State of Gujarat

Vs

Inderjit O. Parekh and Others

Civil Appeal No. 2279 of 1972

(G. L. Oza, M. P. Thakkar JJ)

05.02.1987

JUDGMENT

THAKKAR, J. –

1. On November 23, 1965 a notification under Section 6 of the Land Acquisition Act was issued in order to acquire lands specified in the notification for the purpose of "construction of light factories and residential quarters for members of the Vishwakarma Sarvodaya Sahakari Mandal Ltd., Ahmedabad for engaging itself in light industrial work which is for a public purpose". Respondents 1 and 2 instituted a writ petition in the High Court in order to challenge the aforesaid notification. The High Court by by its judgment and order under appeal allowed the writ petition and quashed the aforesaid notification under Section 6 of the Land Acquisition Act as also the earlier notification under Section 4 of the Land Acquisition Act. Thereupon the State of Gujarat has approached this Court by way of present appeal by special leave.

2. The notifications under Sections 4 and 6 of the Land Acquisition Act which were challenged by the original writ petitioners were quashed upon the High Court accepting two submissions urged on behalf of the writ petitioners. The two submissions which were upheld by the High Court, have been set out by the High Court in its judgment as under :

> (1) After the agreement was executed on June 11, 1965 between the third respondent Cooperative Society and the government, certain modifications of that agreement were arrived at by mutual agreement between the parties and though because of such mutual agreement arrived at after June 11, 1965, a novatio came into existence, no fresh agreement setting out the novatio was executed between the parties.
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> (2) Though Section 41 of the Land Acquisition Act contemplates that an agreement should be entered into between the Acquiring Body and the government after the government has considered the report of the inquiry under Section 5-A, in the present instance, the agreement was entered into on June 11, 1965, whereas the report was submitted by the Land Acquisition Officer on June 17, 1965, and, therefore, the agreement of June 11, 1965 was not in accordance with the provisions of Section 41 of the Land Acquisition Act.

A few facts are required to be stated in order to appreciate, the first contention which found favour with the High Court. It appears that initially respondent 3 had submitted a draft agreement dated June 11, 1965, wherein the land was sought to be utilized inter alia for "erecting dwelling houses, providing amenities directly connected with the dwelling houses, and constructing the building". It

was however subsequently realized that inasmuch as the land was situated in a non-residential area it would not be possible to grant permission for erecting dwelling houses. The clause pertaining to erection of dwelling houses was therefore required to be dropped from the agreement as it was originally drafted. That it was so dropped is established by the agreement finally executed by respondent 3 published in the government Gazette dated December 2, 1965 which contains only one clause which reads as follows :

> Society shall not use or permit to be used the said land except with the previous sanction of the government in writing for any purpose other than that for which it has acquired or use or permit to be used the land for any building erected thereon for the purposes which in government's opinion are objectionable.

Clause (ii) which was included in the draft agreement in the context of erecting of dwelling houses was dropped from the final agreement. Admittedly, the agreement as published in the gazette only contained clause (i) and did not contain clause (ii) which was originally included in the draft agreement. From this circumstance the writ petitioners contended that inasmuch as there was a modification of the agreement as it was originally drafted it constituted novatio and that a fresh agreement was required to be entered into by respondent 3 in favour of the State Government. The High Court on a perusal of the record and the affidavits came to the conclusion that the modification in the agreement as originally prepared which modification was made in order to bring it in line with the agreement as it was finally published in the gazette by deleting clause (ii), was made unilaterally by Shri K. R. Modi, the then Town Planning Officer. Says the High Court :

> On the contrary, it is clear from the affidavit of K. R. Modi that the agreement was modified unilaterally by him. The copy of the agreement as published in the Government Gazette of December 2, 1965 purports to be the agreement of June 11, 1965 and it does not indicate anywhere on the face of it that it was the modified form of the agreement which was originally entered into between the parties on June 11, 1965.

With due respect to the High Court, it appears that the High Court has overlooked vital evidence bearing on this aspect and has misread the affidavits on record. In the affidavit in reply sworn by Shri Ramanlal Motilal Panchal, President of the third respondent Co-operative Society, dated July 28, 1970 it has in terms been mentioned that the Society at its meeting dated September 17, 1965 had passed a resolution in this behalf and necessary amendments were made in the original document dated June 11, 1965 and the final amended agreement was sent to the government. The relevant portion from the affidavit deserves to be extracted :

> That the Society, by its meeting dated September 17, 1965 passed a resolution to the effect that the Society requires the land in question for the purpose of constructing light factories only. Accordingly, and in pursuance to the resolution passed by the respondent Society by its meeting on September 17, 1965 necessary amendments were made in the original document dated June 11, 1965 and the final amended agreement was sent for the purpose of doing needful to the government. I say that necessary amendments were validly and legally made as per the resolution passed by the respondent Society. I further say that the agreement printed and published at pages 5220 to 5222 of the Gujarat Government Gazette Part I, Supplement to Central Gazette dated December 2, 1965 is the same which is printed as per the amended agreement pursuant to the resolution passed by the respondent Society. I say that the

> agreement is in compliance with the provision of Section 41 of the Land Acquisition Act and I further say that the final notification under Section 6 of the Land Acquisition Act was published after the amended agreement was executed. Herewith I am producing copy of the letter dated October 1, 1965 written by the Secretary to the respondent Society and addressed to Additional Special Land Acquisition Officer, Ahmedabad, along with the resolution passed by the respondent Society on September 17, 1965.

It may be observed that the resolution dated September 17, 1965 has been placed on record an its genuineness has not been even questioned. Besides, the aforesaid affidavit leaves no room for doubt that the modification was as a matter of fact made after the Society at its meeting had passed the aforesaid resolution authorising the modification. The affidavit further shows that in the original document (by which express reference is made to the agreement as it was originally submitted bearing the dateline of June 11, 1965) was modified to delete the reference to clause (i) and that it was this modified document which was sent to the State Government for acceptance (and it was duly accepted) by the State Government. The affidavit of Shri K. R. Modi also fully supports what has been stated in the affidavit of Shri Panchal. There can be no room for doubt that a modification was carried out in the document dated June 11, 1965 as it was originally submitted by making the modification necessitated in the aforesaid circumstances because in the final document which has been published in the Government Gazette, clause (ii) does not find a place. The High Court came to the conclusion that this modification was 'unilaterally' made by Shri Modi on the basis of affidavit as would appear from the passage from the judgment of the High Court which has been extracted hereinabove. In the first place, there is nothing express or implicit in the affidavit of Shri Modi which would justify the inference that he had 'unilaterally' modified the draft. We have perused the affidavit of Shri Modi but we do not find any such statement or even a remote basis for such an inference in his affidavit. Learned counsel for the writ petitioners (respondents 1 and 2) is unable to point out anything from the affidavit of Shri Modi to warrant such a finding. The finding recorded by the High Court is, therefore, based on some misconception without any factual basis. The affidavit of Shri Panchal clearly establishes that the modification in the draft agreement was made 'after' a resolution authorizing the modification was passed on September 17, 1965. His affidavit further shows that the modification was duly made in the agreement in accordance with and pursuant to the aforesaid resolution. There is therefore not even a remote hint anywhere in the record for holding that Shri Modi had done so on his own (why should he, a responsible government official, holding such a post, do so ?). The High Court was, therefore, not justified in quashing the notification on the basis of the finding that the modification in the draft agreement was made unilaterally by Shri Modi. It may be stated that while the agreement bears the dateline of June 11, 1965, the modification has been made subsequent to September 17, 1965 as has been established by the aforesaid affidavits of Shri Panchal and Shri Modi though the dateline of the agreement was not altered. A modification could be made in the document as it was originally submitted by deleting the relevant clause therefrom. The mere fact that it was not freshly typed or rewritten on another piece of paper would not make any difference and nothing turns on it. The High Court was therefore not justified in quashing the impugned notification on this ground.

3. So far as the second point is concerned, the High Court has proceeded on the assumption that the agreement was executed on June 11, 1965. On this assumption the High Court has taken the view that the report made by the competent authority under Section 5-A on June 17, 1965 could not have been considered by the State Government. Once the conclusion is reached that the modified agreement was executed on September 17, 1965 or as a sequal to the resolution of September 17, 1965, the very basis of this contention disappears. We have already pointed out the reasons for

reaching the conclusion that the agreement was modified pursuant to the resolution dated September 17, 1965. Under the circumstances, the contention that the report under Section 5-A dated June 17, 1965 could not have been considered on the date on which the agreement was accepted by the State Government cannot survive. Since the modification itself was made pursuant to the resolution dated September 17, 1965, and it was the modified agreement which was subsequently accepted by the State Government and published in the Government Gazette, it follows that the report dated June 17, 1965 was already before the State Government. And it would be wrong to say that the State Government could not have considered the report on or before the date on which the agreement was executed. The second ground for quashing must also accordingly fail.

4. These were the only two grounds on which the impugned notifications were quashed by the High Court under some misconception. In our view, the High Court was not justified in quashing the notifications. The appeal must, therefore, be allowed. The order passed by the High Court quashing the impugned notifications under Sections 4 and 6 of the Land Acquisition Act must be set aside. The writ petition giving rise to this appeal must stand dismissed. There will be no order as to costs throughout.

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