 437 : AIR 1966 SC 1408 : (1966) 2 SCJ 528) the facts were identical. On August 3, 1960 the Government of Gujarat issued a notification under Section 4 in respect of certain land falling in Final Plot No. 460 of the Town Planning Scheme No. III of Ellisbridge in the city of Ahmedabad, stating that the land was likely to be needed for a public purpose, viz., for construction of houses for Sri Krishnakunj Government Servants' Co-operative Housing Society Ltd. On July 18, 1961 the State Government issued a notification under Section 6 stating that the land was to be acquired for the aforesaid public purpose at the expense of Sri Krishnakunj Government Servants' Co-operative Housing Society Ltd. On September 22, 1961, the landholder filed a writ petition in the High Court for an order quashing the notification under Section 6. During the pendency of the proceedings, the government issued a notification dated April 28, 1964 cancelling the aforesaid notification dated July 18, 1961. On August 14, 1964 the government issued a fresh notification under Section 6 stating that the land was needed to be acquired at the public expense for a public purpose, viz., for the housing scheme undertaken by Sri Krishnakunj Government Servants' Co-operative Housing Society Ltd.

10. The contention was that by cancelling the first notification under Section 6, the government must be deemed to have withdrawn from the acquisition and cancelled the notification under Section 4, and therefore, could not issue the second notification under Section 6, without issuing a fresh notification under Section 4. It was also urged that the power of the State Government to issue a notification under Section 6 was exhausted, and the government could not issue a fresh notification under Section 6. The Court rejected both the contentions observing :

> Having regard to the proviso to Section 6 of the Act, a declaration for acquisition of the land for a public purpose could only be made if the compensation to be awarded for it was to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. The government had no power to issue a notification for acquisition for a public purpose where the compensation was to be paid entirely by a company. The notification dated July 18, 1961 was, therefore, invalid and of no effect, see Shyam Behari v. State of Madhya Pradesh ((1964) 6 SCR 636 : AIR 1965 SC 427 : (1964) 2 SCJ 226). The appellants filed the writ petition challenging the aforesaid notification on this ground. The challenge was justified and the notification was liable to be quashed by the Court. The State Government realised that the notification was invalid, and without waiting for an order of Court, cancelled the notification on April 28, 1964. The cancellation was in recognition of the invalidity of the notification. The government had no intention of withdrawing from the acquisition. Soon after the cancellation, the government issued a fresh notification under Section 6. Where, as in this case, the notification under Section 6 is incompetent and invalid, the government may treat it as ineffective and issue a fresh notification under Section 6. This is what, in substance, the government did in this case. The cancellation on April 28, 1964 was no more than a recognition of the invalidity of the earlier notification.

The first notification issued under Section 6 on August 21, 1961 was obviously invalid and of no effect. By the issue of this notification, the government had not effectively exercised its powers under Section 6. In the circumstances, the government could well issue a fresh notification under Section 6 dated September 10, 1964.

11. In State of Gujarat v. Musamiyan Imam Haider Bux Razvi (1976 Supp SCR 28 : (1976) 3 SCC 536) this Court while reversing the decision of the Gujarat High Court in Dosabhai Ratansha Keravala ((1970) 11 Guj LR 361) on which the High Court based its decision, has laid down two important principles : (1) In view of the decisions of this Court in Pandit Jhandu Lal v. State of Punjab ((1961) 2 SCR 459 : AIR 1961 SC 343 : (1961) 1 SCJ 529), Ratilal Shankarbhai v. State of Gujarat (AIR 1970 SC 984 : (1970) 2 SCC 264) and Ram Swarup v. District Land Acquisition Officer, Aligarh (AIR 1972 SC 2290 : (1973) 2 SCC 56) the acquisition of land for a co-operative housing society is a public purpose. The government is the best judge to determine whether the purpose in question is a public purpose or not; and, it cannot be said that a housing scheme for a limited number of persons cannot be construed to be a public purpose inasmuch as the need of a section of the public may be a public purpose. (2) When a notification under Section 6 is invalid, the government may treat it as ineffective and issue a fresh notification under Section 6, and nothing in Section 48 of the Act precludes the government from doing so, as held by this Court in Girdharilal Amratlal Shodan ((1966) 3 SCR 437 : AIR 1966 SC 1408 : (1966) 2 SCJ 528).

12. The High Court had not the benefit of these decisions when it held that acquisition of land for a co-operative housing society was not a public purpose and, therefore, the first notification dated August 21, 1961 issued under Section 6 of the Act was valid. The substratum on which the decision of the High Court rests has, therefore, disappeared. This Court in Musamiyan case (1976 Supp SCR 28 : (1976) 3 SCC 536) distinguished the decision in State of Madhya Pradesh v. Vishnu Prasad Sharma ((1966) 3 SCR 557 : AIR 1966 SC 1593 : (1966) 2 SCJ 231) by quoting the passage referred to above. The decision in Vishnu Prasad Sharma case ((1966) 3 SCR 557 : AIR 1966 SC 1593 : (1966) 2 SCJ 231) is not an authority for the proposition that where a notification under Section 6 is found to be invalid it cannot be followed by a fresh notification under Section 6. In fact, the decision of the High Court runs counter to what it had observed in Dosabhai Ratansha Keravala case ((1970) 11 Guj LR 361) after referring to the decisions of this Court in Vishnu Prasad Sharma case ((1966) 3 SCR 557 : AIR 1966 SC 1593 : (1966) 2 SCJ 231) and Girdharilal Amratlal Shodan case ((1966) 3 SCR 437 : AIR 1966 SC 1408 : (1966) 2 SCJ 528) :

> If the first Section 6 notification is invalid, that is, non est, Section 4 notification cannot be regarded as exhausted, for its purpose is yet unfulfilled; its purpose could be fulfilled only by issue of a valid notification under Section 6.

13. There remains the question whether the High Court was right in quashing the second notification under Section 6 on the ground of unreasonable delay in its issuance. The respondent had not taken any such ground in the writ petition filed by him. The High Court was, therefore, not justified in observing that 'the appellant had not explained the delay by filing any affidavit'. We fail to appreciate that if there was no ground taken, there could be no occasion for filing of any such affidavit. Further, the delay, if any, was of the respondent's own making. He had challenged the first notification under Section 6, presumably on the ground that the acquisition being for a public purpose, could not be made at the expense of the second respondent. The challenge was justified and the State Government, therefore, withdrew the first notification under Section 6 without waiting for an order of the High Court. The cancellation was in recognition of the invalidity of the notification. The government had no intention of withdrawing from the acquisition. Thereafter, the

government issued a fresh notification under Section 6 making a declaration for acquisition of the land for a public purpose at public expense. There is nothing in the Act which precludes the government from issuing a fresh notification under Section 6, if the earlier notification is found to be ineffective. The delay of one year and four months between the date of cancellation and the issue of the second notification cannot be regarded to be unreasonable, in the facts and circumstances of the case. In somewhat similar circumstances, this Court recently in Gujarat State Transport Corpn. v. Valji Mulji Soneji ((1979) 3 SCC 202) held the delay of about fifteen years in making the second notification under Section 6 not to be unreasonable. We cannot, therefore, uphold the High Court's decision that the second notification must be struck down on the ground of delay.

14. In the result, the appeal succeeds and is allowed with costs, the judgment of the High Court is set aside, and the writ petition filed by the first respondent is dismissed.

15. Respondent 1 shall bear the costs.

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