State of Gujarat

Vs

Panch Of Nani Hamam's Pole and Others

Civil Appeal No. 1464(N) of 1972

(D. P. Madon, G. L. Oza JJ)

19.12. 1985

JUDGMENT

OZA, J. -

1. This appeal is by special leave granted by this Court against the judgment of Gujarat High Court at Ahmedabad in Civil Second Appeal No. 45 of 1963.

2. Respondents 2 and 3 filed a suit No. 1476 of 1958 in the Court of Joint Civil Judge (Senior Division), Ahmedabad for declaration that the proceedings and award in land acquisition case No. L.A.Q. 1496 were illegal and for injunction restraining the defendants, the Panch of Nani Hamam's Pole of Gujarat and the State of Gujarat from doing any act affecting the plaintiff's possession of Municipal Census Nos. 605 and 605/1 and Census Nos. 1335 to 1337 of Shahpur Ward II and the superstructure standing thereon situated in Nani Hamam, Ahmedabad.

3. These lands were acquired by acquisition proceedings under Land Acquisition Act, 1894. After notifications under Sections 4 and 6, the acquisition proceedings proceeded further for determination of compensation and an award was made.

4. The grievance made by plaintiff/respondents 1 and 2 was that no notice was given to them personally under Section 4 and Section 9(3) of the Land Acquisition Act and that they were not aware of the land acquisition proceeding till their landlord defendant 1 told them that possession of these lands were to be handed over to the Government on July 22, 1958. Their contention is that they were the tenants of respondent 1 in respect of the acquired land and had raised structures thereupon at their own costs. Being the tenants in the lands acquired and being the occupants of the structures standing on the lands they were entitled to individual notice under Sections 4(1) and 9(3) of the Act and in absence of such notices, the entire proceedings are vitiated.

5. The present appellant, the State of Gujarat, in their written statement pleaded that the notification under Section 4 apart from being published in the Gazette was posted on the site and was served on the persons knows or believed to be interested. Similarly notices under Sections 9 and 10 were also posted on the site to be acquired and were also served on the persons known or believed to be interested in the land.

6. The trial court held that as plaintiffs/respondents 2 and 3 are persons interested in the acquired land they were entitled to individual notices under Section 9(2) of the Act and no notice was served on them as the acquisition authorities did not know that the plaintiffs/respondents were interested in the land as their names did not appear in the City Survey Records. The trial court further held that

the plaintiffs/respondents had actual knowledge of the intended acquisition and as such failure to give individual notice does not invalidate the acquisition proceedings. The trial court therefore dismissed the suit.

7. The plaintiffs/respondents preferred an appeal but the first appellate court maintained the judgment of the trial court and dismissed the appeal. The plaintiffs/respondents preferred a second appeal to the High Court and raised the same contentions. The High Court upheld the contentions and set aside the acquisition proceedings. The High Court placing reliance on the earlier decision of the High Court in Ashokkumar Gordhanbhai v. State of Gujarat (10 Guj LR 503) held that under Section 4 of the Land Acquisition Act read with Rule 1 of the Rules framed by the State Government under Section 55 of the Act, service of notice on parties interested in the land is not only obligatory but a condition precedent and therefore on this count held the acquisition proceedings to be bad and it also granted injunction restraining the State Government from interfering with the possession of the plaintiffs of the property. The High Court refused the certificate under Article 133 and therefore this appeal has been preferred after obtaining a certificate from this Court.

8. Learned counsel appearing for the State contended that the respondents/plaintiffs challenged the proceedings on two grounds : (i) on the ground that Section 4 read with Rule 1 of the Gujarat Rules require a personal notice of intention to acquire under Section 4(1); (ii) the proceedings were also challenged on the ground that under Section 9(3) of the Land Acquisition Act also the plaintiffs/respondents are entitled to individual notice. But it was contended by learned counsel that so far as objection under Section 9(3) is concerned it would only invalidate the award, but in the present case after the award was made, the plaintiffs/respondents accepting the award filed a suit against the landlord who was a party to the acquisition proceedings and obtained a decree for his share of the compensation. That having been done the question of objection under Section 9(3) now is no longer of any consequence. He, therefore, contended that only question which deserves consideration in this appeal is about the notice under Section 4 to the plaintiffs/respondents in view of Rule 1 of the Rules framed under section 55 of the Land Acquisition Act which are known as Bombay Rules adopted by the State of Gujarat.

9. It was contended that following the decision of the Gujarat High Court in Ashokkumar Gordhanbhai v. State of Gujarat (10 Guj LR 503), Gujarat High Court, in the present case held that as notices to the plaintiffs/respondents were not served as required in Rule 1 the proceedings of acquisition are invalidated. But it was contended by the learned counsel that this view was not followed by Gujarat High Court in a subsequent decision in Vasudev Chunilal Pancholi v. State of Gujarat ((1984) 2 (25) 2 Guj LR 844). In this decision, the High Court following the decision in Bai Malimabu v. State of Gujarat (AIR 1978 SC 515 : (1978) 2 SCC 373), held that individual notice under Section 4(1) read with Rule 1 is not necessary. It was therefore contended that Rule 1 of the Rules framed under Section 55 could not go beyond the requirements under Section 4(1) and to that extent the rule is bad in law. It was therefore contended that the High Court has committed an error of decreeing the suit filed by plaintiffs/respondents.

10. Section 4(1) of the Land Acquisition Act as it stood at the relevant time reads as under :

> 4. Publication of preliminary notification and powers of officers thereupon. - (1) Wherever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette and the Collector shall cause public notice

> of the substance of such notification to be given at convenient places in the said locality.

11. This provision contemplates the notification to be published in the official Gazette indicating the intention of the State Government of acquisition for a public purpose and it further requires that the Collector shall cause a public notice of the substance of such notification to be given at a convenient place in the same locality. The purpose of this second part of section, of giving a notice by the Collector by notifying it at a convenient place in the locality appears to be to intimate the persons affected by the acquisition. Rule 1 which is relevant for consideration reads as under :

> (1) Whenever any notification under Section 4 of the Act has been published but the provisions of the Section 17 have not been applied and the Collector has under the provisions of Section 4(1) issued notices to the parties interested; and on or before the last day fixed by the Collector in those notice in this behalf any objection is lodged under Section 5-A(2), firstly, the Collector shall record the objection in his proceedings. Secondly, the Collector shall consider whether the objection is admissible according to these Rules.

The relevant words in this rule are : "Collector has under the provisions of Section 4(1) issued notice to the parties interested". It is these words on the basis of which, in the impugned judgment, the High Court felt that a personal notice to the persons interested is mandatory provision and in absence of such a notice the proceeding of acquisition will be invalidated. In fact there are no words in this rule indicating a personal notice. What has been indicated is that the Collector has issued notice to the parties interested under provisions of Section 4(1). Section 4(1) quoted above indicates the manner in which a notice will be given to the parties interested. And that is by getting a public notice having the substance of the notification given at a convenient place in the said locality. Therefore, what Rule 1 contemplates is a notice to the interested parties as required under Section 4(1) and Section 4(1) requires the notice to be notified at a convenient place in the said locality for information of the interested parties. It is, therefore, clear that by reading Section 4(1) with Rule 1 it could not be interpreted to mean that a personal notice to each and every interested person is the requirement of Section 4 and in absence of such a notice the proceedings of acquisition will be invalidated. The High Court in the impugned judgment placing reliance on Ashokkumar Gordhanbhai v. State of Gujarat (10 GUJ LR 503) came to the conclusion that as such an individual notice was not served in the present case, the proceeding of acquisition are bad in law. As discussed earlier, reading of Section 4(1) with Rule 1 does not provide for an individual notice but only requires a notice as contemplated under Section 4(1) to the interested persons. The manner in which the notice is to be given is provided in Section 4(1) itself by publication of the substance of the notification at a convenient place in the locality. It is not in dispute that such a procedure was followed and therefore it could not be said that the notice as contemplated under Section 4(1) read with Rule 1 was not given to parties interested and therefore it could not be held that the proceedings of acquisition are bad in law. The High Court therefore was in error and the view taken could not be maintained.

12. In Bai Malimabu v. State of Gujarat (AIR 1978 SC 515 : (1978) 2 SCC 373) this Court while considering the language of Rule 30-B of the Gujarat Rules which is more or less similar to Rule 1 quoted above took the view as under :

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 5-A were not properly 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 30-B 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 presupposes 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 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 requirement aforesaid. Proper inquiry was held under Section 5-A of the 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.

13. In the light of the discussions above, therefore, the appeal is allowed with costs and the judgment and decree passed by the High Court in Civil Second Appeal No. 45 of 1963 are set aside and the said second appeal is dismissed. There will be no order as to costs throughout. Security amount deposited shall be refunded to the appellant.

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