Ramgir Uttamgir Goswami

Vs

State of Gujarat and Another

Civil Appeal No. 2720 of 1972

(G.L. Oza, M.H. Kania JJ)

20.01.1988

JUDGMENT

KANIA, J. –

1. This an appeal against the judgment of a Division Bench of the Gujarat High Court dismissing a writ petition filed by the appellant herein. The appeal has been filed on a certificate of fitness granted by the Gujarat High Court under Article 133(1)(c) of the Constitution.

2. The main challenge in the writ petition was to the vires of Sections 4 and 6 respectively of the Land Acquisition Act, 1894. That challenge no longer survives in view of the validity of the sections having been upheld by this Court in Manubhai Jehtalal Patel v. State of Gujarat ((1983) 4 SCC 553). The lands in question are situated at village Bhairav, Taluka Kamrege, District Surat, Gujarat. The said lands are situated on the bank of the river Tapti which is known for its frequent floods and the lands are covered in Survey No. 2. The said lands admeasure 1 acre and 39 gunthas. We propose to refer to the said lands in the aggregate as "the said land". The said land is also known as the "Maksheshwar Mahadev" land. The appellant claims to be the occupant and owner of the entire land comprising in Survey No. 2 which includes the said land. It may be mentioned that the claim of the appellant to be the owner and occupier of the said land is based on his being the senior member of his family but we are not concerned with that question as we propose to proceed on the footing that he is in actual occupation of the said land. The preliminary notification declaring the intention to acquire the said land was issued under Section 4 of the Land Acquisition Act, 1894 and published in the government gazette of the State of Gujarat on April 30, 1970. It was notified that the proposed acquisition was for a public purpose, namely, for extension of the village site of the village Bhairav. It is common ground that the extension of the village site was required for the purpose of housing 12 families who had been rendered homeless because of floods in Tapti river. An individual notice under Section 4 of the Land Acquisition Act was served on the appellant on May 2, 1970. The appellant filed his objections against the proposed acquisition on May 12, 1970 and filed additional objections on June 20, 1970 and July 6, 1970 respectively. After consideration and rejection of the said objections, the notification for acquisition of the lands under Section 6 of the Land Acquisition Act was issued on December 8, 1970. Notices under Section 9 of the Land Acquisition Act were issued on January 8, 1971. The said acquisition was challenged by the appellant in the writ petition on various grounds.

3. The main ground on which the said acquisition was challenged in the writ petition was that the provisions of Sections 4 and 6 respectively of the Land Acquisition Act were ultra vires the Constitution of India. That challenge, as we have already pointed out, has been finally negatived by this Court. In view of this, Mr. Mehta fairly conceded that the vires of Section 4 and 6 of the Land

Acquisition Act could no longer be called in question before us. It was however, pointed out by him that the said notification was also challenged on some other grounds.

4. It was contended by Mr. Mehta that under the provisions of the Bombay Land Revenue Code, 1879, it must be established that the lands in the existing village site are insufficient for the extension of the village site before any acquisition can be resorted to. It was submitted by Mr. Mehta that before the said land could be acquired for the aforestated public purpose, the revenue authorities should have satisfied themselves that there were no unoccupied lands in the village which were suitable, appropriate an available for the extension of the village site or abadi and since that has not been done, the acquisition could not said to be for a public purpose. Mr. Mehta sought support for these submissions from the decision of a Division Bench of the Nagpur Bench of the Bombay High Court in Chandrabhagabai Udhaorao v. Commissioner, Nagpur Division ((1962) 45 Nag LJ 466). It was held in that case that the provisions of Section 226 of the Madhya Pradesh Land Revenue Code require that the Deputy Commissioner of the District or any other person authorised under law by him must record a finding that the village abadi is insufficient and that there is no other unoccupied land suitable for the purpose of extension of the village abadi before land could be compulsorily acquired for that purpose. The decision as to the sufficiency or otherwise of the land in the abadi must be taken by the Deputy Commissioner. The Land Acquisition Officer cannot substitute his opinion for that of the Deputy Commissioner in purporting to comply with the provisions of Section 226. Reliance was also placed by Mr. Mehta on the decision of a Division Bench (Nagpur) of the Bombay High Court, in Sitaram Maroti v. State of Maharashtra ((1963) 65 Bom LR 241) which is to the same effect as the aforesaid decision and, in fact, follows it. It was submitted by Mr. Mehta that the provisions of Section 226 of the Madhya Pradesh Land Revenue Code were substantially similar to the provisions of Section 126 of the Bombay Land Revenue Code which is really the provision applicable to the lands in question before us. We are totally unable to accept the submission of Mr. Mehta that the provisions referred to above are in pari materia.

5. Section 226 of the Madhya Pradesh Land Revenue Code provides as follows :

> 226(1) Where the area reserved for abadi is in the opinion of the Deputy Commissioner insufficient, he may reserve such further area from the unoccupied land in the village as he may think fit.
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> (2) Where unoccupied land for purposes of abadi is not available, the State Government may acquire any land for the extension of abadi and the Deputy Commissioner shall dispose of such land on such terms and conditions as may be prescribed.
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> (3) The provisions of the Land Acquisition Act, 1894 shall apply to such acquisition and compensation shall be payable for the acquisition of such land in accordance with the provisions in that Act.

A perusal of the said section shows that before the State Government acquires any land for extension of abadi, the Deputy Commissioner has to give his opinion that the area reserved for abadi in the village in question is insufficient. A reading of sub-section (2) of the said section shows that it is only where unoccupied land for the purpose of abadi is not available, that the State can acquire any land for extension of abadi. Sub-section (3) merely makes the provisions of the Land Acquisition Act applicable to the procedure for acquisition and for determination the compensation. The provisions of Section 126 of the Bombay Land Revenue Code, 1879 read altogether differently.

The said section runs as follows :

> 126. Limits of sites of villages, towns and cities how to be fixed. - It shall be lawful for the Collector or for a survey officer, acting under the general or special orders of the State Government, to determine what lands are included within the site of any village, town, or city, and to fix, and from time to time to vary the limits of the same, respect being had to all subsisting rights of landholders.

6. A perusal of Section 126 of the Bombay Land Revenue Code shows that unlike Section 226 of the Madhya Pradesh Land Revenue Code, there is nothing in Section 126 which indicates that the Collector or a Survey Officer acting under his orders has to first decide to enlarge or vary the site of any village, town or city before acquisition is resorted to for enlarging or varying such site under the Act. Section 126 merely deals with the limits of the site of any village, town or city and prescribes the procedure for fixing the limits of such sites. There is nothing in the Bombay Land Revenue Code or the Land Acquisition Act which would suggest that before acquisition can be resorted to for enlarging a village site, the Collector or a Survey Officer or Revenue Authority must decide upon such enlargement. Great emphasis was laid by Mr. Mehta on the last part of Section 126 which shows that the enlargement of the site has to be made, keeping in mind the rights of the landholders. However, in our opinion, this factor is of no relevance in the present case as there is nothing on record to establish that such rights have not been taken into account.

7. The next submission of Mr. Mehta was that the land acquisition authorities have failed to consider what were the other lands available which could have been more conveniently acquired for the public purpose referred to earlier. It was pointed out by him that in the writ petition, the appellant (petitioner) has alleged that he could have pointed out certain other lands and open spaces where the twelve families rendered homeless by the floods of Tapti river could have been housed. With reference to these allegations, the respondents in their counter-affidavit filed before the Gujarat High Court have rightly pointed out that the appellant had not given any details regarding other more suitable lands available for acquisition and hence it was not open to him to make a grievance on that score. Moreover, in paragraph 29 of the counter-affidavit, the respondents have pointed out that the lands referred to by the appellant in his petition were not suitable for housing the victims of the floods because they were low-lying lands and not suitable for residential purposes. The assessment of suitability of the land proposed to be acquired for the concerned public purpose is primarily for the Land Acquisition Officer to consider and no good reason has been shown to us which could warrant interference with his decision. Moreover, we are satisfied that the appellant had not even given proper particulars of the other lands which, according to him, were available for acquisition and were more suitable for acquisition and hence he can make no grievance on the score of proper consideration not having been given to the question of acquiring such lands.

8. It was lastly submitted by Mr. Mehta that since several years had passed from the date of the notification under Section 4, the victims of the floods must have been housed and rehabilitated elsewhere and hence the public purpose for which the lands were sought to be acquired does not survive. We are a little surprised at this argument The delay has taken place on account of the legal proceedings adopted by the appellant himself and by reason of the interim orders obtained by him. He cannot take advantage of this delay and claim that the public purpose no longer survives. Moreover, the public purpose stated in the notification is the extension of a village site or goathan of the village Bhairav and there is nothing to show that this public purpose has exhausted itself. In fact, we presume, on account of the increasing population, it will be more necessary today that the village site should be extended even than it was at the time when the notification was issued. This

submission must also fail.

9. The other controversies sought to be raised by the appellant are factual in nature and we do not consider it necessary to go into the same.

10. In the result, the appeal fails and is dismissed with costs.

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