

State of Gujarat and Another

Vs

Punjabhai Nathubhai and Others

Civil Appeal No. 508 of 1975

(S. Natarajan, M.H. Kania, M.N. Venkatachaliah JJ)

12.02.1988

JUDGMENT

VENKATACHALIAH, J. –

1. This appeal, by certificate, by the State of Gujarat arises out of and is directed against the judgment, dated August 4, 1972 of the High Court of Gujarat in Special Civil Application No. 798 of 1970, quashing, at the instance of the land owners, the final notification, dated January 18, 1969 issued under Section 6 of the Land Acquisition Act, 1894 (Act) in the matter of acquisition of S. No. 349/1, 349/2 and 349/3 of Karamsad Village in Anand Taluk for the purpose of the establishment of the "Industrial township for heavy and light industries" by the Gujarat Industrial Development Corporation.
2. The impugned notification was quashed by the Division Bench principally on the ground that there was an unreasonable delay in the publication of the final notification which was separated by 5 1/2 years from the preliminary notification under Section 4(1) of the Act which had been published on July 26, 1963.
3. It would appear that earlier, on January 16, 1965, a final notification including therein these and certain other lands belonging to certain other land owners had come to be published; but the same having been challenged by the land owners of the other lands covered by the notification, the High Court on January 30, 1968 struck down the final notification. A fresh final notification, insofar as the lands concerned in the present case was issued on January 18, 1969. The land owners - respondents 1 and 1-A in this appeal - assailed the said notification on the ground that it was published after an undue and unreasonable delay which vitiated the exercise of power under Section 6.
4. Supporting the validity of the impugned notification the acquiring authority relied on the provisions of the Section 5(2) of the Land Acquisition (Amendment and Validation) Ordinance, 1967 -later replaced by an appropriate legislative enactment - Which provided that no declaration under Section 6 of the Act in respect of any land which had been notified under Section 4(1) of the Act before the commencement of the said Ordinance shall be made after the expiry of two years from the date of commencement of the Ordinance. The Ordinance came into force on January 20, 1967. The impugned final notification was issued on January 18, 1969 within the stipulated period of 2 years. The Ordinance by its Section 4(a)(ii) also introduced a proviso to Section 6 of the 'Act' which imposed a time limit of 3 years from the date of notification under Section 4(1) for the issue of the final notification under Section 6. As notified earlier, sub-section (2) of Section 5 of the Ordinance made a special provision in respect of preliminary notification which had been issued

prior to January 20, 1967 and enabled a final notification to be issued within 2 years from January 20, 1967 in this class of cases.

5. The contention of the land owners before the High Court was that, notwithstanding sub-section (2) of Section 5 of the Ordinance, their claim that the acquiring authority had not acted bona fide and within a reasonable time and had desired to bring about a pegging-down of the prices of land, survived and could yet be examined.

6. The High Court accepted this contention of the land owners and struck down the impugned final notification on the ground that there was an unreasonable delay. In reaching this conclusion the Division Bench relied principally on an earlier decisions of the same High Court in Valji Mulji Soneji v. State of Gujarat ((1970) 11 Guj LR 95). That case, on which reliance was placed by the High Court, came up in appeal before this Court and the view of the High Court that notwithstanding Section 4(2) of the Land Acquisition (Amendment and Validation) Act, 1967, the court could yet enquire whether a notification under Section 6 published within the time envisaged by the Section 4(2) of Amendment Act was rendered infirm on grounds of unreasonable delay was not accepted by this Court. In Gujarat State Transport Corporation v. Valji Mulji Soneji ((1979) 3 SCR 905 : (1979) 3 SCC 202) this Court held : (SCC p. 212, paras 17 and 18)

Therefore, while appreciating the anxiety of the High Court we are of the opinion that once the legislature stepped in and prescribed a sort of period of limitation within which power to issue notification under Section 6 could be exercised it was not necessary to go in search of a further fetter on the power of the government by raising the implication.

It thus appears to be satisfactorily established that the impugned Section 6 notification was issued within the prescribed period introduced by the 1967 Amendment Act and, therefore, could not be struck down on the only ground that the power to issue second Section 6 notification was exercised after an unreasonable and unexplained delay.

7. The point raised in the present appeal is, therefore, fully covered by the pronouncement of this Court in GST Corporation case ((1979) 3 SCR 905 : (1979) 3 SCC 202) . For the reasons set out in and following the said pronouncement, this appeal requires to be and is hereby allowed; the judgment dated August 4, 1972 of the High Court under appeal set aside and Special Civil Application No. 798 of 1970 before the High Court dismissed. However in the circumstances of the case, the parties are left to bear and pay their own costs, both here and below.

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