

SUPREME COURT OF INDIA

Mohanlal Nanabhai Choksi (D) By Lrs.

Vs.

State of Gujarat

C.A.No.7268 of 2004

(G.S.Singhvi and Asok Kumar Ganguly JJ.)

04.10.2010

JUDGEMENT

A.K.Ganguly, J.

1. The appellants are the owners of the lands bearing Survey Nos. 1587 to 1596, 1597-A-Part, 1599 to 1601 of Ward No. 4 of Taluka Choryasi of the city of Surat in Gujarat.
2. On 22.08.1980, the Standing Committee of the Surat Municipal Corporation 1 (hereinafter `SMC'), passed a resolution with a proposal to the State Government, under *Section 78 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter `BPMC Act')*, for initiating land acquisition proceedings under the Land Acquisition Act, 1894, for acquiring the abovementioned land of the appellants. The said land, admeasuring 7168.09 sq. mts., was to be acquired for the setting up of a vegetable market. The said resolution was approved and the proposal was sanctioned by the State Government on 30.07.1981.
3. On 3.03.1986, the first Development Plan under the *Gujarat Town Planning & Urban Development Act, 1976 (hereinafter the `Development Act')* was under preparation for the *Surat Urban Development Authority (hereinafter `SUDA')*. During the pendency of the said plan, the State Government sanctioned the abovementioned proposal, and therefore the land in question was kept reserved for a vegetable market for SMC.
4. On 9.2.1990, a notification was issued under *Section 4 of the Land Acquisition Act, 1894* for acquiring the lands of the appellants. The appellants, on 14.3.1990, filed their objections under *Section 5A of the Land Acquisition Act*. However the objections were overruled and then followed a notification under Section 6 of the said Act on 8.02.1991.
5. The appellants, on 16.3.1991, filed a special civil application (No. 3435/1991) before the Gujarat High Court, challenging the notifications under Sections 4 and 6 of the Land Acquisition Act.

6. In 1996-97, SUDA started revising the Development Plan, and in its revision the land was shown as reserved for the vegetable market of SMC.

7. On 17.05.2001, a notification was issued by the State Government under *Section 17 of the Development Act*, whereunder it was proposed to de-reserve the lands that had been reserved for the establishment of a vegetable market by SMC and place them in the residential zone. SMC objected to the said proposal of de-reservation on 13.07.2001.

8. The Gujarat High Court by the impugned judgment dismissed the special civil application (No.3435/1991) on 1.02.2002 and allowed the acquisition of the lands of the appellants for setting up a vegetable market.

9. In the impugned judgment the Hon'ble High Court, inter alia, held as follows:

“a. A major part of the land in question was open land, the construction upon it was very old and hardly 1/10th of the land was occupied by structures.

b. The land was required for a public purpose in terms of *Sections 78 of the BPMC Act, and 12 (2) (b) read with Section 20 of the Development Act*.

c. The other markets, which the appellants claim as very closeby, were actually quite far away. SMC needs to provide a market close to the people so that they do not have to move far to purchase their daily necessities. A vegetable market is required to be near the people, especially in India, as in India people buy their fresh vegetables daily.

d. The notification dated 17.05.2001 made it clear that it was a draft development plan, and suggestions and objections were invited from persons for modification of the said Plan. Therefore, the notification dated 17.05.2001 was merely a proposal to modify the draft Development Plan and did not reflect a decision to de-reserve the lands of the appellants.

e. A reading of *Section 63(12) read with Section 66(42) of the BPMC Act* made it clear that there was an obligatory duty on SMC to construct and maintain a public market, for which it can take appropriate action as required under the Act. Further the scheme of the Act clearly indicated that SMC was competent to establish a market.

f. The appellants had raised a contention that SMC had no right to acquire the land and at most the State Government could acquire land.

The High Court dismissed the said contention holding once a notification was published under Section after complying with the provisions of the Land Acquisition Act, it was conclusive evidence that the land was required for a public purpose and the Court could not go behind the said notification.

g. The appellants were neither agriculturalists nor producers of agricultural produce, nor dealers or office bearers of the Surat Agricultural Produce Market Committee, and as such they had no right to question the authority of SMC to initiate acquisition proceedings for a vegetable market.

6 h. The 1963 Act applied only to bulk sales and not retail sales. The SMC was providing a market so that the retailers and consumers have no difficulty in the sale/purchase of commodities. Retailers were excluded from the purview of the 1963 Act and Rules framed there under. Thus, the SMC could set up the vegetable market as it was doing the same for retailers. The 1963 Act had been enforced to regulate transactions between traders and agriculturalists, in order to prevent exploitation of the latter by the former.

Thus, a market for agriculturalists and traders could only be set up under the provisions of the 1963 Act, but the same did not and would not apply to retailers dealing in small quantities. There was nothing in the 1963 act to indicate that transactions between the ultimate consumers and the vendors was controlled or that the local authority was prohibited from setting up a vegetable market for the same.”

10. The appellants on 19.3.1992 filed an SLP (No.7559/2002), before this Court raising, inter alia, the following main contentions:

a. SMC, acting under the provisions of the BPMC Act, had no authority to establish the vegetable market as there was a later and special Act passed by the Gujarat government, namely the *Gujarat Agricultural Produce Market Act, 1963 (hereinafter the `1963 Act')* and under 1963 Act a vegetable market could only be established by a Market Committee constituted under the 1963 Act.

b. There were markets already established within a radius of 1 and 1/2 kms, and thus there was no need to establish a vegetable market. It was also contended that there was no mandatory duty on the SMC to establish the said market, and that establishing such a market would only lead to traffic problems as the area was a congested area in the middle of the city. The appellants also stated that the area sought to be acquired was occupied by many tenants with many superstructures on it.

c. The lands in question had been reserved in the Final Development Plan of SUDA, but there was a proposal to de-reserve the said lands (by notification dated 17.05.2001), and thus the notifications under Sections 4 and 6 of the Land Acquisition Act would not survive.

11. On 2.09.2004, the State Government issued a notification under Section 17(1)(c) of the Development Act sanctioning the revised Development Plan (called the revised Final Development Plan). In the said plan, the State Government, due to the objections raised by

SMC, did not accept the proposal for de-reservation of the appellants' lands. Thus, the reservation of the lands for a vegetable market for SMC was continued.

12. On 22.04.2002, this Court in the pending SLP stayed further steps regarding the proposed acquisition of land and the interim order of stay was continued on 5.11.2004.

13. This Court is of the view that among the contentions which have been raised by the appellants herein, the one relating to non- applicability of BPMC Act, to initiate an acquisition by the State for establishment of a vegetable market in the context of enactment of a later and a special Act, namely, the 1963 Act, is of some substance.

14. Admittedly, from the resolution of SMC, it is clear that it was relying on *Section 78 of the BPMC Act* for initiating its proposal of acquisition of land for the establishment of a vegetable market.

Section 78 of the BPMC Act runs as under:

“78. Procedure when immovable property cannot be acquired by agreement.- (1) Whenever the Commissioner is unable under section 77 to acquire by agreement any immovable property or any easement affecting any immovable property vested in the Corporation or whenever any immovable property or any easement affecting any immovable property vested in the Corporation is required for the purposes of this Act, the State Government may, in its discretion, upon the application of the Commissioner made with the approval of the Standing Committee and subject to the other provisions of this Act, order proceedings to be taken for acquiring the same on behalf of the Corporation, as if such property or easement were land needed for a public purpose within the meaning of the *Land Acquisition Act, 1894 (1 of 1894)*.

(2) Whenever an application is made under sub-section (1) for the acquisition of land for the purpose of providing a new street or for widening or improving an existing street it shall be lawful for the Commissioner to apply for the acquisition of such additional land immediately adjoining the land to be occupied by such new street or existing street as is required for the sites of buildings to be erected on either side of the street, and such additional land shall be deemed to be required for the purposes of this Act.

(3) The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the Corporation.”

15. A perusal of Sub-section(1) of Section 78 shows that the State Government may, in its discretion, upon application of the Commissioner, order proceedings to be taken for acquiring the land in question if the SMC needs it for the purposes of this Act. Section 63 of

the BPMC Act provides for certain categories of matters in respect of which SMC is competent to take steps and one such step is provided under Section 63(12). Under *Sub-section 12 of Section 63*, SMC can take steps for:

“63. (12) the construction or acquisition and maintenance of public markets and slaughter-houses and tinneries and the regulation of all markets and slaughter-houses and tinneries;”

16. *Section 2(33) of BPMC Act* defines a 'market'.

“The said definition is very broad and is set out herein below:

"2. (33) "market" includes any place where persons assembly for the sale of, or for the purpose of exposing for sale, live-stock or food for live-stock or meat, fish, fruit, vegetables, animals intended for human food or any other articles of human food whatsoever with or without the consent of the owner of such place, notwithstanding that there may be no common regulation of the concourse of buyers and sellers and whether or not any control is exercised over the business of or the persons frequenting the market by the owner of the place or any other person;”

17. Relying on these provisions of BPMC Act, it has been argued by the learned counsel for the appellants that a Municipal Commissioner is authorized to set up a market within the meaning of *Section 2(33) of BPMC Act*. Such a market is much wider than a vegetable market.

18. The learned counsel for the appellants buttressed the argument by further reference to the 1963 Act. Referring to the Statement of Objects and Reasons of the 1963 Act, learned counsel urged that the said 1963 Act has been enacted to consolidate and amend the law relating to buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Gujarat. The Statement of Objects and Reasons of the 1963 Act, in the Gujarat Government Gazette Extraordinary dated March 22, 1963 is as follows:

“STATEMENT OF OBJECTS AND REASONS.

As regards the regulation of sales and purchases of agricultural produce, there is in force, in the Bombay area of the State, the Bombay Agricultural Produce Markets Act, 1939, and in the Saurashtra area of the State, the Saurashtra Agricultural Produce Markets Act, 1955.

There is no corresponding law in force in the Kutch area of the State.

2. The aforesaid Bombay Act is on the statute book for the last 23 years and during that period it has undergone various changes from time to time to suit the development and growth of regulated agricultural produce markets.

3. Government had appointed a Committee under the Chairmanship of Shri Jashvantlal Shah, the then Deputy Minister for Co-operation, to review the entire position of agricultural produce markets in the light of the experience gained in the day-to-day working thereof and to suggest amendments, if any, to the existing Law. Accordingly the Committee has suggested various amendments. In pursuance of the policy of the State to bring about uniformity in the laws in force in the State, it is proposed to consolidate and amend the law relating to the regulation of buying and selling of agricultural produce in the whole of the State Of Gujarat. The present Bill seeks to achieve that object. The Bill mainly follows the *Bombay Agricultural Produce Markets Act, 1939* (hereinafter referred to as "the existing Act"). Various amendments suggested by the Committee have also been incorporated in the Bill."

19. The learned counsel for the appellants further urged that the Act of 1963 is a later and a special law for establishment of a market for agricultural produce in the State. The learned counsel also referred to the definition of 'agricultural produce' under *Section 2(i) of the 1963 Act* and argued that vegetables definitely come within the definition of 'agricultural produce'. He also referred to the definition of 'market' under *Section 2(xii) of the 1963 Act* to mean 'a market declared or deemed to be declared under the Act'; as also to the definition of a 'market area' under *Section 2(xiii)*, which means 'any area declared or deemed to be declared to be a market area under this Act.'

20. Reference was also made to 'retail sale' under *Section 2(xviii) of the 1963 Act*, whereunder 'retail sale' means:

"2. (xviii) "retail sale" means a sale of any agricultural produce not exceeding such quantity as a market committee may by bye-laws determine to be a retail sale in respect of such agricultural produce;"

21. This Court notes that sale and purchase in the market area is controlled under *Section 6(1) and (2)*. *Section 6(3)* carves out an exception in the following terms:

"6. (3) Nothing in sub-section (2) shall apply to the purchase or sale of any such agricultural produce, if its producer is himself its seller and the purchaser purchases it for his own private consumption."

22. The learned counsel for the appellants, relying on these provisions urged that the establishment of a vegetable market falls solely and squarely within the provisions of the 1963 Act.

23. Under *Chapter IX and section 49 of the 1963 Act*, the State Government is authorized to acquire any land within a market area if it is needed for the purposes of this Act, i.e. the 1963 Act. Such acquisition can be made under the provisions of the *Land Acquisition Act, 1894* or any other corresponding law for the time being in force.

“Section 49 (1) and (2) are set out below:

"49. (1) The State Government may acquire any land within a market area, which in its opinion is needed for the purposes of this Act, under the provisions of the Land Acquisition Act, 1894 or any other corresponding law, for the time being in force.

(2) Such land shall be transferred by the State Government to the market committee on payment by the market committee of the compensation awarded under the Land Acquisition Act, 1894, or any other corresponding law for the time being in force and of all other charges incurred by the State Government on account of the acquisition, within such period and in such manner as the State Government may, by general or special order, determine and on such transfer the land shall vest in the market committee.”

24. The learned counsel for the appellants strongly relied on *Section 63 of the 1963 Act*, which excludes the application of *Bombay Markets and Fairs Act, 1862* or any other law for the time being in force relating to the establishment, maintenance and regulation of a market. Section 63 runs as under:

“63. Nothing contained in the Bombay Markets and Fairs Act, 1862, or in any law for the time being in force relating to the establishment, maintenance or regulation of a market shall apply to any market area or affect in any way the powers of a market committee or the rights of a holder of a licence granted under this Act to set up, establish or continue any place for the purchase or sale of any agricultural produce notified under sub-section (1) of section 6 in such area.”

25. The main argument of the learned counsel for the appellants on the basis of the aforesaid statutory framework is that if the State Government wants to acquire any land for the establishment of a vegetable market, the State Government must take steps under the later and the special Act, which is the 1963 Act. In other words, the State Government cannot, in view of specific later legislative enactment, i.e. the 1963 Act and Section 63 thereof, initiate acquisition proceedings to establish a vegetable market on the basis of resolution of SMC under *Section 78 of BPMC Act*.

26. The learned counsel for the respondents opposed the aforesaid contentions and took us through the judgment of the High Court and submitted that the 1963 Act is meant for the cultivators and traders and is not meant for common man. The learned counsel also relied on various provisions of the Gujarat Town Planning and Urban Development Act and also urged that in view of *sections 63(12) and 78 of the BPMC Act*, the impugned action of SMC, which

has been affirmed by the High Court, is valid in law and this Court may dismiss the special leave petition.

27. After considering the rival submissions of the parties, this court is of the opinion that the contentions raised by the learned counsel for the appellants deserved serious consideration by the High Court.

28. However, the High Court in the impugned judgment, with great respect, proceeded on various issues but has not at all touched the questions discussed above. In fact in paragraph 18 of the impugned judgment, the High Court refused to answer this question, inter alia, on the ground that the appellants are neither agriculturalists nor the purchasers of agricultural produce as specified in the schedule nor dealers in such commodities nor office bearers of Surat Agricultural Produce Market Committee, nor have any right to make grievance on behalf of Surat Agricultural Produce Market Committee.

29. We are of the considered view that the High Court was clearly in error in refusing to deal with the aforesaid question on the grounds mentioned in paragraph 18.

30. This court is further of the opinion that since the property of the appellants is taken away as a result of the aforesaid acquisition proceedings, the appellants are entitled to raise the question of non-applicability of the BPMC Act to initiate an acquisition proceedings for establishing a vegetable market, in view of the clear provisions of the 1963 Act, which is a special and a later Act.

31. The right of property, may no longer be a fundamental right, but it enjoys the protection of *Article 300A of the Constitution* to the extent that there can be no deprivation of property save by authority of law. Authority of law would obviously mean valid authority of law. In a case of deprivation of property by acquisition, ultimately by Land Acquisition Act, 1894, which is a drastic and expropriatory piece of legislation, the owners of property, the appellants herein, are admittedly entitled to raise all legally permissible objections to the legality of an acquisition proceeding.

32. Here as the High Court has proceeded on an erroneous approach, its judgment cannot be sustained in as much as the High Court refused to examine the validity of the main challenge raised by the appellants on a ground of their lack of locus. This approach of the High Court, with great respect, goes to the root of the issue and makes its judgment very vulnerable.

33. For the reasons aforesaid, this Court cannot sustain the impugned judgment of the High Court, which is accordingly set aside. The matter is remitted to the High Court for decision of the writ petition afresh on the questions discussed above and are specifically formulated below.

34. The High Court may deal with all issues but specifically the two following questions:

“(i) Whether the 1963 Act, a later and a special Act as compared to the 1949 Act would prevail over the 1949 Act or whether a harmonious construction is possible between the 1963 Act and the 1949 Act on the footing that they seem to govern two distinct and separate spheres of markets.

(ii) The impugned acquisition proceeds under *Section 78 of the BPMC Act*. Section 78 peculiarly uses the term "property vested in the corporation". A plain reading of the term seem to prima facie imply that the SMC can only acquire property vested in it and not private property. Thus, High Court may decide the scope and extent of the said expression in *Section 78 of the BPMC Act* and determine issue of validity of the impugned acquisition.”

35. Since considerable time has elapsed, the High Court is requested to take steps to hear out the writ petition in light of the observations made above, as early as possible, but definitely within a period of 6 months from the date of the production of this order before the High Court. However, the High Court is free to decide the questions without being in any way inhibited by any observation made in this judgment, save and except its finding on two issues. They are (i) the 1963 Act is a later and special statute dealing with agricultural produce and agricultural market, and (ii) the appellants have, in view of the provisions of Article 300A and the drastic provision of Land Acquisition Act, the locus to challenge the acquisition proceeding.

36. It is, however, made clear that it is open to the parties to raise all legally permissible contentions before the High Court. The appeal is allowed to the extent indicated above.

37. No order as to costs.