

Madhusudan Chhotalal Patel and Another

Vs

Special Land Acquisition Officer and Others

Civil Appeal No. 279 of 1970

(D. A. Desai, E. S. Venkataramiah JJ)

08.01.1980

JUDGMENT

DESAI, J. –

The appellant questioned the validity of notification dated March 31, 1958 and another notification dated December 29, 1962 under Section 4 and 6 respectively of the Land Acquisition Act in Special Civil Application 228 of 1963 filed in the Gujarat High Court at Ahmedabad on the following grounds :

"(1) The two notifications are mala fide as they suffer from non-application of mind and are in colourable exercise of power on the two submissions :

(a) There is utter impossibility of constructing a road over this plot as part of the scheme, and

(b) The acquisition is in excess of the requirement.

(2) Section 6 notification is illegal as it does not show the instrumentality through which the said public purpose should materialise."

2. These grounds did not find favour with the High Court and the special civil application was dismissed. Upon certificate granted under Article 133(1)(b) the present appeal is filed.

3. Mr. Bhandare, learned counsel for the appellant canvassed the same before us. It is not necessary to examine them in an elaborate on behalf. The main gravamen of the charge was that the whole of plot No. 31 which was under acquisition could not be required for a road 30 ft. in width. In a detailed affidavit, filed on behalf of the Ahmedabad Municipal Corporation for whose benefit the acquisition was made, it was pointed out that the plot is required for road 60 ft. wide, walking platform by the side of it again 60 ft. In width and a service platform 30 ft. in width and that this should cover the entire plot which is 188 ft. in width at one end and 204 ft. in width at other and 237 ft. in length. Further it transpired from the affidavit that the acquisition forms part of a town planning scheme which envisages not only a road, a walking platform, a service platform along the river Sabarmati between the two terminal Mahatma Gandhi Bridge and Ellis Bridge along with a neighbourhood Centre, Public Garden and a playground. The High Court accepted these averments. These findings are incontrovertible. The High Court rightly rejected the contention of the appellant that the entire plot was not required for the purpose for which it was acquired. This finding also answers the second limb of the submission that the acquisition is in excess of the requirement.

4. The second contention is no more res integra. At one time the High Court of Gujarat took the view that the statement of public purpose in Section 6 notification is not complete unless the instrumentality through which the public purpose was to be carried out is stated as in integral part of the statement of public purpose in the notification under Section 6. Subsequently, a Full Bench in Ramji Popatbhai Patel v. Jamnadas Shah ((1969) 10 Guj LR 164), overruled its earlier view and held that failure to specify the instrumentality by which the public purpose was to be carried out does not invalidate a notification under Section 6. This view of the Full Bench was confirmed by this Court in Kanaiyalal Maneklal Chinai v. State of Gujarat ((1969) 3 SCC 456, 463 : (1970) 2 SCR 908, 915). While affirming the above taken by the Full Bench, this Court observed that this Court in Vishnu Prasad Ramdas Gohil v. State of Gujarat (1970 UJ (SC) 14 : 1969 SCD 1044) agreed with the view of the Full Bench of the Gujarat High Court in Ramji Popatbhai ((1969) 10 Guj LR 164) that failure to specify the instrumentality which is to execute the public purpose does not affect the validity of the notification Section 4 or 6 of the Land Acquisition Act. Accordingly, there is no merit in the second contention.

5. These were the only contentions raised in this appeal and as there is no merit in any of them, the appeal fails and is dismissed, but in the circumstances of the case with no order as to costs.

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