

SUPREME COURT OF INDIA

Dahyabhai Ranchhoddas Dhobi

Vs.

State of Gujarat

C.A.No.5882 of 2010

(P. Sathasivam and Anil R. Dave JJ.)

23.07.2010

JUDGEMENT

P.Sathasivam, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 12.01.2009 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 5663 of 1990 with Civil Application No. 3458 of 2006 whereby the High Court dismissed the petition preferred by the appellants herein.

3. Brief facts:

“a) According to the appellants, they are owners of the land in question measuring 848.66 sq.m., Nandh No. 2190/P, Ward No.4 of Surat City. The State of Gujarat initiated acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") for construction of a school in the land in question under the Surat Municipal Corporation. The appellants objected to the said acquisition on the ground that:

(i) this is the only land for them for carrying on the business of washermen and they are using this land for the purpose of their livelihood.

(ii) There are vacant/open lands adjoining to the land in question.

(iii) Within a radius of 1 km., number of schools are available particularly being run by the Surat Municipal Corporation.

(iv) While acquiring the land, the respondents have not followed the provisions of Sections 4, 5, 6 and 11A of the Act.

b) On the other hand, it is the stand of the State Government that:

(i) the land is required for establishing a primary school by the Surat Municipal Corporation.

(ii) They fully complied with the statutory notices and other requirements.

(iii) The appellants did not avail the opportunity of participating in the 5A enquiry by filing objections.

(iv) The declaration made under Section 6 of the Act is within time.

(v) Award under Section 11A has been passed within the statutory period. Since the establishment of school is for a public purpose and in view of compliance of all the statutory formalities, there is no merit in the appeal and prayed for dismissal of the same.”

4. Heard Mr. Ranjit Kumar, learned senior counsel for the appellants and Mr. Prashant G. Desai, learned senior counsel for the Surat Municipal Corporation and Ms. Hemantika Wahi, learned counsel for the State of Gujarat.

5. Mr. Ranjit Kumar, learned senior counsel for the appellants has raised the following contentions:

“a) there was no hearing/enquiry in terms of Section 5A of the Act which is mandatory;

b) the locality publication was not effected under Section 6(2);

c) the Award passed under Section 11A was not made within two years from the date of last publication of notification under Section 6, therefore the acquisition is vitiated;

d) after change of classification of the land in question, namely, residential use, the respondents are not permitted to establish a primary school which is not permissible;

e) In view of the fact that the area being designated as residential congested by houses on either side, it is not a fit place for establishing a school as observed by this Court in *Avinash Mehrotra vs. Union of India and Others*¹.

6. On the other hand, Mr. Prashant G. Desai, learned senior counsel for the Surat Municipal Corporation has submitted that in view of Section 12 (2) (b) and Section 20 (1) of the Gujarat Town Planning & Urban Development Act, 1976, the State Government is well within their powers in establishing a primary school in Surat. He further submitted that all the statutory

provisions have been strictly complied with and the declaration under Section 6 and Award under Section 11A were duly made within the prescribed time. Ms. Hemantika Wahi, learned counsel appearing for the State, by drawing our attention to specific averments in the counter affidavit submitted that the appellants having not filed objections in the enquiry under Section 5A, all the three modes of publication as contemplated under Section 6 were duly published and made and Award passed within the prescribed period, there is no infirmity in the acquisition proceedings and prayed for dismissal of the appeal.

7. We have considered the rival contentions and perused the relevant materials.

8. With regard to the first objection as to enquiry under Section 5A of the Act though the appellants have stated that they were not given an opportunity of being heard, in the counter affidavit filed by the Special Land Acquisition Officer, Surat before the High Court it has been specifically asserted that notification under Section 4 in the Official Gazette was published on 09.03.1989, public notice displayed at the office of Mamlatdar of the concerned Ward on 20.04.1989 and hearing of objections under Section 5A was fixed on 20.05.1989. In para 4 of the counter affidavit, the Land Acquisition Officer has specifically stated that appellants were given several opportunities for hearing their objections from time to time. The hearing was fixed on 29.05.1989, 05.06.1989, 12.06.1989, 20.09.1989, 28.09.1989 and 16.10.1989 and the appellants were heard through their lawyer Mr. Kashyap H. Shukla. In view of the above specific information the contention contrary to the same is liable to be rejected.

9. The second objection is that locality publication was not effected under Section 6(2) of the Act. In the same counter affidavit, the Land Acquisition Officer has asserted that publication of notification under Section 6 was published in the Gazette dated 21.03.1990. Public Notice displayed at the office of Mamlatdar of the concerned Ward on 19.04.1990. In the light of the said information, the claim that no publication of notice in the locality under Section 6(2) cannot be accepted.

10. The third and the important objection relates to passing of Award under Section 11A. It is the stand of the appellants that Award was not made within two years from the date of last publication of Notification under Section 6 hence the acquisition is vitiated. Since heavy reliance was placed on the said objection, it is useful to refer Section 6 and Section 11A of the Act which reads thus:

“6. Declaration that land is required for a public purpose.- (1) Subject to the provision of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1) irrespective of whether one report

or different reports has or have been made (wherever required) under section 5A, sub-section (2);

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

11A. Period within which an award shall be made.- (1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.”

11. These provisions were considered by this Court in various decisions. In *Krishi Utpadan Mandi Samiti and Another vs. Makrand Singh and Others*², the question that was posed for consideration was whether the High Court was right in its conclusion that the declaration under Section 6 was published after three years and the last of the publications shall be the last date for the purpose of computing three years' period envisaged in clause (i) of the proviso to sub-section (1) of Section 6 of the Act as amended by Land Acquisition (Amendment) Act, 1984. The discussion and conclusion in paras 4 and 5 are relevant:

“4. The question, therefore, is that which date of the publications in three steps i.e. publication in the Gazette, two newspapers and local publication to be the last date for the purpose of computing three years' limitation prescribed in clause (i) of the proviso to Section 6(1) of the Act. Prima facie, it gives an impression that the last of any of the three steps puts in motion, the running of limitation of three years. But on deeper probe, it does not appear to be so and such a construction would easily defeat the public purpose and deflects the course of justice. So it is necessary to understand the scheme and policy of the Act to get the crux of the question. It is seen that sub-section (1) of Section 4 gives power of eminent domain to the State to acquire the land, whenever it appears to it that the land is needed or likely to be needed for any public purpose or for any company, by a notification published in the Official Gazette and two daily newspapers circulating in that area and at least one of them should be in the regional language and also the Collector is enjoined to cause public notice of the substance of notification to be given at convenient places in the said locality in which the land is situated. It is also mentioned thereunder that the last date of such publication and the giving of such public notice "being hereinafter referred to" as the date of publication of the notification. It would be seen that the purpose of notification under Section 4(1) is an intimation to the owner or person having an interest in the land that Government exercised the power of eminent domain in relation to his land and for public purpose his land is needed or likely to be needed; puts an embargo on his freedom to deal with the land as an unencumbered land and also pegs the price of the land prevailing as on that date. It also is a caveat to the Collector to make the award under Section 11 as well as to determine the market value prevailing as on the last of the dates to be the date and the award should be made within a period prescribed by Section 11-A, lest the entire acquisition shall stand lapsed. The word `hereinafter' is for such purposes as well as for the purpose of determination of the compensation under Chapter III of the Act as well. Therefore,

the word `hereinafter' referred to as the last date of the publication of the notification is the date from which the prevailing prices of the land is to be computed etc.

5. Clause (i) of the proviso to Section 6(1) mandates the publication of the declaration in the Official Gazette and it should be within three years from the date of the publication of the notification under Section 4(1) i.e. the last of the dates referred to in Section 4(1). The word `publish' emphasises the act accomplished i.e. declaration under Section 6(1) being published in the Official Gazette. The last date under Section 6(2) shall be the date for the purposes "hereinafter referred to" would be not for computing the period of three years prescribed in clause (i) of proviso to Section 6(1) of the Act as it was already done, but purposes to be followed hereinafter.

Otherwise language would have been "hereinbefore done".

Sub-section (2) as such did not prescribe any limitation within which the declaration under Section 6(1) or other steps hereinafter to be taken, in other words, the steps to be taken thereafter in making the award under Section 11 or in computation of the period prescribed in Section 11-A. The publication of the declaration in two daily newspapers having circulation in the locality one of which is in the regional language and the publication of the substance of the declaration in the locality are ministerial acts and is a procedural part. It appears that these publications are required to be done to make the declaration published in the manner, to be conclusive evidence of the public purpose under Section 6(1) and also to provide limitation to make the award under Section 11 by the Collector. In other words, the limitation prescribed under Section 11-A is for the purpose of making the award and if the Collector fails to do so, the entire proceeds under Sections 4(1) and 6(1) shall stand lapsed. If this consistent policy of the Act is understood giving teeth to the operational efficacy to the scheme of the Act and public purpose the Act seeks to serve, we are of the considered view that publication in the Official Gazette already made under clause (i) of proviso to sub-section (1) of Section 6 is complete, as soon as the declaration under Section 6(1) was published in the Official Gazette. That will be the date for the purpose of computation of three years' period from the last of the dates of the publication of the notification under Section 4(1). The procedural ministerial acts prescribed under sub-section (2) are only for the purpose of the procedure to be followed `hereinafter', in other words, the steps to be taken subsequent to the publication of the declaration under Section 6(1) of the Act. We cannot agree with Shri Rana, the learned Senior Counsel, that the date of making the declaration by the Secretary to the Government or the authorised officer is the date for computing period of three years. Equally, we cannot agree with the learned counsel for the respondents, Shri Upadhyay, that publication of the substance being the last date from which the period of three years needs to be computed. Acceptance of either contention would easily defeat the public policy under the Act by skilful manner of management with the lower level officials.

12. In *Eugenio Misquita and Others vs. State of Goa and Others*³, similar issue was considered by this Court. K. Venkataswami, J. speaking for the Bench has concluded as follows:

“9. Let us examine whether the learned counsel is right in his submission. As seen from the above extracts of relevant provisions, while Section 4(1) commands publication of notification under that section, Section 6 speaks of the declaration being made to the effect that any particular land is needed for public purpose or for a company. There are judicial decisions that have interpreted the word "made" to mean "published" for the reasons stated in those decisions.

Therefore, strictly speaking, but for those judicial decisions the date of making of the declaration under Section 6(1) will be the relevant date for reckoning the period of limitation.

However, in the interest of the general public, the courts have taken the view that the declaration made will stand accomplished only when it is published. This publication has, therefore, nothing to do with the publication referred to in Section 6(2) of the Act which is for a different purpose, inter alia, for reckoning the limitation prescribed under Section 11-A of the Act. This construction is supported by the language employed in Section 6(2) of the Act. In particular, the word "hereinafter" used in Section 6(2) will amply prove that the last of the series of the publication referred to under Section 6(2) is relevant for the purposes coming thereafter, namely, for making award under Section 11-A. The language employed in second proviso to Section 6(1) also supports this construction. Therefore, the contention of learned counsel cannot be accepted.

10. This is also the view taken by this Court in *Krishi Utpadan Mandi Samiti* case. The learned Judges framed the question thus: (SCC p. 499, para 4) "4. The question, therefore, is that which date of the publications in three steps i.e. publication in the Gazette, two newspapers and local publication to be the last date for the purpose of computing three years' limitation prescribed in clause (i) of the proviso to Section 6(1) of the Act."

11. It may be noted that this Court in that case was considering a case which arose before the coming into force of Amending Act 68 of 1984. The case on hand has arisen after Amending Act 68 of 1984. The only difference is the period of limitation; for the cases arising before the Amending Act it was three years and one year for the cases arising after the Amending Act. Otherwise, the principle is the same.

16. The above view of this Court lends support to the view that for the purpose of calculating the limitation prescribed under clause (ii) of the first proviso to Section 6(1), it is not the last of the publication in the series that should be taken into account, but the publication that was made in the first instance under Section 6.

17. In the light of the law laid down by this Court, we have no hesitation to hold that the declaration published under Section 6 of the Act was well within one year and the challenge to the same has been rightly rejected by the High Court. However, the view taken in the judgment of the High Court under appeal that the relevant date for reckoning the period of limitation will be the date of making of the declaration under Section 6, may not be correct. As held in *Krishi Utpadan Mandi Samiti* case mere making of declaration is not enough. The making of declaration under Section 6 is complete for the purpose of clauses (i) and (ii) of the first proviso to Section 6(1) when it is published in the Official Gazette."

After holding so, since the Notification under Section 4 was lastly published on 06.08.1992 in the Official Gazette and declaration under Section 6 was published in the Gazette on 05.08.1993, this Court found that the same is well within one year and accordingly dismissed the appeal of the landowners."

13. In *S.H. Rangappa vs. State of Karnataka and Another*⁴, a three-Judge Bench of this Court speaking through Kirpal, J. has observed thus:

"7. Declaration under Section 6 is preceded by issuance of a notification under Section 4 which indicates the intention of the Government to inter alia acquire land for a public purpose. Pursuant to the issuance of the same, objections can be filed and after hearing the same, Section 6(1) enables the appropriate authority if it is satisfied, after considering the report made under Section 5-A of the Act, that if any particular land is needed for a public purpose, then a declaration is to be made under the signature of an appropriate officer. Where notification under Section 4 is published after the commencement of the Land Acquisition Amendment Act, 1984, as in the present case, proviso (ii) requires that such a declaration shall not be made after the expiry of one year from the date of the publication of Section 4 notification.

8. We wish to clarify that the words "publish" and "from the date of publication of the notification" occurring in proviso (ii) to Section 6(1) refer to the publication of Section 4 notification and have no reference to the publication of any notification under Section 6. Under Section 6(1), it is only a declaration which is required to be made, the time-limit being within one year of the publication of Section 4 notification. The main purpose for the issuance of a declaration under Section 6 is provided by sub-section (3), namely, that the declaration is conclusive evidence that the land is needed inter alia for a public purpose and after the making of the declaration the appropriate Government may acquire the land in the manner provided by the Act. Sub-section (2) requires the declaration to be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situate and in addition thereto the Collector is also required to cause public notice of the substance of the declaration to be given in the convenient places in the said locality.

9. It is pertinent to note that sub-section (2) of Section 6 does not prescribe any time-limit within which the declaration made under Section 6(1) is to be published. It is well known that after an order or declaration is made there can be a time gap between the making of the order or a declaration and its publication in the Official Gazette.

Whereas the time-limit for the making of an order is provided under Section 6(1), the legislature advisedly did not provide for any time-limit in respect of the steps required to be taken under sub-section (2) of Section 6. If the contention of Mr G.L. Sanghi, the learned Senior Counsel for the appellant is correct, the effect would be that not only the declaration would have to be published within the time prescribed under the proviso to Section 6(1) but all other steps, like publication in the daily newspaper and the Collector causing public notice of the declaration to be given at convenient places in the locality, must also be completed within a period of one year of Section 4 notification. This could certainly not be a consequence contemplated by the legislature. As already observed, the purpose of Section 6 notification being to give a final declaration with regard to the need of the land for public purpose, the interest of the landowners was sufficiently safeguarded with the requirement of the making of the declaration under Section 6(1) within a prescribed period. It is difficult for us to read into sub-section (2) the provisions of the proviso to Section 6(1) which relate to the time-limit for issuance of the notification under Section 6(1).

10. This view which we have expressed hereinabove finds support from a decision of a Bench of four Judges of this Court in the case of *Khadim Hussain v. State of U.P.*"

14. In *General Manager, Department of Telecommunications, Thiruvananthapuram vs. Jacob S/o Kochuvarkey Kalliath (Dead) By LRs. and others*⁵, this Court again reiterated that period of two years from the date of publication of the declaration prescribed under Section 11A for passing the Award, must be calculated from the last of the series of the publications referred to under Section 6(2). After holding so, Doraiswamy Raju, J. speaking for the Bench has held that last of the series of publications being publication in daily newspapers, the period of two years must be calculated from the date of such publication.

15. In *Bihar State Housing Board vs. State of Bihar and Others*⁶, Arijit Pasayat, J. while considering the rival contentions with reference to Sections 4 (1), 6(1), 6(2) and 11A of the Act has held thus:

“9. If one takes note of the parenthesis appearing in sub-section (2) of Section 6, it is clear that reference to the subsequent provisions of the Act to the date of publication of declaration has to be determined as the last of the dates of the publication and the giving of public notice. As the date of publication by local publication was the last at that point of time i.e. 15-3- 1991, the award on 25-3-1992 was not beyond the prescribed period of limitation.”

16. In *Kunwar Pal Singh (dead) by LRs vs. State of U.P. and Others*⁷, Panta, J. speaking for the Bench held:

“17. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the declaration under Section 6. In ordinary course, therefore, when the Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, the proceedings will lapse. The period of two years referred to in Section 11-A shall be computed by counting from the last of the publication dates, as per the prescribed modes of publication.

25. Again, in *Bihar State Housing Board v. State of Bihar* this Court reiterating the proposition of law has held that modes of publication of declaration prescribed under Section 6(2) are conjoint and cumulative and all of them must be resorted to and completed. Sub-section (2) of Section 6 of the Act necessarily makes it abundantly clear that the last of the dates of the publication and giving of such public notice shall "hereinafter" be referred to as the date of publication of the declaration and limitation period of two years for making award under Section 11-A has to be counted as the last of the dates out of the three modes of publication specified in Section 6 of the Act.”

17. In the case on hand, it is clearly indicated in the reply affidavit filed by the Special Land Acquisition Officer that the notification under Section 6 was last published on 19.04.1990, by affixing a copy of the Notification on the notice board of the office of City Mamlatdar, Surat and also by affixing the same in ward No.4 of Surat city.

“Hence the period of two years stipulated in Section 11A would begin to run from 19.04.1990 and, therefore, the publication of the Award under Section 11 of the Act on 18.04.1992 was within the stipulated time limit of two years. In such circumstances, this contention also is liable to be rejected as devoid of any merit.”

18. Learned senior counsel for the appellants submitted that inasmuch as the respondents, by a notification, has changed the classification of the land in question and designated as "residential use" at this moment, they are not permitted to set up a school in the land in question.

“In the counter affidavit filed by the Director of Planning, Surat Municipal Corporation has highlighted that the land in question has been reserved for school purpose in the development plan sanctioned by the State Government under the provisions of Gujarat Town Planning and Urban Development Act, 1976. As per Section 20 of the said Act, the acquiring body, namely, Surat Municipal Corporation

is required to acquire the land under the Land Acquisition Act as the impugned land is reserved for school purpose.

Further, inasmuch as the land in question is kept under reservation for school in the sanctioned development plan for the State Government under Section 17 of the Gujarat Town Planning & Urban Development Act, it is the duty of the Corporation to acquire the land for implementing the provisions of the same. In view of the same, this contention is also liable to be rejected.”

19. Mr. Ranjit Kumar, learned senior counsel for the appellants has also submitted that in view of existence of many schools in and around the vicinity, there is no need to establish a school in the land of the appellants. In respect of the said claim, the Director of Planning, Surat Municipal Corporation, in the counter affidavit has stated that there is no municipal school near the site in question and that the schools of the Corporation which are located in Begampura, Moti Talkies, Mumbaivad, Shetranjivad, Viramgami Maholla are very far from the land under acquisition and due to increase in population in the city of Surat, they are justified in establishing a school for providing primary education to the children in the said area. In respect of `need' and `necessity', it is for the Government and their authorities to take a decision considering various aspects. If such a decision is taken based on materials it is not for the Court to doubt their claim. It is also stated that the Surat Municipal Corporation is required to pay the amount of compensation to the tune of Rs.10,54,901.95 and the said amount has already been deposited with the Government Treasury on 27.05.1992. In view of the above information, the contention of learned senior counsel for the appellants is to be rejected.

20. Finally, learned senior counsel for the appellants, by drawing our attention to the recent decision of this Court in *Avinash Mehrotra vs. Union of India and Others*⁸, submitted that in view of the strict conditions issued by this Court for establishing a school particularly in a crowded city, the respondents cannot fulfill those conditions and on this ground also the acquisition proceeding is liable to be dropped. It is true that in view of what had happened in Lord Krishna Middle School in Kumbakonam in the State of Tamil Nadu, this Court issued several directions and conditions, safety measures and standards for establishing a school. In our view, it is the duty of the State and their educational authorities to adhere to all those conditions before commencing a school in the land in question.

21. In the light of the above discussion, we are unable to sustain any of the objections raised by the appellants. On the other hand, we are in entire agreement with the stand taken by the State as well as the conclusion arrived at by the High Court. Consequently, the appeal fails and the same is dismissed, however, with no order as to costs.

¹(2009) 6 SCC 398

²(1995) 2 SCC 497

³(1997) 8 SCC 47

⁴(2002) 1 SCC 538

⁵(2003) 9 SCC 662

⁶(2003) 10 SCC 1
⁷(2007) 5 SCC 85
⁸(2009) 6 SCC 398