

Reliance Petroleum Ltd.

Vs

Zaver Chand Popatlal Sumaria and Others

Civil Appeals Nos. 7873-74 of 1996

(S. C. Agarwal, K. Venkataswami JJ)

09.05.1996

ORDER

K. VENKATASWAMI, J. -

1. Leave granted.
2. Heard learned counsel. Perused the written submissions.
3. These appeals - one by the State of Gujarat [SLP (C) No. 27350 of 1995] and the other by the Reliance Petroleum Limited [SLP (C) No. 27230 of 1995] arise out of the judgment and order of the Gujarat High Court dated 5-9-1995 in Special Civil Application No. 13525 of 1994.
4. By the judgment under appeal the High Court has quashed (a) the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") dated 15-2-1993, (b) the declaration issued under Section 6 of the Act dated 18-5-1994 and (c) the award passed on 12-12-1994 insofar as they related to the lands of the writ petitioners and other objectors (totalling 89 in number) belonging to Villages Padana and Meghpur.
5. At the instance of the appellant in civil appeal arising out of SLP (C) No. 27230 of 1995 (hereinafter called the "appellant company") machinery under the Land Acquisition Act was put into operation under Part VII of the Act for acquiring approximately an extent of 2500 acres of lands situated in the villages of Moti Chavdi, Padana, Meghpur, Lalpur, Sikka and Gagva. Before the High Court the lands measuring about 877 acres belonging to 89 individuals situated in Padana and Meghpur was the subject-matter. It appears in between (namely when the matter was pending before the High Court and the matter was heard and concluded in this Court) that the appellant company was able to settle the matter with 70 individuals, leaving 19 individuals holding an extent of 241.34 acres for settling the issue. In other words we are concerned now with the lands situated in Padana and Meghpur villages belonging to 19 individuals measuring 241.34 acres only.
6. Before the High Court the writ petitioners [namely Respondents 1 to 3 in civil appeal arising out of SLP (C) No. 27230 of 1995] raised only three contentions. They were that there was non-compliance of the provisions of Rule 3 of the Land Acquisition (Companies) Rules, 1969, that there was non-compliance of provisions of Rule 4 of the said Rules and that there was no hearing as required was afforded and thereby there was violation of the provisions of Section 5-A of the Act. The learned Judges impressed by the arguments of the writ petitioners accepted the above three contentions and consequently quashed the notification under Section 4(1), declaration under Section 6 and awards passed under the Land Acquisition Act as mentioned above at the outset.

7. Aggrieved by the judgment of the High Court, these appeals by special leave have been preferred.
8. Mr. Ashok Desai, the learned Senior Counsel appearing for the appellant company, submitted that the High Court on the facts of the case ought not to have entertained the writ petition under Article 226 of the Constitution of India especially when the object of the petitioners before the High Court was for getting an unrealistic price for their lands. He also submitted that their conduct in not challenging the legality and validity of the notification under Section 4(1), declaration under Section 6 of the Act immediately after their publications and they having waited till the award was passed and finding that the award was not to their satisfaction and filing reference under Section 18 of the Act, disentitles them from moving the High Court under Article 226 of the Constitution. Such conduct on the part of the writ petitioners should have been taken due note of by the High Court for rejecting the relief. He also brought to our notice one factual position that out of 89 persons who challenged the land acquisition proceedings, only 19 are in the field and the rest have accepted the compensation (of course higher amount than the one awarded by the Land Acquisition Officer) and that shows that the sole object of the petitioners before the High Court (Respondents 1 to 3 herein) was to get the unrealistic price. In support of this he also invited our attention to paragraph 4 of the written submissions filed on behalf of Respondents 1 to 3. In the written submissions filed on behalf of the appellant company, it is categorically stated that the company is prepared to pay the same compensation as paid to other persons at the rate of Rs. 43,750 for non-irrigated lands and Rs. 87,500 for irrigated lands. It is also pointed out that these amounts are higher than the one demanded by the writ petitioners in their letter dated 25-10-1994. In the concluding part of the written submissions an alternative offer also is made stating that if necessary the company is prepared to give alternative lands out of the lands acquired to the 19 individuals who are now disputing the land acquisition proceedings. No doubt the learned counsel also contended that the authorities concerned have complied with the formalities required under Rules 3 and 4 of the Land Acquisition (Companies) Rules and also the formalities required under Section 5-A of the Act. He also cited a number of judgments of this Court to support his contentions.
9. Mr. Shanti Bhushan, the learned Senior Counsel appearing for the landowners (Respondents 1 to 3) representing the 19 individuals while replying submitted that the company having not responded to the offer made by the landowners by letter dated 25-10-1994 cannot place any reliance at this stage. The landowners/respondents on the basis of the judgment of the High Court are entitled to the present market value which is about Rs. 7 lakhs per acre and if this amount is paid now they will accept the same and give up their further claims. According to the learned counsel as per decision of this Court, compliance of requirement of Rules 3 and 4 of the Land Acquisition (Companies) Rules as well as personal hearing under Section 5-A are mandatory and non-compliance of the same as factually found by the High Court cannot be cured and therefore, the High Court was justified in entertaining the case under Article 226 and quashing the proceedings. He also cited a number of authorities in support of his submission.
10. We have carefully gone through the relevant records and considered the submissions both oral and written and we are of the view that on the facts which cannot be disputed, the High Court ought not to have exercised its discretionary jurisdiction and quashed the notification, declaration and award under the Land Acquisition Act.
11. The facts which cannot be disputed are the following. The notification under Section 4 dated 15-2-1993, which is the first step to initiate proceedings under the Land Acquisition Act, was issued on 11-3-1993. After the enquiry under Section 5-A, (we proceed on the assumption that there was no strict compliance of the requirements) declaration under Section 6 was published on 18-5-1994.

Thereafter individual notices under Section 9 were issued on 12-8-1994. In response to notices under Section 9 claims were filed by the landowners including Respondents 1 to 3 on 5-9-1994. Apart from that on 7-9-1994 a letter was addressed to the Land Acquisition Officer on behalf of the 89 individuals which included Respondents 1 to 3 informing that the claims were filed on behalf of the 89 individuals. When the matter was pending before the Land Acquisition Officer and before an award was passed Respondents 1 to 3 for themselves and on behalf of 89 persons addressed a letter on 25-10-1994 stating that they have no objection to the acquisition of land but they wanted only compensation as demanded therein. In fact they have given figures which ranged between 37,500 to 87,000 per acre. However, the appellant company did not take advantage of that offer by responding to the same. Subsequently, on 12-12-1994 the Land Acquisition Officer has passed the award and on the same date notices under Section 12(2) were also issued to the individuals. It is claimed that a major portion of the land was taken possession of on 19-12-1994. It is, therefore, only on 20-12-1994 Special Civil Application No. 13525 of 1994 was filed by Respondents 1 to 3 on behalf of 89 persons challenging the land acquisition proceedings.

12. From the above facts which cannot be disputed as they were taken from records, it would be clear that Respondents 1 to 3 (writ petitioners before the High Court) took their chance in the award proceedings and finding that the compensation as claimed by them was not given have moved the High Court. If really their intention was to challenge the acquisition as such they could have done so immediately at least after the publication of declaration under Section 6 or immediately after they received notices under Section 9 of the Land Acquisition Act. This shows that the only object of the writ petitioners was to get the maximum price for the land acquired. No doubt they are entitled to the compensation as provided under the Land Acquisition Act. For that there is a separate procedure under the Act itself. As a matter of fact out of 19 individuals who are before us, represented by Respondents 1 to 3, it is common ground 17 have already sought reference under Section 18 of the Act claiming more compensation. Further, it is stated in the written submission filed on behalf of Respondents 1 to 3 as under :

"It may be pointed out that some of the landowners, as was stated by the counsel for the company, have entered into settlement with the company and have accepted the compensation. Evidently they will not be entitled to the benefit of the High Court judgment. However, it has been stated in a note given to the Court by the company that 19 persons owning 241.34 acres of the land sought to be acquired have not entered into any settlement with the company. The result would be that the Government would have no authority to take possession of these lands without fresh acquisition proceedings. It was stated on behalf of these respondents that the present market value of the land was about 7 lakhs per acre and therefore, the compensation for the said 241.34 acres would come to about Rs. 17 crores. It was further stated on behalf of the respondents that if the company is willing to agree that these persons would be entitled to receive compensation according to the market value prevalent on the date of Supreme Court's judgment in this SLP, the respondents would be willing to accept the same."

13. Taking note of all these facts we have come to the conclusion that the High Court was not justified in entertaining the writ petition and also in exercising the discretionary jurisdiction to quash the Section 4(1) notification, Section 6 declaration and award made under the Land Acquisition Act.

14. In the view we take on the facts of the case, we do not think it necessary to discuss the question of law and to quote the cases cited by the counsel on both sides.

15. Notwithstanding the above, we feel that the ends of justice would be met if we direct the appellant company to pay the enhanced compensation at the rate/rates paid to others who have accepted the same and have withdrawn from prosecuting the case in this Court, with interest @ 12% from 25-10-1994. If an affidavit is filed on behalf of the 19 persons accepting the above compensation in full quit within 8 weeks from this date, the same should be paid by the company within 4 weeks from the date of filing of such affidavit. If the affidavit accepting the above compensation is not filed as above, then it will be taken that the 19 individuals are not accepting the compensation suggested, but desire to agitate the same in accordance with law.

16. In the circumstances, subject to the direction given above, the appeals are allowed and the judgment of the High Court is set aside. However, there will be no order as to costs.